

1 [Public Works Code – Sidewalk flower-vending stands.]

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3 **Ordinance amending Public Works Code Sections 156, 157, 159, 160, 161, 162, and 163**
4 **to impose a two five year limit on sidewalk flower-vending stand permits and establish**
5 **a lottery process for subsequent permit issuance for such stands, to clarify application**
6 **requirements, to add operating conditions for such stands and establish an**
7 **abandonment period, to establish an annual public right-of-way occupancy fee, to**
8 **delete provisions regarding permit assignment to family members of the permittee, to**
9 **change the criminal penalty for violations from a misdemeanor to an infraction, and to**
10 **establish administrative penalties for violations; and adding Section 165 concerning**
11 **the establishment of new sidewalk flower-vending stand locations, including permit**
12 **application fees.**

13 Note: Additions are *single-underline italics Times New Roman*;
14 deletions are *strikethrough italics Times New Roman*.
15 Board amendment additions are double underlined.
16 Board amendment deletions are ~~strikethrough normal~~.

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

17 Section 1. The San Francisco Public Works Code is hereby amended by amending
18 Section 156, 157, 159, 160, 161, 162, and 163 to read as follows:

19 SEC. 156. AUTHORITY TO ISSUE PERMITS.

20 *(a)* The Director of Public Works is hereby authorized and empowered to issue
21 permits for the maintenance of sidewalk flower-vending stands at the locations specified in
22 Section 155 of this Article, subject to the proviso contained in said Section 155. In considering
23 the issuance of sidewalk flower-vending stand permits and in prescribing the location of such
24 stands within the areas set forth in Section 155 of this Article, the Director of Public Works
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1 shall give due regard to the conveniences and necessities of the owners, occupants or
2 tenants of offices, stores or shops in the vicinity.

3 ~~(b) The term of a A permit issued pursuant to this Article shall be no longer than two~~
4 ~~five years, subject to revocation or suspension pursuant to Section 161 or the Director's~~
5 ~~authority to revoke such permit for appropriate governmental use of the public right-of-way.~~

6 ~~(c) At the end of the permit term, the permit shall automatically terminate . A If the~~
7 ~~Director has revoked a permit, a subsequent permit for that location shall be issued based on a~~
8 ~~random lottery among qualifying applicants who desire to operate a flower stand at the subject~~
9 ~~location and the existing permittee. If there are no qualifying applicants for the subject~~
10 ~~location, the permit shall be automatically renewed. In order to qualify, an applicant cannot~~
11 ~~have any business interest in any other street flower market stand authorized pursuant to this~~
12 ~~Article. Each qualifying applicant in the lottery for the particular flower market stand location shall~~
13 ~~receive one ticket in the lottery and the former permittee shall receive two lottery tickets for each~~
14 ~~qualifying applicant in the lottery. Should a participating applicant be selected in the lottery,~~
15 ~~but for whatever reason said applicant cannot complete the two five year permit term, then the~~
16 ~~former permittee shall be able to complete any unexpired period remaining on the permit.~~
17 ~~Should such permittee have obtained a permit to operate at another street flower market~~
18 ~~stand or be unavailable or unwilling to complete the unexpired term, then a new lottery shall~~
19 ~~be conducted among qualifying applicants. If there are no qualifying applicants, the location shall~~
20 ~~remain vacant until one or more qualifying applicants express interest in obtaining a permit for the~~
21 ~~location during a six month period. If there is only one qualifying applicant during this period, the~~
22 ~~Director shall award the permit to such applicant. If there is more than one qualifying applicant, the~~
23 ~~Director shall hold a random lottery among the applicants to award the location.~~

1 (d) In order to be a qualifying applicant, neither the applicant nor any one in his or
2 her immediate family shall have any business interest in any other street flower market stand
3 authorized pursuant to this Article. For purposes of this Subsection, "immediate family"
4 means the children, grandchildren, spouse, domestic partner, parent, brother, or sister of the
5 applicant. In addition, a qualifying applicant may not have any outstanding violations pursuant
6 to Section 162 or be subject to permit revocation or suspension actions pursuant to Section
7 161. As part of applying for the flower stand lottery, each applicant shall submit to the
8 Department an affidavit signed under penalty of perjury that the applicant qualifies under the
9 terms of this Subsection.

10 (e) The Director, after a duly noticed public hearing, may adopt regulations that
11 would establish minimum qualification standards for lottery participants.

12 SEC. 157. APPLICATION FOR PERMIT.

13 Each application for a sidewalk flower-vending permit shall state the name of the
14 applicant *therefor as well as the names of the individuals to be employed by or engaged with the*
15 *applicant in displaying or selling flowers at said flower vending stand, include a diagram of the area of*
16 *the sidewalk that the flower-vending stand will occupy, and any other information as specified in the*
17 *rules and regulations of the Department.*

18 SEC. 159. PERMIT - PERMIT FEE.

19 No person, firm or corporation shall operate, maintain or conduct any sidewalk flower-
20 vending stand in the City and County of San Francisco without first obtaining a permit to so do
21 and paying the fees for said permit in accordance with the provisions of this Article. *The fee for*
22 *any such permit shall be \$100 per quarter year, commencing on the first day of July, 1981, and in*
23 *addition to said quarterly fee herein provided for, each permittee shall pay a quarterly fee of \$30 for*
24 *each employee employed in and about said sidewalk flower vending stands. When any application for a*
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1 ~~permit for a sidewalk flower vending permit shall be granted by the Director of Public Works, the same~~
2 ~~shall be delivered to the permittee only upon the payment of the first quarter's permit fee due thereon,~~
3 ~~and the payment of the same shall be endorsed on said permit, and said permittee shall thereafter pay~~
4 ~~quarterly, in advance, the permit fees herein provided for, and on the failure to so do, said permit may~~
5 ~~be revoked by the Director of Public Works. The permit fee shall be as set forth in Section 2.1.1 of the~~
6 ~~Public Works Code. In addition, the permittee shall pay a right-of-way occupancy assessment fee of~~
7 ~~\$3.00 per square foot of occupancy for the area occupied by the flower stand. Any other area~~
8 ~~occupied pursuant to the permit shall be charged the occupancy assessment fee at a rate of~~
9 ~~\$2.00 per square foot of occupancy to reflect the temporary occupation of this area. Both the~~
10 ~~permit fee and occupancy assessment fee shall be adjusted annually as set forth in Section 2.1.2. For~~
11 ~~purposes of calculating the assessment fee, the Department shall charge no less than \$100.00 per year~~
12 ~~even though the calculated square footage charge for the street flower vending stand may result in a~~
13 ~~smaller assessment fee.~~

14 ~~SEC. 160. NO OTHER FEE OR PEDDLER'S LICENSE.~~

15 ~~———— The permit fees provided for in Section 159 of this Article shall be the only fees charged~~
16 ~~for the privilege of maintaining said sidewalk flower vending stands or for displaying or selling flowers~~
17 ~~thereat. No peddler's license shall be required for such permittees or for any other person employed in~~
18 ~~and about the conduct of said sidewalk flower vending stands.~~

19 ~~SEC. 161. CONDITIONS AND RESTRICTIONS.~~

20 The issuance of permits and licenses and the maintenance of sidewalk flower-vending
21 stands by the persons granted permits hereunder shall be subject to the following conditions
22 and restrictions:

- 23 (a) No permanent stands of any kind shall be erected on the sidewalks of said
24 locations;

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1 (b) The design and construction of all flower-vending stands placed at the locations
2 designated in Section 155 of this Article and the maintenance of said stands shall be subject
3 to the approval of the Director of Public Works; provided, that no such flower-vending stand
4 shall exceed the following dimensions, to-wit: 10 feet in length and three feet in width, and any
5 person, firm or corporation having a permit to maintain and operate a flower-vending stand as
6 provided in Sections 155 to 162 of this Article may maintain and operate a stand not
7 exceeding 10 feet in length and three feet in width, provided that no part of the flower vender's
8 display or activities may take place outside of an area that exceeds five feet in width and 20
9 feet in length;

10 (c) No more than one flower-vending stand shall be granted a permit to operate at
11 any one of the locations designated in Section 155;

12 (d) No more than two persons shall at any given time be engaged or employed in
13 displaying or selling flowers at any stand; provided, that for a substantial portion of time during
14 the hours of operation of any stand, one of said persons engaged in displaying or selling
15 flowers thereat shall be the person to whom the permit to operate said stand is issued;
16 provided, however, that if the permit is issued to a firm or corporation, one of said persons
17 engaged in displaying or selling flowers for a substantial portion of the time said stand is
18 operated shall be an officer or partner of said firm or corporation;

19 (e) ~~Only cut flowers, evergreens, and corsages~~ and products related directly to
20 flower sales, including, but not limited to vases, greeting cards, floral arrangements, potted
21 plants, or shrubs may shall be displayed or sold at any stand, ~~and no display, sale or orders~~
22 ~~for the sale or delivery of floral arrangements, potted plants, or shrubs shall be made, taken,~~
23 ~~received or solicited, at any stand, or by the owners or operators thereof; provided, however,~~
24 that no stand shall display or sell any food or beverages;
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1 (f) No rubbish or cuttings shall be deposited in any public waste container;

2 (g) No flower stand shall be operated between the hours of 9:00 p.m. and 7:00 a.m.,
3 and the sidewalk and street surrounding each stand shall be kept free of rubbish, cuttings or
4 debris resulting from the operation of the stand;

5 (h) ~~No permit shall be issued to any person unless he or she has been a resident of the City~~
6 ~~and County of San Francisco for a period of one year prior to his or her application for a permit~~
7 ~~hereunder; The flower-vending stand shall be operative no less than five days a in continuous~~
8 ~~operation seven days a Monday through Friday each week with the exception of official City~~
9 ~~holidays. Failure to operate the stand for a period of ten (10) two (2) consecutive calendar~~
10 ~~days weeks one (1) month, official City holidays and inclement weather excepted, shall constitute~~
11 ~~abandonment of the street flower market area and be subject to the permit revocation or permit~~
12 ~~violation procedures set forth in Sections 161 and 162, respectively; provided, however, that if a~~
13 ~~permittee can demonstrate just cause for failure to operate as set forth herein, the Director, in~~
14 ~~his or her discretion, may waive this requirement on an incident-by-incident basis;~~

15 (i) No owner, landlord, lessee or occupant of any premises in the block occupied by
16 a flower- vending stand as provided for herein, shall receive rent or any remuneration directly
17 or indirectly for the space occupied by such flower-vending stand or its operation;

18 (j) Each person operating a flower-vending stand under a permit as herein provided
19 for, shall at all times carry and maintain at the permittee's own cost and expense a policy of
20 liability insurance in the minimum amount of \$500,000 single limit applying to bodily injuries,
21 personal injuries and property damage. Said policy shall directly protect the City and County
22 of San Francisco, its officers and employees and agents as named insureds, and shall
23 provide that the insurance will operate as primary insurance and no other insurance effected
24 by City will be called on to contribute to a loss covered by said policy. Said policy shall provide
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1 30 days' notice of cancellation or material change to the Director of Public Works of the City
2 and County of San Francisco. Said policy shall be approved in writing by the Director of Public
3 Works and the City Attorney of the City and County of San Francisco. A copy of policy and
4 certificate shall be filed with the Director of Public Works.

5 In addition, the permittee shall agree to hold harmless and indemnify the City and
6 County of San Francisco, its officers, agents and employees from any damage or injury
7 caused by reason of the placement or maintenance of the flower-vending stand on the
8 sidewalk, and the permittee shall be solely liable for any damage or loss, claims, injury and
9 liability of every kind, nature and description directly or indirectly arising from said activity.
10 Approval of insurance shall in no way relieve operator from liability under this hold-harmless
11 clause.

12 (k) There shall be no liability on the City or upon any of its officers, agents or
13 employees for any damage sustained by the owner or operator of any flower-vending stand
14 from any cause whatsoever, no matter whether said damage be caused by an officer, agent
15 or employee of the City or by any other person;

16 (l) An assignment or sale of a flower stand permit, without the approval of the
17 Board of Supervisors, is prohibited; *provided, however, that in the event of the death of a permittee,*
18 *his or her permit shall be considered to be assigned to a living member of the deceased permittee's*
19 *immediate family. Provided further, however, that such living member of a deceased permittee's*
20 *immediate family must thereafter personally operate the flower vending stand within six months from*
21 *the date of the distribution of the proceeds of the deceased permittee's estate or, with the approval of*
22 *the Board of Supervisors, sell the permit within said six month period.*

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1 ~~For the purposes of this Subparagraph (1), the term "immediate family" shall be limited~~
2 ~~to the children, grandchildren, spouse, co-habitant, parent, brother, sister, or child of a deceased~~
3 ~~brother or sister of a deceased permittee.~~

4 ~~An individual shall be considered a "co-habitant" if he or she resided with the permittee,~~
5 ~~shared the common necessities of life with the permittee, was not married to or related by marriage to~~
6 ~~the permittee, was the permittee's sole co-habitant, and is over 18 years of age.~~

7 ~~An individual claiming a right to a permit as co-habitant under this Subparagraph (1)~~
8 ~~shall have resided with the permittee, and been a resident of the City and County of San Francisco, for~~
9 ~~a period of one year prior to the assignment or sale of said permit.~~

10 SEC. ~~162~~161. SUSPENSION OR REVOCATION OF PERMIT.

11 The operator of any flower-vending stand, licensed hereunder, who shall violate any of
12 the restrictions and conditions set forth in Section ~~161~~160 of this Article, or any rule or
13 regulation of the Director of the Department of Public Works adopted in pursuance of the
14 provisions of Section 158 of this Article, shall be subject to the suspension or revocation of his
15 permit by said Director.

16 SEC. ~~163~~162. VIOLATION ~~A MISDEMEANOR AN INFRACTION OR SUBJECT TO~~
17 ~~ADMINISTRATIVE PENALTIES.~~

18 Any person, firm or corporation violating any of the provisions of this Article or any
19 lawful rule or regulation adopted pursuant thereto shall be guilty of ~~a misdemeanor an infraction.~~
20 Every violation determined to be an infraction is punishable by (1) a fine not exceeding \$100 for the
21 first violation within one year; (2) a fine not exceeding \$200 for a second violation within one year
22 from the date of the first violation; (3) a fine not exceeding \$500 for the third and each additional
23 violation within one year from the date of the first violation. In the alternative to the criminal penalty
24 authorized above, the Department of Public Works officials designated in Section 38 of the Police Code
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1 may issue administrative citations for violations of this Article. The administrative penalty shall not
2 exceed \$300 per day for each violation. Such penalty shall be assessed, enforced, and collected in
3 accordance with Section 39-1 of the Police Code.

4 Section 165. NEW SIDEWALK FLOWER-VENDING STAND LOCATIONS.

5 (a) Nothing herein shall prohibit the Board of Supervisors from establishing via
6 ordinance a new sidewalk flower-vending stand locations pursuant to the terms and conditions
7 of this Article; provided, however, that no new location shall be established in any residential
8 zoning district as set forth in the Planning Code.

9 (b) Any person may initiate the establishment of a new sidewalk flower-vending
10 stand location by submitting a written request to the Department of Public Works along with
11 the written consent of the adjacent property owner and any other information that the
12 Department requires. The Department shall treat the request as a street encroachment
13 permit application and process it in accordance with Public Works Code Sections 786.1-
14 786.6; provided, however, that the legislation forwarded to the Board shall be an ordinance.
15 The permit fee for the initiation request shall be the fee set forth in Section 2.1.1(h).

16 (c) Should the Board of Supervisors approve a new sidewalk flower-vending stand
17 location pursuant to Subsection (b), the Department shall issue a permit to the requestor as
18 set forth in Section 156(b), and in accordance with the terms and conditions of this Article.

19 Section 2. This section is uncodified. All existing permits for street flower market
20 stands shall be subject to the terms of this Ordinance beginning on its effective date. In
21 addition, the spouse or domestic partner, if any, of an existing permittee shall be considered a
22 co-permittee for purposes of this section. In order to make this co-permittee provision
23 operative, the existing permittee shall provide the Department with written authorization and
24 proof of marriage or domestic partner status.

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

By: _____
John D. Malamut
Deputy City Attorney