

[Business and Tax Regulations and Health Codes - Food Product and Marketing Establishment License Fees]

Ordinance amending 1) the San Francisco Business and Tax Regulations Code Sections 248 and 249.1; and 2) the San Francisco Health Code Sections 440 and 451 relating to fees for food product and marketing establishment licenses issued by the Department of Public Health.

NOTE: Additions are single-underline italics Times New Roman; deletions are ~~strike-through italics Times New Roman~~. Board amendment additions are double-underlined; Board amendment deletions are ~~strikethrough-normal~~.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Findings.

The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. 120638 and is incorporated herein by reference.

Section 2. The San Francisco Business and Tax Regulations Code is hereby amended by amending Sections 248 and 249.1, to read as follows:

SEC. 248. FOOD PRODUCT AND MARKETING ESTABLISHMENTS.

(a) The following fee for licenses is established for persons, firms or corporations engaged in the conduct or operation of the handling, manufacture or sale of foodstuffs, annually payable in advance to the Tax Collector.

Class	Fee	
Class A. Food product and marketing establishments without food preparation with a total		

square footage of:

<i>Class A-1. Less than 5,001 square feet</i>	\$569	\$647
<i>Class A-2. 5,001 square feet to 10,000 square feet</i>	\$748	\$847
<i>Class A-3. 10,001 square feet to 20,000 square feet</i>	\$934	\$1,054
<i>Class A-4. Greater than 20,000 square feet</i>	\$1,135	\$1,277
Class B. Food product and marketing establishments with food preparation with a total square footage of:		
<i>Class B-1. Less than 5,001 square feet</i>	\$610	\$693
<i>Class B-2. 5,001 square feet to 10,000 square feet</i>	\$794	\$898
<i>Class B-3. 10,001 square feet to 20,000 square feet</i>	\$968	\$1,091
<i>Class B-4. Greater than 20,000 square feet ("Supermarket") with:</i>	\$1,154	
<i> <u>1 Food Preparation Station</u></i>		\$1,235
<i> <u>2 to 3 Food Preparation Stations</u></i>		\$1,390
<i> <u>4 or more Food Preparation Stations</u></i>		\$1,544
Class C. Retail bakeries with total square footage of:		
<i>Less than 2,001 square feet Without food preparation</i>	\$625	\$753
<i>Greater than 2,000 square feet With food preparation</i>	\$645	\$1,290
Class D. Produce stand Farm Stand	\$629	\$309
Class E. Certified farmers market	\$635	\$1,039
Class F. Wholesale food markets with retail	\$610	\$645
Class G. Food manufacturing or processing	\$629	\$714
Class H. Food product and marketing establishments with an inventory of food at cost in stock as of the first day of April:		
Less than \$1,000	\$105	
Greater than \$1,000	0	Refer to Class A
Class I. Food product and marketing establishments in stadiums, arenas or auditoriums with a seating capacity of	\$625	

25,000 or more		
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(b) The license fees set forth above shall be paid annually on or before March 31, in accordance with the provisions of Section 76.1 of the Business and Tax Regulations Code.

SEC. 249.1. FOOD PREPARATION AND SERVICE ESTABLISHMENTS.

Every person, firm or corporation engaged in the business of operating food preparation and service establishments, as defined in Section 451 of the San Francisco Health Code, that require permits from the Health Department shall pay an annual license fee to the Tax Collector as follows:

(a)

Class	Fee	
Class A. Food preparation and service establishments with a total square footage of:		
Less than 1,000 square feet	\$777	<u>\$879</u>
1,000 square feet to 2,000 square feet	\$1,028	<u>\$1,158</u>
Greater than 2,000 square feet	\$1,179	<u>\$1,326</u>
Class B. Bar or tavern	\$923	
<i>Without food preparation</i>		<u>\$750</u>
<i>With food preparation</i>		<u>\$950</u>
Class C. Take-out establishment	\$932	<u>\$1,051</u>
Class D. Fast food establishment	\$1,056	<u>\$1,189</u>
Class E. Catering facility	\$908	<u>\$1,025</u>
Class F. Temporary facility	\$145	<u>\$176</u>
<i>Class G. Food demonstrations</i>	\$105	
Class <u>HG</u>. Commissary	\$884	<u>\$998</u>
Class <u>IH</u>. Mobile Food Facilities		

1	Class H-1. Mobile Food Facility 1	\$181	\$195
2	Class H-2. Mobile Food Facility 2	\$271	\$292
3	Class H-3. Mobile Food Facility 3	\$181	\$195
4	Class H-4. Mobile Food Facility 4	\$724	\$778
5	Class H-5. Mobile Food Facility 5	\$724	\$778
6	Class <u>JI</u>. Stadium concession	\$625	\$710
7	Class <u>KJ</u>. Vending machines companies	\$177	\$211 plus
8			\$5.56 per machine
9	Class <u>LK</u>. Bed and breakfast establishment	\$999	\$1,126
10	Class <u>ML</u>. Boarding house	\$241	\$283
11	Class <u>NM</u>. Private school cafeteria	\$294	
12	<i>Without food preparation</i>		\$342
13	<i>With food preparation</i>		\$527
14	Class <u>ON</u>. Hospital kitchen, with food service to the general public and staff only	\$940	\$1,060
15	Class <u>PO</u>. Licensed Health Care Facility	\$1,050	\$1,169
16	Class <u>QP</u>. Caterer	\$350	\$376
17	Class <u>Q</u>. <i>Employee Cafeteria</i>		
18	<i>Without food preparation</i>		\$669
19	<i>With food preparation</i>		\$1,029
20			

21 The license fees set forth above shall be paid annually on or before March 31, in
22 accordance with the provisions of Section 76.1 of the Business and Tax Regulations Code.

23 (b) Exemptions. The following establishments are exempt from paying the fees
24 required by this Section:

1 (1) Food preparation and service establishments used exclusively by day care
2 facilities for children are exempt from paying the fees required by this Section.

3 For the purpose of this subsection, a "day care facility for children" shall mean a
4 "community care facility" licensed pursuant to the provisions of Chapter 3, Division 2 of the
5 California Health and Safety Code (commencing at Section 1500) which provides nonmedical
6 care to children in need of personal services, supervision, or assistance essential for
7 sustaining the activities of daily living or for the protection of the individual on less than a 24-
8 hour basis, or a "family day care home for children" licensed pursuant to the provisions of
9 Chapter 3.6, Division 2 of the California Health and Safety Code (commencing at Section
10 1597.50).

11 (2) Food preparation and service establishments funded through the San
12 Francisco Commission on Aging for nutrition projects for older individuals.

13 (c) Beginning with fiscal year 2010-2011 and annually thereafter, the fees set
14 forth in this section may be adjusted each year, without further action by the Board of
15 Supervisors, as set forth in this subsection. Not later than April 1, the Director shall report to
16 the Controller the revenues generated by the fees for the prior fiscal year and the prior fiscal
17 year's costs of operation, as well as any other information that the Controller determines
18 appropriate to the performance of the duties set forth in this Article. Not later than May 15, the
19 Controller shall determine whether the current fees have produced or are projected to produce
20 revenues sufficient to support the costs of providing the services for which the fee is assessed
21 and that the fees will not produce revenue that is significantly more than the costs of providing
22 the services for which the fee is assessed. The Controller shall, if necessary, adjust the fees
23 upward or downward for the upcoming fiscal year as appropriate to ensure that the program
24 recovers the costs of operation without producing revenue that is significantly more than such
25 costs. The adjusted rates shall become operative on July 1.

1
2 Section 3. The San Francisco Health Code is hereby amended by amending Sections
3 440 and 451, to read as follows:

4 **SEC. 440. FOOD PRODUCT AND MARKETING ESTABLISHMENT.**

5 (a) **"Food Product and Marketing Establishment"** means any room or building,
6 or place or portion thereof, maintained, used or operated for the purpose of commercially
7 storing, selling, vending, packaging, making, cooking, mixing, processing, bottling, canning,
8 packing, slaughtering, or otherwise preparing or handling food, except Food Preparation and
9 Service Establishments as defined in Section 451 and Food Product and Marketing delivery
10 vehicles.

11 (b) **"Food"** as used in this Section, includes all articles used for food, drink,
12 confectionery, or condiment, whether simple or compound, including perishable foods, such
13 as fruits, vegetables, fish, meat, poultry, eggs, and bakery goods, whether sold after
14 processing or sold in a fresh or frozen form. Food as used in this Section, shall not include
15 whole pumpkins sold during the month of October for purely decorative purposes, which are
16 not intended for human consumption, and which are clearly marked as being sold only for
17 such limited purposes.

18 (c) **"Bakery"** as included within this Section and means any room, building,
19 premises, or place which is used or operated for commercial baking, manufacturing,
20 preparing, processing, retail selling, or packaging of bakery products. It includes all rooms of a
21 bakery in which bakery products or ingredients are stored or handled. It does not, however,
22 include any Food Preparation and Service Establishment as defined in Section 451.

23 (d) "Certified Farmers Market" means a location approved by the San Francisco
24 Agricultural Commissioner where agricultural products are sold by producers or certified producers
25 directly to consumers or to individuals, organizations, or entities that subsequently sell or distribute the

1 products directly to end users. A certified farmers' market may only be operated by one or more
2 certified producers, by a nonprofit organization, or by a local government agency and must meet the
3 requirements of San Francisco Administrative Code Chapter 9A, or any successor provisions.

4 (e) "Farm Stand" means a location at or near the point of production of a community or
5 urban garden where their fresh produce, shell eggs and non-potentially hazardous processed
6 agricultural products made with ingredients produced on or near the community or urban garden are
7 sold. The community or urban garden must be deemed an approved source by the Director of
8 Environmental Health or the County Agricultural Commissioner. "Near" is defined as "within San
9 Francisco City Limits".

10 (f) "Food Preparation Station" means a preparation area where separate equipment
11 and/or facilities are used by designated trained staff for a specific type of food conveyance, including,
12 but not limited to, meat, fish, bakery, prepared foods, or confection.

13 (g) "Retail Food Vendor at Farmers Market" means a vendor who sells prepackaged
14 food items that are processed, packaged and labeled from and approved permitted food facility, and
15 has an individual permit that is specific to that market.

16 (h) "Supermarket" means a food product and marketing establishment that sells a variety
17 of food and is greater than 20,000 square feet.

18 (i) "Wholesale Food Market with retail" means a food market which predominantly
19 specializes in buying produce, bakery, meat, fish, processed food, confection and other food items for
20 resale to retail outlets, but retains a retail space within the establishment to sell the aforementioned
21 items to the public.

22 ~~(j)~~ (j) It shall be unlawful for any person, persons, firm or corporation to maintain
23 or operate within any room, building, vehicle or place or portion thereof a Food Product and
24 Marketing Establishment within the City and County of San Francisco, without having first
25

1 obtained a permit issued and signed by the Director of Public Health of said City and County
2 to do so.

3 Said permit when issued shall be kept displayed in a prominent place on the
4 premises of the establishment, vehicle or cart for which or whom it is issued.

5
6 **SEC. 451. FOOD PREPARATION AND SERVICE ESTABLISHMENT.**

7 (a) **"Bar or tavern"** means any food preparation and service establishment which
8 primarily prepares and/or serves alcoholic beverages.

9 (b) **"Bed and breakfast establishment"** means a "restricted food service facility"
10 as defined in Health and Safety Code Section 113893.

11 (c) **"Boardinghouse"** means any building or portion thereof occupied or
12 intended, arranged or designed for occupation by six or more but less than 35 guests where
13 sleeping rooms and meals are provided to the guests for compensation and includes all
14 private institutional type homes where inspection is made by the San Francisco Department of
15 Public Health.

16 (d) **"Caterer"** means a person who is in the business of providing food,
17 beverages, and sometimes service, at social gatherings. The caterer prepares the food at a
18 location separate from the social gathering, though the caterer may engage in limited food
19 preparation at the location where the caterer serves the food. A caterer is not a private chef or
20 chef for hire who prepares food in a private home.

21 (e) **"Catering facility"** means any food preparation and service establishment
22 where a caterer prepares food for service at another location.

23 (f) **"Commissary"** means any food establishment in which food, containers,
24 equipment, or supplies are stored or handled for use in vehicles, mobile food preparation
25 units, food carts, or vending machines.

1 (g) **"Director"** means the "Director of Public Health of the City and County of San
2 Francisco" or his or her designee. "Inspectors" shall mean the "Inspectors of the Department
3 of Public Health," administered by said Director. The Director shall be responsible for the
4 administration and enforcement of Sections 451 to 456, inclusive, of this Article and the rules
5 and regulations relating thereto. The Director shall, after a public hearing, prescribe the rules
6 and regulations relating thereto. Said rules and regulations shall be issued in pamphlet form.
7 All such food preparation and service establishments shall be operated, conducted and
8 maintained in accordance therewith.

9 (h) **"Employee Cafeteria"** means a food facility located within business premises where
10 the business employees are provided or sold food on a regular basis. Food and drink are not regularly
11 served to the public and the food establishment is not subject to tax. The operators of the food facility
12 are either employees of the business or are contracted by that business.

13 ~~(h)~~(i) **"Food demonstrations"** means any food preparation and/or service facility
14 operating out of temporary facilities approved by the Director of Public Health for a period of
15 time not to exceed seven consecutive days for purposes of demonstrating food preparation or
16 equipment.

17 ~~(i)~~(j) **"Food preparation and service establishment"** means and includes any
18 restaurant, mobile food facility, guest house, boardinghouse, special events, school food
19 concessions, bar or tavern, take-out establishment, fast food establishment, caterer, catering
20 facility, temporary facility, food demonstration, commissary, pushcart, stadium concession,
21 vending machine, bed and breakfast establishment, employee cafeteria, private school
22 cafeteria, hospital kitchen, and licensed health care facility, as those terms are defined herein.

23 ~~(j)~~(k) **"Guest house"** means any building or portion thereof occupied or intended,
24 arranged, or designed for occupation by 35 or more guests where sleeping rooms and meals
25

1 are provided to the guests for compensation and shall include "guest house," "residence
2 club," "lodge," "dormitory," "residence cooperative" and any of its variants.

3 ~~(k)~~(l) **"Hospital kitchen"** means any food preparation and service facility
4 operating within a hospital that serves food to staff or the general public, but not to patients.

5 ~~(l)~~(m) **"Licensed Health Care Facility"** means all of the following health facilities
6 with 16 or more beds designated for the diagnosis, care, prevention, and treatment of human
7 illness, physical or mental, including convalescence, rehabilitation, and care during and after
8 pregnancy, to which persons are admitted for a 24-hour stay or longer:

9 (1) General Acute Care Hospital as defined in Cal. Health and Safety Code
10 Section 1250(a) or any successive statutes;

11 (2) Acute Psychiatric Hospital as defined in Cal. Health and Safety Code
12 Section 1250(b) or any successive statutes;

13 (3) Skilled Nursing Facility as defined in Cal. Health and Safety Code Section
14 1250(c) or any successive statutes;

15 (4) Intermediate Care Facility as defined in Cal. Health and Safety Code
16 Section 1250(d) or any successive statutes;

17 (5) Special Hospital as defined in Cal. Health and Safety Code Section 1250(f)
18 or any successive statutes;

19 (6) Intermediate Care Facility/Developmentally Disabled as defined in Cal.
20 Health and Safety Code Section 1250(g) or any successive statutes;

21 (7) Chemical Dependency Recovery Facility as defined in Cal. Health and
22 Safety Code Section 1250.3 or any successive statutes;

23 Any of the facility types listed above that are operated by the State of California
24 Departments of Mental Health, Developmental Services, Corrections, or Youth Authority are
25 not included in this definition.

1 ~~(m)~~(n) **"Mobile Food Facility"** means any vehicle or pushcart used in conjunction
2 with a commissary or other permanent food facility upon which food is sold or distributed at
3 retail. Mobile Food Facilities may be located on private or public property. Mobile Food Facility
4 does not include a "Transporter" used to transport packaged food from a food facility or other
5 approved source to the consumer. There are five categories of Mobile Food Facilities for
6 licensing and fee payment purposes under San Francisco Business and Tax Regulations
7 Code Section 249.1 as set forth below. For purposes of this Section, the term "potentially
8 hazardous food" shall have the same meaning as set forth in California Health and Safety
9 Code Section 110005 or any successor provisions, the term "limited food preparation" shall
10 have the same meaning set forth in California Health and Safety Code Section 113818 or any
11 successor provisions, and the term "prepackaged" shall have the same meaning as set forth
12 in California Health and Safety Code Section 113876 or any successor provisions.

13 (1) **"Mobile Food Facility 1"** means a Mobile Food Facility where a Mobile
14 Food Facility Vendor handles prepackaged and non-potentially hazardous foods, including but
15 not limited to, pastries, bagels, donuts, popcorn, chips, candies, sodas, or bottled drinks.

16 (2) **"Mobile Food Facility 2"** means a Mobile Food Facility where a Mobile
17 Food Facility Vendor handles prepackaged and potentially hazardous foods, including but not
18 limited to, cold sandwiches, salads, pasta, or cold noodles.

19 (3) **"Mobile Food Facility 3"** means a Mobile Food Facility where a Mobile
20 Food Facility Vendor handles non-prepackaged and non-potentially hazardous foods,
21 including but not limited to, churros, salted bagels, cotton candy, lemonade, or tea.

22 (4) **"Mobile Food Facility 4"** means a Mobile Food Facility where a Mobile
23 Food Facility Vendor engages in limited food preparation.

24 (5) **"Mobile Food Facility 5"** means a Mobile Food Facility where a Mobile
25 Food Facility Vendor engages in full food preparation or any food preparation not covered by

1 Mobile Food Facility Categories 1-4, including but not limited to, tacos, burritos, crepes, or
2 falafel.

3 ~~(#)~~(o) **"Mobile Food Facility Vendor"** means any person engaged in the
4 business of operating a Mobile Food Facility within the City and County of San Francisco.

5 ~~(#)~~(p) **"Owner"** or **"owners"** mean those persons, partnerships, or corporations
6 who are financially interested in the operation of a food preparation and service
7 establishment.

8 ~~(#)~~(q) **"Operator"** means any person engaged in the dispensing of or in assisting
9 in the preparation of food, or a person otherwise employed in a food preparation and service
10 establishment.

11 ~~(#)~~(r) **"Private school cafeteria"** means any food preparation and service facility
12 serving food to faculty and/or students of a school not operated by the San Francisco Unified
13 School District.

14 ~~(#)~~(s) **"Restaurant"** means any coffee shop, cafeteria, short-order cafe,
15 luncheonette, cocktail lounge, sandwich stand, soda fountain, public school cafeteria or eating
16 establishment, in-plant or employee eating establishment and any other eating establishment,
17 organization, club, including Veterans' Club, boardinghouse, bed and breakfast
18 establishments, or guest house, which gives, sells or offers for sale, food to the public, guests,
19 patrons, or employees as well as kitchens or other food preparation areas in which food is
20 prepared on the premises for serving or consumption on or off the premises, and requires no
21 further preparation and also includes manufacturers of perishable food products that prepare
22 food on the premises for sale directly to the public. The term "restaurant" shall not include
23 mobile food facilities, cooperative arrangements made by employees who purchase food or
24 beverages for their own consumption and where no employee is assigned full time to care for
25 or operate equipment used in such arrangement, or private homes; nor shall the term

1 "restaurant" include churches, church societies, private clubs or other nonprofit associations
2 of a religious, philanthropic, civic improvement, social, political, or educational nature, which
3 purchase food, food products, or beverages, or which receive donations of food, food
4 products, or beverages for service without charge to their members, or for service or sale at a
5 reasonable charge to their members or to the general public at occasional fundraising events,
6 for consumption on or off the premises at which the food, food products, or beverages are
7 served or sold, if the service or sale of such food, food products or beverages does not
8 constitute a primary purpose or function of the club or association, and if no employee or
9 member is assigned full-time to care for or operate equipment used in such arrangements.

10 ~~(s)~~(t) **"School food concessions"** means any food preparation, food service or
11 food products intended for consumption by students attending or participating in activities
12 within a school facility.

13 ~~(u)~~(v) **"Special events"** means any organized collection of food purveyors
14 operating individually or collaboratively out of approved temporary or mobile food facilities at a
15 fixed location for a period of time not to exceed 25 days in a 90-day period in conjunction with
16 a single, weekly, or monthly community event as defined in the California Health and Safety
17 Code Section 113755.

18 ~~(w)~~(w) **"Stadium concession"** means any food preparation and/or service facility
19 operating within a stadium, arena, or auditorium with a seating capacity of 25,000 or more.

20 ~~(x)~~(x) **"Take-out establishment"** means any food preparation and service
21 establishment which primarily prepares food for consumption off premises.

22 ~~(y)~~(y) **"Temporary facility"** means any food preparation and service facility
23 operating out of temporary facilities approved by the Director of Public Health at a fixed
24 location for a period of time not to exceed 25 days in any 90-day period in conjunction with a
25 single event or celebration.

1 ~~(b)(2)~~ **"Vending machine"** means any self-service device, which upon insertion of
2 money or tokens, dispenses food without the necessity of replenishing the device between
3 each vending operation.

4 Section 4. Effective Date. This ordinance shall become effective 30 days from the
5 date of passage.

6 Section 5. In enacting this Ordinance, the Board intends to amend only those words,
7 phrases, paragraphs, subsections, sections, articles, numbers, punctuation, charts, diagrams,
8 or any other constituent part of the San Francisco Park Code that are explicitly shown in this
9 legislation as additions, deletions, Board amendment additions, and Board amendment
10 deletions in accordance with the "Note" that appears under the official title of the legislation.

11 Section 6. Severability. If any section, subsection, sentence, clause, or phrase of this
12 ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of
13 competent jurisdiction, such decision shall not affect the validity of the remaining portions of
14 the ordinance. The Board of Supervisors hereby declares that it would have passed this
15 ordinance and each and every section, subsection, sentence, clause, or phrase not declared
16 invalid or unconstitutional without regard to whether any portion of this ordinance would be
17 subsequently declared invalid or unconstitutional.

18
19
20 APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

21
22 By:



VIRGINIA DARIO ELIZONDO
Deputy City Attorney

23
24
25
Mayor Lee
BOARD OF SUPERVISORS



City and County of San Francisco

Tails Ordinance

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 120638

Date Passed: July 24, 2012

Ordinance amending: 1) the San Francisco Business and Tax Regulations Code Sections 248 and 249.1; and 2) the San Francisco Health Code Sections 440 and 451 relating to fees for food product and marketing establishment licenses issued by the Department of Public Health.

June 21, 2012 Budget and Finance Committee - CONTINUED

June 22, 2012 Budget and Finance Committee - RECOMMENDED

July 10, 2012 Board of Supervisors - CONTINUED ON FIRST READING

Ayes: 11 - Avalos, Campos, Chiu, Chu, Cohen, Elsbernd, Farrell, Kim, Mar, Olague and Wiener

July 17, 2012 Board of Supervisors - PASSED, ON FIRST READING

Ayes: 11 - Avalos, Campos, Chiu, Chu, Cohen, Elsbernd, Farrell, Kim, Mar, Olague and Wiener

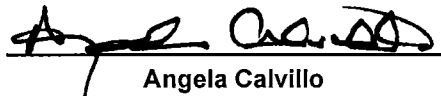
July 24, 2012 Board of Supervisors - FINALLY PASSED

Ayes: 10 - Avalos, Campos, Chiu, Chu, Cohen, Elsbernd, Kim, Mar, Olague and Wiener

Excused: 1 - Farrell

File No. 120638

I hereby certify that the foregoing
Ordinance was FINALLY PASSED on
7/24/2012 by the Board of Supervisors of the
City and County of San Francisco.


Angela Calvillo
Clerk of the Board


Mayor


Date Approved