



MEMORANDUM

August 6, 2021

TO: MEMBERS, PORT COMMISSION
Hon. Kimberly Brandon, President
Hon. Willie Adams, Vice President
Hon. John Burton
Hon. Gail Gilman
Hon. Doreen Woo Ho

FROM: Elaine Forbes 
Executive Director

SUBJECT: Request approval of a Resolution establishing a licensed vending pilot program on Port property; adopting associated regulations; and delegating implementation authority to the Executive Director

DIRECTOR'S RECOMMENDATION: Approve the Attached Resolution No. 21-34

Executive Summary

At the June and July meetings of the Port Commission Port staff provided a briefing on Senate Bill 946 (SB 946), which expanded opportunities for entrepreneurship and decriminalized vending. Local agencies are prohibited from enforcing pre-existing permitting regimes that do not comply with SB 946.

Since SB 946 was enacted, vending activity has increased on Port property. Over the course of the Covid-19 pandemic, Fisherman's Wharf has seen a significant concentration of vending activity, but vendors have also been observed along the Embarcadero and throughout Port property. As the numbers of vendors have increased, concerns have been raised regarding public health and safety issues, including adherence to Covid-19 health orders, maintenance of an accessible path of travel, failure to abide by public health regulations regarding the sale of prepared food, compliance with traffic and parking laws, and other City laws and regulations intended to safeguard public safety.

In response to these health and safety concerns, on May 18, 2021, Supervisor Aaron Peskin introduced an ordinance at the Board of Supervisors (the “Ordinance”) that establishes a pilot program for permitting and regulating vending on Port property in compliance with SB 946.

On July 13, 2021, the Port Commission adopted Resolution 21-29 supporting the Ordinance and staff presented an informational report on proposed regulations for the pilot program. The Ordinance was unanimously adopted by the Board of Supervisors on July 20 and 27, 2021 and is expected to be signed into law by Mayor London Breed on August 6, 2021.

This staff report summarizes the Port’s proposed pilot vending regulation program on Port property for Port Commission consideration and action. The Ordinance and pilot program will go into effect 30 days after the Mayor’s signature.

Strategic Objective

The proposed pilot vending regulation program is expected to contribute to meeting the Equity Objective of the Port’s Strategic Plan by investing in a program that offers new economic opportunities to historically disadvantaged communities while establishing rules that will allow for all residents and visitors to safely enjoy the natural and recreational benefits of an inclusive waterfront.

SB 946 and its Impacts

The findings adopted under SB 946 summarized the legislative strategy of providing important entrepreneurship and economic development opportunities to low-income and immigrant communities by removing unnecessary barriers for vendors and prohibiting criminal penalties for violations of vending ordinances and regulations. At the same time, the legislature recognized the important governmental interest in ensuring the safety of pedestrians on the sidewalk and the public’s enjoyment of natural resources and recreational opportunities.

SB 946 detailed standards for local sidewalk vending programs, including but not limited to what can be required as part of a permit application, what permit fees can be charged, acceptable limits of regulations on the time, place and manner of operations, and allowable enforcement powers (administrative citations rather than criminal penalties). Notably, the law prohibited enforcement of vending regulations which did not comply with these standards. This provision rendered many local programs inoperative, including those in San Francisco.

Over the past year vending activity picked up in a number of locations, most notably in Fisherman’s Wharf but also in the vicinity of the Ferry Building and other locations where foot traffic persisted despite the Covid-19 public health orders. SB 946’s limitation on enforcement left the Port with limited ability to address the impacts of these vendors. Port staff has worked closely with the Office of the City Administrator and other City agencies to address violations of other relevant regulations, including but not limited to efforts to encourage masking and distancing among the vendors. While in certain cases these efforts did create better compliance, the lack of an SB 946-compliant vendor permitting program limited the Port’s ability to establish a more orderly

and safe way for vendors to operate. In an effort to improve the management of Port property and provide access to the waterfront, Port staff worked closely with a City agency working group to provide input to Supervisor Peskin and the City Attorney's Office as they developed the Ordinance.

Ordinance

On May 18, 2021, Supervisor Peskin's introduced the Ordinance to create a new regulatory program in the Port Code for street and sidewalk vending within the jurisdiction of the Port. The Ordinance seeks to prioritize health and safety, protect the scenic and natural character of the waterfront, while expanding economic opportunities for those who aspire to vend lawfully.

The intent and spirit of the law is best captured within the general findings set forth in Section 2(e) of the Ordinance:

A well-regulated vending program would ensure the Port's streetscape can remain a vibrant and dynamic marketplace, with unparalleled historic, scenic, and recreational value that can be safely enjoyed by all. Regulations are needed for several reasons: to accommodate vending, including vendors' equipment, while safeguarding pedestrian and chair-user movement on sidewalks, streets, and other public spaces; to prevent unsanitary conditions and ensure trash and debris are removed by vendors; and to protect the scenic and natural character of the Port of San Francisco's parks and waterfront, and the recreational opportunities the areas provide.

The Ordinance repeals all peddler regulations in the Police Code and creates a new regulatory program that requires permits to vend food or merchandise, authorizes the issuance of a permit subject to a fee, and establishes enforcement methods including administrative citations and impoundment for non-compliance. The ordinance will not alter existing food safety regulations in the Public Health Code, but requires the Port and Department of Public Health to report to the Board of Supervisors regarding enforcement and implementation of the law. The Ordinance also establishes new good neighbor policies to ensure that quiet, safety, and cleanliness of the premises where vending occurs are maintained.

The Ordinance authorizes the Port Commission to adopt additional requirements regulating the time, place, and manner of vending if the requirements are directly related to health, safety, or other general welfare concerns, including use and enjoyment of the scenic waterfront.

Proposed Operational Standards and Administrative Regulations

Port staff proposes the establishment of a regulatory permit program for all sidewalk vendors on Port property that will require vendors to obtain a sidewalk vendor permit from the Port and comply with other applicable City requirements. Although the proposed ordinance provides some minimum standards for the permit program, the proposed Operational Standards and potential Administrative Regulations will govern all sidewalk vending activities, including time, place and manner of permitted sidewalk vending, application requirements, operational standards, and enforcement actions. The purpose of the Operational Standards is to provide additional detail and guidance in the

administration of the Port's Sidewalk Vending Permit Program, as well as delegate authority to the Executive Director to promulgate Administrative Regulations to implement the Commission's Operational Standards.

Permit Application

As set forth in the Ordinance, no person may vend on Port property without first having obtained a mobile vendor permit. By establishing a permit process, the Port can help effectively regulate individuals engaging in sidewalk vending activities and ensure health and safety compliance with the rules and regulations established in the program.

To become an approved sidewalk vendor on Port property a vendor must comply with City requirements, that may include obtaining: a business license from the Treasurer Tax Collector, a vendor permit from the Port, and a seller's permit from the state of California. In addition, vendors selling food products are required to obtain a food facility permit from the Department of Public Health and approval from the Port Fire Marshal for the use of flammable gas or open flames. Similarly, vendors selling any art or craft work of the person's own creation are required to obtain a Street Artist Certificate from the Art Commission.

The Ordinance limits permit fees to the amounts needed to recover the reasonable regulatory costs of administering the program, and delegates authority to set those fees to the Port Commission. In the absence of data regarding the costs of a program that has not yet started, Port staff notes that sidewalk vending represents a significant sector of San Francisco's local economy and provides economic opportunity for people to support themselves and their families. In an effort to establish a low barrier to entry at the onset of the Port's program launch, Port staff propose a \$100 annual vendor permit fee applicable to both food vendors and merchandise vendors for the initial year of operation, an amount comparable to other jurisdictions with new programs. The annual permit fee may be changed in future years to address program needs.

City business licenses range in price from \$50 to \$100 and the Department of Public Health has agreed to waive all food facility permit fees for the first year of the program so long as the vendor complies with local and state food safety requirements. Vendors operating an energy source including propane, butane, or an open flame are also required to obtain approval from the Port Fire Marshal.

Operational Standards and Designated Locations

The Ordinance authorizes the Port Commission to adopt requirements regulating the time, place, and manner of sidewalk vending along the waterfront. Exhibit 1 to Attachment A of this report provides draft "Operational Standards" which include additional detail and guidance to assist staff with the issuance and enforcement of permits. As proposed, the Operational Standards provide additional details and general principles to shape the Port's permit program. The Operational Standards delegate authority to the Executive Director to publish Administrative Regulations to implement the Operational Standards defined by the Port Commission.

In order to balance health, safety, and welfare concerns while protecting the scenic and natural character of the waterfront stationary vendors will only be permitted in designated vending locations. A map of proposed locations is included in Attachment D.

Each vending location will be identified by markings and written descriptions stenciled on the pavement.

Each designated location will allow for up to three stationary vendors in one location. Upon program launch vending locations will be made available to permitted vendors on a first come first served basis for each day's operations; as more vendors obtain permits the Port may institute a process to fairly allocate spaces on a rotating basis so that all vendors have an opportunity to operate in locations they deem desirable. The Port may add, remove, or alter designated stationary vending locations as deemed necessary.

Enforcement Actions

SB 946 and the Ordinance outline enforcement methods for non-compliance including administrative fines and impoundment of vending equipment. A violation by a vendor who holds a valid permit from the Port will be punishable by an administrative citation, in the following amounts:

1. One hundred dollars (\$100) for a first violation
2. Two hundred dollars (\$200) for a second violation
3. Five hundred dollars (\$500) for each additional violation, and permit revocation for a fourth violation, within a year of the first violation

A person engaged in vending without a valid permit is punishable by an administrative citation pursuant in amounts not to exceed the following:

1. Two hundred fifty dollars (\$250) for a first violation
2. Five hundred dollars (\$500) for a second violation
3. One thousand dollars (\$1,000) for each additional violation and confiscation of cart, food, and/or merchandise

Additionally, the Ordinance empowers enforcement officials to order a cessation of any vending activity they determine to be a safety hazard or public nuisance. The Port Executive Director may designate any City officer, employee, or contractor as an enforcement official to assure compliance with the mobile vendor regulation ordinance and its corresponding rules and regulations.

Vendor Engagement and Technical Assistance

The Port has been working with the Office of Economic and Workforce Development and the Mission Economic Development Agency (MEDA) to establish a contract relationship to provide a public education and outreach campaign to inform existing food and merchandise vendors about the City's new vending regulations in English and Spanish and to provide technical assistance to vendors in order to assist with permit issuance and compliance.

The goal of the campaign is to ensure awareness of the Port's new vending regulations and to provide technical assistance to vendors interested in participating in the program by obtaining a vending permit. Upon execution of the contract MEDA will provide technical assistance on how to apply for a business license and vendor permit, lead a series of bilingual application workshops to assist vendors through the application process, and provide the Port with guidance on how to achieve maximum vendor compliance. Port staff will also use this initial outreach to evaluate the need for

additional language competency and will seek out appropriate technical assistance resources as needed.

The program objective is to make vendors feel welcomed and supported in a potentially difficult and iterative permitting process. Supervisor Peskin allocated \$25,000 in the City's Fiscal Year 2021-22 budget to support this effort. Port staff will ensure that the MEDA contract is complete and outreach is begun prior to the launch of the program.

Recommendation

Port staff recommends the Port Commission approve the attached resolution. The resolution formally adopts Operational Guidelines directing the vending regulation program and delegates authority to staff to implement the program: issuing permits, identifying appropriate stationary vending locations, and enforcement actions for failure to comply with the ordinance and regulations.

Port staff will keep the Port Commission apprised as the program and public outreach and technical assistance campaign are carried out. Port staff intend to return to the Port Commission this Fall to provide an update on the program's implementation.

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Assistant Port Director

Boris Delepine
Legislative Affairs Manager

Attachments:

Attachment A	Port Commission Resolution
Exhibit 1	Operational Standards
Attachment B	Mobile Vending Ordinance
Attachment C	<i>Draft</i> Administrative Regulation
Attachment D	<i>Proposed</i> Map of Stationary Vending Locations

**PORT COMMISSION
CITY & COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 21-34

- WHEREAS, Charter Section B3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate, and control the Port area of San Francisco; and
- WHEREAS, the Port of San Francisco manages the waterfront as the gateway to a world-class city, and advances environmentally and financially sustainable maritime, recreational, and economic opportunities to serve the City and County of San Francisco, the Bay Area, and California; and
- WHEREAS, the Port is home to many of San Francisco's leading visitor destinations and welcomed more than 24 million visitors annually before the COVID-19 pandemic; and
- WHEREAS, in furtherance of the City's recovery from the pandemic, the Port is committed to supporting the growth of waterfront jobs and providing space for new and expanding businesses on Port property, while maintaining public health and safety as well as scenic and recreational opportunities; and
- WHEREAS, street and sidewalk vending, with a relatively low barrier to entry, encourages entrepreneurship, represents a significant sector of San Francisco's local economy, and provides economic opportunity for people to support themselves and their families; and
- WHEREAS, a well-regulated vending program would ensure the Port's streetscape can remain a vibrant and dynamic marketplace, with unparalleled historic, scenic, and recreational value that can be safely enjoyed by all; and
- WHEREAS, sidewalk vending regulations are needed to address existing vending and promote vending as a means of contributing to a safe, healthy, and vibrant waterfront; and regulations are needed to address vendors' equipment, while safeguarding pedestrian and chair-user movement on sidewalks, streets, and other public spaces, to prevent unsanitary conditions and ensure trash and debris are removed by vendors, and to protect the scenic and natural character of the Port of San Francisco's parks and waterfront, and the recreational opportunities the areas provide; and

- WHEREAS, in 2018, then-Governor Jerry Brown signed Senate Bill 946 (“SB 946”), which decriminalized street vending across California and constrained local regulatory authority; and
- WHEREAS, SB 946 seeks to create entrepreneurial and economic development opportunities, including for immigrant and low-income communities, to increase access to desired goods, to contribute to a safe and dynamic public space, and to promote the safety and welfare of the public by encouraging local authorities to support and properly regulate vending; and
- WHEREAS, on May 18, 2021, the San Francisco Board of Supervisors introduced the Mobile Vendor Regulation Ordinance to amend the Port Code to create a pilot sidewalk vending program which provides permitting and regulation of street vendors on Port property in accordance with SB 946; and
- WHEREAS, on July 13, 2021, the Port Commission adopted Resolution 21-29 urging the Board of Supervisors to approve and adopt the Mobile Vendor Regulation Ordinance; and
- WHEREAS, on July 27, 2021, the San Francisco Board of Supervisors adopted the Mobile Vendor Regulation Ordinance amending the Port Code to create a sidewalk vending program which authorizes permitting and regulation of private street and sidewalk vendors on Port property in accordance with SB 946; now therefore be it
- RESOLVED, that the Port Commission adopts the Operational Standards for Mobile Vendors as provided in Exhibit 1 to this Resolution; and be it further
- RESOLVED, that the Port Commission approves an annual Mobile Vendor permit fee of \$100, as provided in Operational Standards for Mobile Vendors, Section 4.A; and be it further
- RESOLVED, that the Port Commission delegates authority to the Executive Director of the Port to promulgate and amend Administrative Regulations that implement and provide site-specific application of the Operational Standards, as provided in Operational Standards for Mobile Vendors, Section 5.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of August 10, 2021.

Secretary

OPERATIONAL STANDARDS
for
Mobile Vendors

EXHIBIT 1

Port Commission
OPERATIONAL STANDARDS
for
Mobile Vendors

1. **Authority.** The following Operational Standards are adopted by the Port Commission pursuant to its authority under Port Code section 2A.5.
2. **Definitions.** In addition to the definitions provided below, all capitalized terms have the meanings identified in Port Code section 2A.1.
 - a. **Administrative Regulations** mean the rules and regulations of the Executive Director of the Port, as may be amended from time to time, and which implement and provide site-specific application of the Operational Standards.
 - b. **Operational Standards** mean the guidelines and general standards applicable to Mobile Vendors as approved from time to time by the Port Commission.
3. **General Standards.** Mobile Vendor regulations are needed to address existing Vending and to promote Vending as a means of contributing to a safe, healthy, and vibrant waterfront. Regulations are needed to address Mobile Vendors' equipment, while safeguarding pedestrian and chair-user movement on sidewalks, streets, and other public spaces, to prevent unsanitary conditions and ensure trash and debris are removed by Mobile Vendors, and to protect the scenic and natural character of the Port of San Francisco's parks and waterfront, and the recreational opportunities the areas provide.
 - a.
 1. The Port is home to many of San Francisco's leading visitor destinations and welcomed over 24 million visitors annually before the COVID-19 pandemic. The Port must regulate and manage uses of publicly accessible Port property based on the significant number of visitors and important maritime, recreational and commercial activity that occurs on Port property. Regulation and management of uses must improve and maintain: (i) accessibility to maritime, recreational and commercial activity, (ii) mobility to and through Port property for individuals using all modes of transportation to visit Port property and other destinations throughout the City, and (iii) safety and enjoyment of all persons who use Port property.
 2. Mobile Vendors may not block or obstruct a minimum path of travel for visitors and users of Port property, including streets, sidewalks, promenades, wharves, and piers. The minimum path of travel required on Port property will

OPERATIONAL STANDARDS

for Mobile Vendors

vary depending on location, based on the present and anticipated types of commercial activity, and the number of users and modes of transportation. Greater limits on the time, place, and manner of Vending are appropriate where there is greater intensity of uses (e.g., areas with significant numbers of pedestrians or intense truck and bus traffic), including but not limited to the areas near the Ferry Building, Fisherman's Wharf, Oracle Park (game or event days), Chase Arena (game or event days), and the Pier 27 Cruise Terminal.

b. 1. The Port is home to scenic and natural beauty, including the San Francisco Bay. Many Port properties where Vending may occur are defined as parks in the Port Code. Port property offers significant recreational opportunities. The Port must regulate and manage uses of publicly accessible Port property to ensure safe access to and enjoyment of the scenic and natural beauty, Port parks, and recreational opportunities.

2. Mobile Vendors may not Vend in a manner that significantly impairs or detracts from the public's use and enjoyment of natural resources and recreational opportunities. Greater limits on the time, place, and manner of Vending are appropriate in areas with significant scenic and natural beauty, access to natural resources, and recreational opportunities, including but not limited to the areas near Piers 45, 43, and 7, the Brannan Street Wharf, the Embarcadero Promenade, Agua Vista Park, Crane Cove Park, and Heron's Head Park.

c. The Port Commission recognizes that Vending provides important entrepreneurship and economic development opportunities for low-income and immigrant communities, contributes to a dynamic public space, increases access to desired goods and culturally significant food and merchandise, and contributes to a successful and vibrant commercial area.

d. The Port Commission finds the regulation of the sale of food and food products will help to ensure that Mobile Vendors obtain all necessary permits and comply with applicable sanitation, food preparation, and food handling laws, and thereby will protect the public health and safety against health problems such as food contamination, poor hygienic practices, and food poisoning.

e. The Commission finds that limitations on Vending to specific hours each day may be appropriate to support all of the goals and principles stated above, including maintenance of a minimum path of travel, access to the use and enjoyment of natural and scenic beauty and recreational opportunities, in support of a vibrant commercial area, and to promote the public health, safety, and welfare with respect to food Vending.

4. Permit Fee. The Port shall collect an annual permit fee pursuant to Port Code Section 2A.4, equal to One Hundred Dollars (\$100). Separate annual fees may apply

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and be payable to the Tax Collector, Department of Public Health, and the Port Fire Marshal for any approvals required by each department.

5. Delegation of Authority to Executive Director.

a. The Port Commission delegates authority to the Executive Director of the Port to promulgate and amend, from time to time, Administrative Regulations that implement and provide site-specific application of the Operational Standards.

b. The Executive Director shall publish and maintain the Administrative Regulations on the Port's website and shall post signs and notices on Port property for the Mobile Vendor permitting program.