[Public Works Code - Vending Requirements and Restrictions]

Ordinance amending the Public Works Code to streamline the enforcement of vending requirements and restrictions, clarify vending permit application and compliance requirements, require certain vending permittees to register with the Tax Collector and pay related fees, prohibit stationary sidewalk vendors from vending in residential districts as defined in the Planning Code, limit permissible vending times, and streamline approval of vending regulations; and affirming the Planning Department's determination under the California Environmental Quality Act.

NOTE: Changed Code text and uncodified text are in plain Arial font. Additions to Codes are in single-underline italics Times New Roman font. Deletions to Codes are in strikethrough italics Times New Roman font. Board amendment additions are in double-underlined Arial font. Board amendment deletions are in strikethrough Arial font. Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

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

Section 1. Environmental Findings.

The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. 240056 and is incorporated herein by reference. The Board affirms this determination.
Section 2. General Findings.

(a) Since Public Works Code Article 5.9 (the "Vending Ordinance") took effect, the Department of Public Works ("Department") has devoted significant resources to enforce Article 5.9 to preserve the safety and usability of City sidewalks and property. During the course of enforcement efforts, the Department has routinely encountered a large volume of unpermitted Vendors occupying sidewalks, transit shelters, and BART property.

(b) As evidenced by police incident reports on file with the Department, the City sidewalks and property on which Vending occurs are sometimes impacted by illegal activities, such as assault, battery, drug sales and use, alcohol consumption, and theft. Overcrowded sidewalks impede Department staff's ability to enforce the Vending Ordinance and police officers' ability to respond to these safety threats effectively.

(c) The aforementioned conditions that occur contemporaneously with and in proximity to Vending activities pose numerous objective health, safety, and welfare concerns, threatening the health, safety, and wellbeing of Vendors, pedestrians, wheelchair users, and City staff who are using City property. Such conditions have required significant law enforcement and civilian staff resources to mitigate and address nuisance and criminal activities that occur alongside Vending activities, diverting these City resources from other law enforcement and Public Works functions.

(d) The aforementioned Vending, criminal, and nuisance activities have been associated with and have exacerbated the severity of unsanitary sidewalk conditions resulting from the accumulation of food waste, drug paraphernalia, Vendors' discarded boxes and receptacles, and other miscellaneous debris, all in violation of the Vending Regulations that have been approved by the City and the Good Neighbor Policies in Public Works Code Section 5.9-9.
(e) This ordinance intends to implement improvements to Vendor permitting and Vendor permit enforcement in order to address objective health, safety, and welfare concerns associated with Vending. The ordinance would also enable the Department to update and amend its regulations more expeditiously to better address urgent conditions and concerns related to Vending on City property.

Section 3. Article 5.9 of the Public Works Code is hereby amended by revising Sections 5.9-2, 5.9-3, 5.9-4, 5.9-5, 5.9-6, 5.9-8, and 5.9-11, to read as follows:

SEC. 5.9-2. DEFINITIONS.

For the purpose of this Article 5.9, the following words and phrases have the following meanings:

* * * *

Merchandise. Any item that is *not* Food, *nor* unpackaged food, *nor* food that is *cooked or prepared onsite*, and that is not an art or craft regulated under Article 24 (Regulating Street Artists) of the Police Code.

* * * *

Vend (and variations such as Vends, Vending). To sell, offer for sale, expose or display for sale, solicit offers to purchase *or lease*, or barter Food or Merchandise. Vending includes offering free samples of Food or Merchandise that are also for sale, *or* negotiating fees for Food or Merchandise, *or* soliciting customers to enter into commercial agreements.

* * * *
SEC. 5.9-3. PERMIT REQUIRED; MANDATORY DISPLAY; PROOF OF PURCHASE.

(a) No person may Vend on any City property, including a public right-of-way (as that term is defined in Public Works Code Section 2.4.4) or any other street, sidewalk, alley, walkway, or pedestrian path available to the public, except on property regulated by Article 7 of the Park Code, without first having obtained either a Roaming Vendor permit or a Stationary Vendor permit pursuant to this Article 5.9.

(b) A Vendor shall prominently display a valid Vendor permit that corresponds with the Vendor’s business activity while Vending in accordance with this Article 5.9.

(c) Upon request by an Enforcement Official, a Vendor shall immediately provide proof of ownership or authorization to sell the Food and/or Merchandise that the Vendor is Vending.

SEC. 5.9-4. VENDOR PERMIT TYPE.

(a) The Department shall issue Vending permits to applicants under Section 5.9-5. Each Vendor permit must:

   (1) Include a photograph of the Vendor or any personal identifier meant to prevent the sale or transfer of the permit.

   (2) Identify whether the permit authorizes the permittee to Vend Food, Vend Merchandise, or Vend both Food and Merchandise, except as provided in subsection (b).

(b) Notwithstanding subsection (a), the Department may issue a time-limited Vendor permit to a nonprofit corporation that is exempt from federal taxation under 26 U.S.C. Section 501(c)(3), as it may be amended, and which permit may apply to multiple Vendors as further described in the permit.
SEC. 5.9-5. PERMIT APPLICATION; FEE.

(a) Department Permit. The Department shall establish a uniform application process through which a Vendor may request, and upon approval receive, a Vendor permit. The application process shall be easily accessible to individuals with limited business experience and limited English language proficiency. The permit application shall require:

* * * *

(5) For any new Food and/or Merchandise to Vend, whether new or used, an attestation by the Vendor that theVendor will maintain proof of ownership or authorization to sell the Food and/or Merchandise and will produce the documentation of same immediately upon request. If the Vendor does not have proof of ownership or authorization to sell the Food and/or Merchandise, the Vendor shall provide a written explanation for the lack of proof thereof.

(6) A certification by the Vendor that to the Vendor's knowledge and belief, the information submitted for the permit application is true.

(7) Proof of Identity, as described in Administrative Code Section 95.2 and as it may be amended, of the Vendor.

(8) If the Vendor is an agent of an individual, company, partnership, corporation, or other entity (each a "principal"), the name and business address of the principal.

(9) The Vendor's California seller's permit number (California Department of Tax and Fee Administration sales tax number), if applicable.

(10) Any other information deemed relevant by the Department.

* * * *

SEC. 5.9-6. VENDING RESTRICTIONS AND REQUIREMENTS.

(a) Certified Farmers' Market or Swap Meet. No person, without written approval of the Director, may Vend within the immediate vicinity of a permitted Certified Farmers' Market
or a permitted Swap Meet during the operating hours of that Certified Farmers' Market or Swap Meet.

(b) **Temporary Special Permit.** No person, without written approval of the Director, may Vend within the immediate vicinity of a temporary special permit issued by the City that authorizes the temporary use of, or encroachment in or on, the sidewalk or other public area, including an encroachment permit, special event permit, or temporary event permit for purposes including filming, parades, or outdoor concerts. This prohibition against Vending shall be effective only for the limited duration of the temporary special permit. Any notice, business interruption mitigation, or other rights provided to affected businesses or property owners under the temporary special permit shall also be provided to any Vendor whom the Director previously specifically permitted to operate within the immediate vicinity of the temporary special permit during the period that the temporary special permit is effective.

(c) **United Nations Plaza.** No person, without written approval of the Director may Vend at UN Plaza, unless it is an approved seller in the course of a permitted Certified Farmers’ Market. The Director, in consultation with the General Manager of the Recreation and Park Department or the General Manager’s designee, may approve a Vending permit at UN Plaza if the Director finds that the issuance of such a permit would not objectively undermine public health, safety, or welfare.

(d) **Hallidie Plaza.** The Director, in consultation with the General Manager of the Recreation and Park Department or the General Manager’s designee, may approve a Vending permit at Hallidie Plaza if the Director finds that the issuance of such a permit would not objectively undermine public health, safety, or welfare.

(e) **Residential Zones.** Stationary Vendors may not operate in any RH (Residential, House) districts as defined in the Planning Code.
(f) **Hours of Operation.** Each Vendor permit shall include permissible Vending hours, which shall be consistent and not in conflict with any limitations on hours of operation imposed by federal, state, and City laws, including but not limited to the Police Code and the Planning Code Zoning Control Tables, on other businesses or uses on the streets on which the Vendor operates. Each Vendor shall not Vend at times other than the hours authorized in the Vendor’s permit.

(g) **Business Registration.** Each Vendor shall register with the Tax Collector pursuant to Article 12 (Business Registration) of the Business and Tax Regulations Code, if applicable. Separate fees may apply and be payable to the Tax Collector.

**SEC. 5.9-8. DELEGATION OF AUTHORITY FOR RULEMAKING.**

(a) **Rules and Regulations Authorized.** Subject to the restrictions stated in subsections (b) and (c), the Department, in consultation with the Office of Economic and Workforce Development and the Human Rights Commission, may adopt Rules and Regulations related to the administration and enforcement of this Article 5.9, in order to further the purposes of this Article 5.9, and to promote public health, safety, or welfare. The Rules and Regulations may include but are not necessarily limited to:

1. Standards for approving permits.
2. Additional requirements regulating the time, place, and manner of Vending, including prohibiting Vending in certain locations, if the Rules and Regulations are directly related to objective health, safety, or welfare concerns.
3. Notice requirements of new Rules and Regulations regarding the time, place, and manner of Vending, including locations where Vending is prohibited.
4. The process for granting fee waivers.
5. Requirements to maintain sanitary conditions.
(6) Requirements necessary to ensure compliance with the Americans with Disabilities Act of 1990 (Public Law 101-336), as it may be amended, and other disability access standards.

(7) Requirements necessary to ensure the public's use and enjoyment of natural resources and recreational opportunities.

(8) Requirements necessary to prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of a park.

(9) The process for selecting organizations to accept donated goods pursuant to Section 5.9-11(f)(3).

(10) Any other Rules and Regulations in order to further the purposes of this Article 5.9 and promote public health, safety, or welfare.

(b) Disapproval by the Board of Supervisors. Any Rules and Regulations adopted under the authority of subsection (a) shall be subject to disapproval of the Board of Supervisors by ordinance until August 31, 2022. The Department shall provide written notice to the Clerk of the Board of Supervisors of its adoption of any Rule or Regulation under subsection (a), along with a copy of said Rule or Regulation. If a Member of the Board of Supervisors does not introduce an ordinance to disapprove the Rule or Regulation within 30 days of the date of delivery of said notice to the Clerk of the Board of Supervisors, or if such an ordinance is introduced within the 30-day period but the ordinance is not passed on second reading by the Board of Supervisors within 90 days of the date of the Department's delivery of notice to the Clerk of the Board of Supervisors, or, if so passed by the Board is not subsequently enacted by the City or does not become law, the Rule or Regulation shall go into effect.

(c) Approval by the Public Works Commission. Starting on September 1, 2022, any Rules and Regulations adopted under the authority of subsection (a) shall be subject to approval of the Public Works Commission.
Port of San Francisco. The Port Commission and its Executive Director, in consultation with the Department, may adopt additional requirements regulating the time, place, and manner of Vending within the regulatory jurisdiction of the Port of San Francisco, including prohibiting Vending in certain locations, if the rules and regulations are directly related to objective health, safety, or welfare concerns. Such Rules and Regulations may impose, but are not limited to imposing, (1) further requirements to maintain sanitary conditions; (2) requirements necessary to ensure compliance with the Americans with Disabilities Act of 1990 (Public Law 101-336), as it may be amended, and other disability access standards; (3) requirements necessary to ensure the public's use and enjoyment of natural resources and recreational opportunities; or (4) requirements necessary to prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of a park.

SEC. 5.9-11. ENFORCEMENT.

(a) Operative Date. The enforcement provisions outlined in this Section 5.9-11 in subsections (b) (k) shall become operative eight weeks after the effective date of the ordinance in Board File No. 211292 establishing this Article 5.9, in order to allow the Department to conduct pre-enforcement extensive education and outreach pursuant to Section 5.9-10.

(b) Nuisance Declaration. Any violation of this Article 5.9, or of any applicable Rules and Regulations, constitutes a public nuisance.

(c) Notice of Violation. Any Enforcement Official may issue a Notice of Violation for any violation of this Article 5.9, or of the Rules and Regulations that interpret and implement this Article, and as described in subsection (ce) below, that occurs on a public right-of-way (as that term is defined in Public Works Code Section 2.4.4) or any other street, sidewalk, alley, walkway, or pedestrian path available to the public. The Notice of Violation shall include: (1)
information identifying the Offender, (2) details of the violation, (3) the name or identifying number of the Enforcement Official, (4) a general description of administrative fines, and payment method and options, including the ability-to-pay determination, (5) a general description of the appeals process, (6) information about the requirements of this Article 5.9 and any applicable Rules and Regulations that interpret and implement this Article, (7) information about who to contact for assistance related to this Article 5.9, and (8) information about workforce development opportunities and job placement programs.

(e) Written Warnings.

(1) The Department shall use the information included in the Notice of Violation to issue a written warning for any violation of this Article 5.9, or the Rules and Regulations that interpret and implement this Article 5.9, within 15 calendar days of issuing the Notice of Violation. The written warning shall inform the Vendor of a reasonable time, identified by the Department, to correct the issue or if the Vendor fails to correct the issue, the Vendor may be subject to an Administrative Citation. If a Vendor is found Vending Food and/or Merchandise in a package that is different from the description listed in the Vendor’s permit application pursuant to Section 5.9.5, the written warning shall inform the Vendor of a reasonable time, identified by the Department, to update the description of the Food and/or Merchandise in the Vendor’s permit application, or the Vendor may be subject to an Administrative Citation for failing to update the description.

(2) If a Vendor fails to correct any of the issues for which they received a written warning within the reasonable time identified by the Department, all additional violations of this Article 5.9, or of any applicable Rules and Regulations that interpret and implement this Article 5.9, shall be subject to an Administrative Citation.

(e) Administrative Citation. The Department will use the information included in the Notice of Violation to issue an Administrative Citation for any violation of this Article 5.9, or the
Rules and Regulations that interpret and implement this Article, as described below, within 15
calendar days of issuing the Notice of Violation:

(1) Vending that violates a requirement in this Article 5.9 or in the Rules and
Regulations that interpret and implement this Article, other than failure to possess a valid
license or permit shall be subject to the following:

(A) An administrative fine equal to $100 for a first violation.

(B) An administrative fine equal to $200 for a second violation within 12
    months of the first violation.

(C) An administrative fine equal to $500 for a third violation, and each
    subsequent violation, within 12 months of the first violation.

(D) In addition to any other authorized enforcement activity, the Director
    may revoke or suspend a Vendor's license and/or permit for the remainder of its term upon a
    fourth or subsequent violation within 12 months of the first violation.

(2) Vending without a valid license or permit shall be subject to the following:

(A) An administrative fine equal to $250 for a first violation.

(B) An administrative fine equal to $500 for a second violation within 12
    months of the first violation.

(C) An administrative fine equal to $1,000 for a third violation, and each
    subsequent violation, within 12 months of the first violation.

(D) If the Vendor submits proof of a valid permit that was effective at the
time of the citation, the administrative fines set forth in subsections (A) through (C) of this
subsection (c)(2) shall be reduced to equal the administrative fines set forth in subsections
(A) through (C) of subsection (e)(1), as those amounts may be revised pursuant to subsection
(c)(5).
(3) Failure to pay an Administrative Citation described in this subsection \((ce)\) shall not be punishable as an infraction or misdemeanor; further, additional fines, fees, assessments, or any other financial conditions beyond those authorized in this subsection \((ce)\) may not be assessed.

(4) When assessing an Administrative Citation authorized in this subsection \((ce)\), the Director shall take into consideration the person’s ability to pay the fine using the criteria described in subsection (a) or (b) of California Government Code Section 68632, as it may be amended. The Enforcement Official shall give notice to the Vendor of the right to request an ability-to-pay determination and instructions or other materials for requesting an ability-to-pay determination. The Vendor may request an ability-to-pay determination at any time while the judgment remains unpaid, including when a case is delinquent or has been referred to a comprehensive collection program. The Director’s determination shall be final. If the Vendor meets the ability-to-pay criteria, the Department shall accept 20% of the total administrative fine specified in subsection \((ce)(1)\) or \((ce)(2)\), as applicable, as full satisfaction.

(5) To the extent permitted by State law, the amounts of the administrative fines identified in subsections (A) through (C) of subsections \((ce)(1)\) and \((ce)(2)\) shall automatically increase or decrease to the maximum amount authorized under California Government Code Section 51039, as it may be amended. If Section 51039 is repealed and not replaced with a similar limitation on administrative fines, then the Director, in consultation with the Controller, may adjust the administrative fine amounts in this Section 5.9-11 each year, without further action by the Board of Supervisors, to reflect changes in the relevant Consumer Price Index.

(6) Within 30 days of issuance, the Vendor shall pay the Administrative Citation unless the Vendor files a written appeal with the Director. The grounds of appeal are limited to error or abuse of discretion in the issuance of the Administrative Citation. The Director may make an ability-to-pay determination pursuant to subsection \((ce)(4)\), but inability to pay shall
not be grounds for rescinding the Administrative Citation or reducing the amount required to satisfy the fine to an amount less than the amount specified in subsection (ce)(4). The Director shall consider any claims or defenses by the appellant, and shall issue and mail a written decision on the appeal within a reasonable time of receipt of the written appeal. Within 20 days of the Director’s decision upholding a fine in whole or in part, the Vendor shall pay the Administrative Citation. The Vendor may seek judicial review of an Administrative Citation pursuant to subsection (c)(1) in San Francisco Superior Court pursuant to Government Code Section 53069.4.

(7) Administrative Citation Issuance Date. For purposes of payment and appeals deadlines, the issuance date of any Administrative Citation delivered by the U.S. Postal Service shall be 5 five calendar days after the date of mailing.

(8) Collection of Fines. The failure of any person to pay a fine assessed by Administrative Citation within the required time constitutes a debt to the City. Simple interest at 10% per year shall accrue on unpaid amounts.

(1ff) Temporary Order to Cease Vending and Removal.

(1) Any Enforcement Official may order a Vendor to promptly cease Vending when, in the judgment of the Enforcement Official, (A) the Vendor constitutes a safety hazard, including but not limited to impeding the safe use of a public right-of-way by pedestrians or persons with disabilities, or (B) when the presence of an emergency so requires, or (C) if the Vendor is unpermitted.

(2) (A) After the Enforcement Official orders an unpermitted Vendor to cease Vending, the Vendor must discontinue any Vending and remove all Food, Merchandise, and any other Vending paraphernalia from property within the City’s jurisdiction. A failure to promptly obey any such order from an Enforcement Official is a violation of this Article 5.9.
(B) After the Enforcement Official orders a permitted Vendor to cease Vending, the Vendor must discontinue any Vending and follow the orders of the Enforcement Official with regard to removing and relocating all Food, Merchandise, and any other Vending paraphernalia, and any other orders the Enforcement Official may give to mitigate safety hazards, and no further Vending may occur until the conditions that caused the order to cease Vending have been abated to the satisfaction of the Enforcement Official. A failure to promptly obey any such orders from an Enforcement Official is a violation of this Article 5.9.

(3) If a Vendor fails, within 10 minutes, to remove Food, or Merchandise, or any other Vending paraphernalia from the location subject to the order to cease Vending, or fails to follow any other orders the Enforcement Official may issue to mitigate safety hazards, the Enforcement Official or the Department may remove any or all of the items. Prior to removal by the Enforcement Official or the Department, the Enforcement Official shall warn the Vendor of the impending removal and impoundment, and shall urge the Vendor to make every effort to remove the items, or cause their removal. Where the Department actually removes any items, the Enforcement Official shall issue an Administrative Citation to the Vendor. The Vendor shall pay the actual costs of removal and storage of any items impounded, and of disposal of any items the storage of which may cause public health, safety, or infestation issues. The Vendor may contest the liability for these costs by timely appealing the Administrative Citation. However, these actual costs to the City are not subject to reduction based on the ability to pay; actual costs are a debt to the City that may be collected in the same manner as provided in subsection (ee)(8). Vendor items that have been removed and stored may be recovered by the Vendor within 90 days from the date of removal and upon payment of a sum equal to the costs of removal, plus any reasonable transport and storage costs, as determined by the Department, and any costs incurred by the Department in
disposing of any items. If the Vendor filed a written appeal pursuant to subsection (fe)(6) and
the appeal is not resolved within 90 days, the Department shall continue to store Vendor’s
items until the appeal is resolved in order to allow Vendor to recover items. After 90 days, or
as soon as the Vendor’s appeal is resolved if longer than 90 days, the Department shall
donate non-Food items to organizations providing services to people who are unhoused, as
appropriate. Prior to making any donations, the Department shall adopt regulations governing
the process for selecting organizations to accept these donated goods.

(ge) Other Violations. Any violation of this Article 5.9, or of the Rules and Regulations
that interpret and implement this Article, may be subject to one or more of the following:

(1) An administrative fine as described in subsection (fe).
(2) Civil Action.

(A) The Department may refer violations to the City Attorney to maintain
an action for injunction to restrain to cause the correction or abatement of the violation of this
Article 5.9, and for recovery of any City department’s enforcement and abatement costs
(including but not limited to costs for removal, storage, impoundment, and disposal).

(B) The City shall be awarded its reasonable attorney’s fees and costs
incurred in enforcing this Article 5.9.

Section 4. Effective Date. This ordinance shall become effective 30 days after
enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
of Supervisors overrides the Mayor’s veto of the ordinance.

Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
additions, and Board amendment deletions in accordance with the "Note" that appears under
the official title of the ordinance.

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

By: /s/ Christopher T. Tom
    CHRISTOPHER T. TOM
    Deputy City Attorney
Ordinance amending the Public Works Code to streamline the enforcement of vending requirements and restrictions, clarify vending permit application and compliance requirements, require certain vending permittees to register with the Tax Collector and pay related fees, prohibit stationary sidewalk vendors from vending in residential districts as defined in the Planning Code, limit permissible vending times, and streamline approval of vending regulations; and affirming the Planning Department’s determination under the California Environmental Quality Act.

April 15, 2024 Rules Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

April 15, 2024 Rules Committee - RECOMMENDED AS AMENDED

April 23, 2024 Board of Supervisors - PASSED ON FIRST READING
   Ayes: 11 - Chan, Dorsey, Engardio, Mandelman, Melgar, Peskin, Preston, Ronen, Safai, Stefani and Walton

April 30, 2024 Board of Supervisors - DUPLICATED ON FINAL PASSAGE

April 30, 2024 Board of Supervisors - FINALLY PASSED
   Ayes: 11 - Chan, Dorsey, Engardio, Mandelman, Melgar, Peskin, Preston, Ronen, Safai, Stefani and Walton
File No. 240056

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 4/30/2024 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

London N. Breed
Mayor

Date Approved 5/10/24