

[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 ~~strike through 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	
<b>Class A.</b> Food product and marketing establishments without food preparation with a total		

1	square footage of:		
2	<u>Class A-1.</u> Less than 5,001 square feet	\$569	<u>\$647</u>
3	<u>Class A-2.</u> 5,001 square feet to 10,000 square feet	\$748	<u>\$847</u>
4	<u>Class A-3.</u> 10,001 square feet to 20,000 square	\$934	<u>\$1,054</u>
5	feet	\$1,135	<u>\$1,277</u>
6	<u>Class A-4.</u> Greater than 20,000 square feet		
7	<b>Class B.</b> Food product and marketing establishments with food preparation with a total square footage of:		
8	<u>Class B-1.</u> Less than 5,001 square feet	\$610	<u>\$693</u>
9	<u>Class B-2.</u> 5,001 square feet to 10,000 square feet	\$794	<u>\$898</u>
10	<u>Class B-3.</u> 10,001 square feet to 20,000 square	\$968	<u>\$1,091</u>
11	feet	\$1,154	
12	<u>Class B-4.</u> Greater than 20,000 square feet		<u>\$1,235</u>
13	<u>("Supermarket") with:</u>		<u>\$1,390</u>
14	<u>1 Food Preparation Station</u>		<u>\$1,544</u>
15	<u>2 to 3 Food Preparation Stations</u>		
16	<u>4 or more Food Preparation Stations</u>		
17	<b>Class C.</b> Retail bakeries <i>with total square footage of:</i>		
18	<u>Less than 2,001 square feet Without food</u>	\$625	<u>\$753</u>
19	<u>preparation</u>	\$645	<u>\$1,290</u>
20	<u>Greater than 2,000 square feet With food</u>		
21	<u>preparation</u>		
22	<b>Class D.</b> <u>Produce stand Farm Stand</u>	\$629	<u>\$309</u>
23	<b>Class E.</b> Certified farmers market	\$635	<u>\$1,039</u>
24	<b>Class F.</b> Wholesale food markets <u>with retail</u>	\$610	<u>\$645</u>
25	<b>Class G.</b> Food manufacturing or processing	\$629	<u>\$714</u>

<b>Class H.</b> 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	<u>Refer to Class A</u>
<b>Class I.</b> Food product and marketing establishments in stadiums, arenas or auditoriums with a seating capacity of 25,000 or more	\$625	

(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	
<b>Class A.</b> Food preparation and service establishments with a total square footage of:		
Less than 1,000 square feet	\$777	\$879
1,000 square feet to 2,000 square feet	\$1,028	\$1,158
Greater than 2,000 square feet	\$1,179	\$1,326
<b>Class B.</b> Bar or tavern	\$923	
<u>Without food preparation</u>		\$750
<u>With food preparation</u>		\$950
<b>Class C.</b> Take-out establishment	\$932	\$1,051
<b>Class D.</b> Fast food establishment	\$1,056	\$1,189

1	<b>Class E.</b> Catering facility	\$908	<u>\$1,025</u>
2	<b>Class F.</b> Temporary facility	\$145	<u>\$176</u>
3	<del>Class G.</del> Food demonstrations	\$105	
4	<b>Class <del>H</del>G.</b> Commissary	\$884	<u>\$998</u>
5	<b>Class <del>H</del>H.</b> Mobile Food Facilities		
6	Class <del>H</del> H-1. Mobile Food Facility 1	\$181	<u>\$195</u>
7	Class <del>H</del> H-2. Mobile Food Facility 2	\$271	<u>\$292</u>
8	Class <del>H</del> H-3. Mobile Food Facility 3	\$181	<u>\$195</u>
9	Class <del>H</del> H-4. Mobile Food Facility 4	\$724	<u>\$778</u>
10	Class <del>H</del> H-5. Mobile Food Facility 5	\$724	<u>\$778</u>
11	<b>Class <del>J</del>I.</b> Stadium concession	\$625	<u>\$710</u>
12	<b>Class <del>K</del>J.</b> Vending machines companies	\$177	<u>\$211 plus</u>
13			<u>\$5.56 per</u>
14			<u>machin</u>
15			<u>e</u>
16	<b>Class <del>L</del>K.</b> Bed and breakfast establishment	\$999	<u>\$1,126</u>
17	<b>Class <del>M</del>L.</b> Boarding house	\$241	<u>\$283</u>
18	<b>Class <del>N</del>M.</b> Private school cafeteria	\$294	
19	<u>Without food preparation</u>		<u>\$342</u>
20	<u>With food preparation</u>		<u>\$527</u>
21	<b>Class <del>O</del>N.</b> Hospital kitchen, with food service to the general public and staff only	\$940	<u>\$1,060</u>
22			
23	<b>Class <del>P</del>O.</b> Licensed Health Care Facility	\$1,050	<u>\$1,169</u>
24	<b>Class <del>Q</del>P.</b> Caterer	\$350	<u>\$376</u>
25	<b>Class <del>Q</del>Q.</b> Employee Cafeteria		

1	<u>Without food preparation</u>		<u>\$669</u>
2	<u>With food preparation</u>		<u>\$1,029</u>

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

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

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

9 For the purpose of this subsection, a "day care facility for children" shall mean a  
10 "community care facility" licensed pursuant to the provisions of Chapter 3, Division 2 of the  
11 California Health and Safety Code (commencing at Section 1500) which provides nonmedical  
12 care to children in need of personal services, supervision, or assistance essential for  
13 sustaining the activities of daily living or for the protection of the individual on less than a 24-  
14 hour basis, or a "family day care home for children" licensed pursuant to the provisions of  
15 Chapter 3.6, Division 2 of the California Health and Safety Code (commencing at Section  
16 1597.50).

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

19 (c) Beginning with fiscal year 2010-2011 and annually thereafter, the fees set  
20 forth in this section may be adjusted each year, without further action by the Board of  
21 Supervisors, as set forth in this subsection. Not later than April 1, the Director shall report to  
22 the Controller the revenues generated by the fees for the prior fiscal year and the prior fiscal  
23 year's costs of operation, as well as any other information that the Controller determines  
24 appropriate to the performance of the duties set forth in this Article. Not later than May 15, the  
25 Controller shall determine whether the current fees have produced or are projected to produce

1 revenues sufficient to support the costs of providing the services for which the fee is assessed  
2 and that the fees will not produce revenue that is significantly more than the costs of providing  
3 the services for which the fee is assessed. The Controller shall, if necessary, adjust the fees  
4 upward or downward for the upcoming fiscal year as appropriate to ensure that the program  
5 recovers the costs of operation without producing revenue that is significantly more than such  
6 costs. The adjusted rates shall become operative on July 1.

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8 Section 3. The San Francisco Health Code is hereby amended by amending Sections  
9 440 and 451, to read as follows:

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

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

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

24 (c) **"Bakery"** as included within this Section and means any room, building,  
25 premises, or place which is used or operated for commercial baking, manufacturing,

1 preparing, processing, retail selling, or packaging of bakery products. It includes all rooms of a  
2 bakery in which bakery products or ingredients are stored or handled. It does not, however,  
3 include any Food Preparation and Service Establishment as defined in Section 451.

4 (d) **"Certified Farmers Market"** means a location approved by the San  
5 Francisco Agricultural Commissioner where agricultural products are sold by producers or  
6 certified producers directly to consumers or to individuals, organizations, or entities that  
7 subsequently sell or distribute the products directly to end users. A certified farmers' market  
8 may only be operated by one or more certified producers, by a nonprofit organization, or by a  
9 local government agency and must meet the requirements of San Francisco Administrative  
10 Code Chapter 9A, or any successor provisions.

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

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

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

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

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

5           ~~(e)~~(j) It shall be unlawful for any person, persons, firm or corporation to maintain  
6 or operate within any room, building, vehicle or place or portion thereof a Food Product and  
7 Marketing Establishment within the City and County of San Francisco, without having first  
8 obtained a permit issued and signed by the Director of Public Health of said City and County  
9 to do so.

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

12  
13           **SEC. 451. FOOD PREPARATION AND SERVICE ESTABLISHMENT.**

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

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

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

23           (d) **"Caterer"** means a person who is in the business of providing food,  
24 beverages, and sometimes service, at social gatherings. The caterer prepares the food at a  
25 location separate from the social gathering, though the caterer may engage in limited food

1 preparation at the location where the caterer serves the food. A caterer is not a private chef or  
2 chef for hire who prepares food in a private home.

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

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

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

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

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

25

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

7            ~~(j)~~(k)    **"Guest house"** means any building or portion thereof occupied or intended,  
8 arranged, or designed for occupation by 35 or more guests where sleeping rooms and meals  
9 are provided to the guests for compensation and shall include "guest house," "residence  
10 club," "lodge," "dormitory," "residence cooperative" and any of its variants.

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

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

- 17            (1)    General Acute Care Hospital as defined in Cal. Health and Safety Code  
18            Section 1250(a) or any successive statutes;
- 19            (2)    Acute Psychiatric Hospital as defined in Cal. Health and Safety Code  
20            Section 1250(b) or any successive statutes;
- 21            (3)    Skilled Nursing Facility as defined in Cal. Health and Safety Code Section  
22            1250(c) or any successive statutes;
- 23            (4)    Intermediate Care Facility as defined in Cal. Health and Safety Code  
24            Section 1250(d) or any successive statutes;

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

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

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

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

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

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

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

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

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

9                   (5)    **"Mobile Food Facility 5"** means a Mobile Food Facility where a Mobile  
10 Food Facility Vendor engages in full food preparation or any food preparation not covered by  
11 Mobile Food Facility Categories 1-4, including but not limited to, tacos, burritos, crepes, or  
12 falafel.

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

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

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

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

24                   ~~(#)~~(s)   **"Restaurant"** means any coffee shop, cafeteria, short-order cafe,  
25 luncheonette, cocktail lounge, sandwich stand, soda fountain, public school cafeteria or eating

1 establishment, in-plant or employee eating establishment and any other eating establishment,  
2 organization, club, including Veterans' Club, boardinghouse, bed and breakfast  
3 establishments, or guest house, which gives, sells or offers for sale, food to the public, guests,  
4 patrons, or employees as well as kitchens or other food preparation areas in which food is  
5 prepared on the premises for serving or consumption on or off the premises, and requires no  
6 further preparation and also includes manufacturers of perishable food products that prepare  
7 food on the premises for sale directly to the public. The term "restaurant" shall not include  
8 mobile food facilities, cooperative arrangements made by employees who purchase food or  
9 beverages for their own consumption and where no employee is assigned full time to care for  
10 or operate equipment used in such arrangement, or private homes; nor shall the term  
11 "restaurant" include churches, church societies, private clubs or other nonprofit associations  
12 of a religious, philanthropic, civic improvement, social, political, or educational nature, which  
13 purchase food, food products, or beverages, or which receive donations of food, food  
14 products, or beverages for service without charge to their members, or for service or sale at a  
15 reasonable charge to their members or to the general public at occasional fundraising events,  
16 for consumption on or off the premises at which the food, food products, or beverages are  
17 served or sold, if the service or sale of such food, food products or beverages does not  
18 constitute a primary purpose or function of the club or association, and if no employee or  
19 member is assigned full-time to care for or operate equipment used in such arrangements.

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

23 ~~(u)~~(v) "**Special events**" means any organized collection of food purveyors  
24 operating individually or collaboratively out of approved temporary or mobile food facilities at a  
25 fixed location for a period of time not to exceed 25 days in a 90-day period in conjunction with

1 a single, weekly, or monthly community event as defined in the California Health and Safety  
2 Code Section 113755.

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

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

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

11 ~~(y)~~(z) "**Vending machine**" means any self-service device, which upon insertion  
12 of money or tokens, dispenses food without the necessity of replenishing the device between  
13 each vending operation.

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

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

21 Section 6. Severability. If any section, subsection, sentence, clause, or phrase of this  
22 ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of  
23 competent jurisdiction, such decision shall not affect the validity of the remaining portions of  
24 the ordinance. The Board of Supervisors hereby declares that it would have passed this  
25 ordinance and each and every section, subsection, sentence, clause, or phrase not declared

1 invalid or unconstitutional without regard to whether any portion of this ordinance would be  
2 subsequently declared invalid or unconstitutional.

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

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8 By: VIRGINIA DARIO ELIZONDO  
9 Deputy City Attorney

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