



MEMORANDUM

January 7, 2022

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: Presentation and update on the Port's pilot Mobile Vending Program

DIRECTOR'S RECOMMENDATION: Information Only – No Action Required

EXECUTIVE SUMMARY

Port staff returns to the Port Commission to provide an update on the Port's pilot Mobile Vending Program

At the June and July Port Commission meetings staff provided a briefing on Senate Bill 946 (SB 946), which expanded opportunities for entrepreneurship and decriminalized vending by limiting enforcement authority to those permitting regimes that comply with the standards set forth under SB 946. Without local action to adopt such a regime, the enforcement tools to regulate vending on public sidewalks and in parks are very limited.

Since SB 946 was enacted, vending activity has increased on Port property. Over the course of the Covid-19 pandemic, Fisherman's Wharf saw a significant concentration of unpermitted vending activity, but vendors have also been observed along the Embarcadero and throughout Port property. As the numbers of vendors increased, concerns were 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 established 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 was signed into law by Mayor London Breed on August 4, 2021.

On August 10, 2021, the Port Commission adopted Resolution 21-34 establishing a licensed vending program on Port property, adopted associated regulations, and delegated implementation authority to the Executive Director.

The Ordinance took effect on September 4, 2021. On December 14, 2021, Mayor London Breed introduced legislation amending the Public Works Code to create a new City-wide regulatory permit program for sidewalk vending.

This report provides an update on the Port’s implementation of the new mobile vendor permit pilot program, the vendor education and outreach effort led by the Mission Economic Development Agency (MEDA), and the Mayor’s legislative effort to create a new City-wide vendor permit program.

Strategic Objective

The Port pilot Mobile Vending Program contributes to meeting the following objectives of the Port’s Strategic Plan:

- The Equity Objective, by investing in a program that offers new economic opportunities to historically disadvantaged communities;
- The Evolution Objective, by establishing rules that allow for the Port to manage the use of waterfront space so that all residents and visitors may safely enjoy the natural and recreational benefits of an inclusive waterfront; and
- The Stability Objective, by creating conditions where residents and visitors can enjoy the benefits of mobile vending in an organized manner as a further encouragement for people to return to the waterfront and bolster the Port’s economic recovery.

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.

As vending activity picked up over the past 18 months, 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 that established the Port's pilot mobile vending program.

Port Mobile Vending Permit Program Ordinance

On May 18, 2021, Supervisor Peskin 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 prioritizes health and safety, protects 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 does 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.

On August 10, 2021, through Resolution 21-34 the Port Commission established a regulatory permit program for all sidewalk vendors on Port property. The Port's pilot Mobile Vending Program requires vendors to obtain a sidewalk vendor permit from the Port and to comply with other applicable City requirements. Although the Ordinance provides some minimum standards for the permit program, the August Port Commission action adopted a set of broad Operational Standards to govern the program and delegated authority to the Executive Director to issue more detailed Administrative Regulations. Together these two documents form the basis by which the Port may manage all sidewalk vending activities, including time, place and manner of permitted sidewalk vending, application requirements, operational standards, and enforcement actions.

On October 14, 2021, the Port's pilot Mobile Vending Program Administrative Regulations were put into effect by the Executive Director pursuant to the Ordinance and Operational Standards adopted by the Port Commission. The finally adopted Regulations can be found at Attachment A.

Program Structure

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.

In an effort to establish a low barrier to entry at the onset of the Port's program launch, the program requires 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. Before issuing a Port permit, the vendor must show all the other required City permits.

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. Each designated location will allow for up to three stationary vendors in one location. Vending locations are made available to permitted vendors on a first come first served basis for each day's operations, with the exception

of two high-demand Fisherman's Wharf locations. For those locations, staff conducts a monthly lottery to allocate spaces to specific interested vendors for each Friday, Saturday and Sunday on a rotating basis.

Enforcement Authority

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.

Program Implementation Tasks Completed

Since the Port Commission approved the program in August, Port staff, with partner entities, have taken many steps to initiate the program, including:

- Developed site plans for individual stalls at each permitted vending location. These plans were finalized through an iterative process with BCDC and City agency staff to ensure that the locations did not violate any public access or public safety requirements
- Painted the vending stalls and installed signage to make vendors and the public aware of the program and permitted locations
- Established and implemented a space allocation process for high-demand stalls at Pier 45 and Pier 43.
- Procured Notice of Violation books for use in the field and finalized Citation documentation for issuance to offenders, including multilingual guides for filing an appeal and for filing for an ability-to-pay determination.
- Established a dedicated webpage for those interested in learning more about the vending program. Through the technical assistance contract MEDA provided Spanish translations of website text as well as the program regulations and permit application for wider accessibility.

- Met with MEDA and representatives from SFDPH, the Fire Department, and the Office of Small Business to detail the various regulatory requirements and establish protocols for the review of vending applications. The parties also discussed some of the barriers to prepared food permitting in state law and other regulations, and agreed to look for ways to make that process more achievable for interested vendors.
- Worked with Arts Commission staff to ensure that the Port program requirements for vendors who sell products they fabricate themselves comply with existing City programs for such vendors.
- As of January 5, 2022, the Port has issued 37 vending permits.
- As of January 5, 2022, the Port has issued 8 Notices of Violation, all to unpermitted vendors.

On the topic of enforcement, during the period between Thanksgiving and the end of December Port staff organized weekly enforcement actions, varying operational periods to target both weekdays and weekend days and avoid predictability. Notably, in a growing number of situations, Port staff has found that there is more value in establishing an enforcement presence for an extended period of time to keep unpermitted vendors clear, as compared to the deterrent effect of issuing citations to unpermitted vendors. Therefore, the citation numbers are not as high as they would be if the plan were to issue citations as the first step in our tactical approach.

The establishment of a “surge” enforcement presence to discourage unpermitted vending at a given location has yielded positive results during those operational periods, but this approach undoubtedly is more staff-intensive and requires significant coordination with public safety agencies. In addition, we have found that unpermitted vendors often return to a location once the enforcement presence ends. Port staff continues to evaluate these “hotspot” tactics in light of available resources with the goal of ensuring a well-managed waterfront where permitted vendors can enjoy the benefits of compliance with the program rules.

Vendor Engagement and Technical Assistance

This past August, the Port through the Office of Economic and Workforce Development (OEWD) entered into a contractual relationship with Mission Economic Development Agency (MEDA) to conduct an education and outreach campaign informing existing food and merchandise vendors about the Port’s new vending regulations in English and Spanish and to provide technical assistance to vendors seeking a vending permit. In addition, MEDA provided translation of all program documents from English to Spanish including the Port permit application, administrative regulations, and citation paperwork. The Port’s contract with MEDA is funded through a \$25,000 budget allocation by Supervisor Aaron Peskin matched by Port harbor funds. The contract expired on December 31, 2021; the Port retains some additional capacity to work with the MEDA team through OEWD, which staff believes may become useful in relation to future vendor outreach as the program matures.

The Education and Outreach campaign launched one month prior to the effective date of the new vending program. MEDA conducted in-person outreach to vendors along the Embarcadero and in Fisherman's Wharf on Fridays and weekends. In addition to providing general information about the new program vendors were invited to in-person workshops and individual technical assistance sessions for support completing permit applications.

On September 10, 2021, MEDA led the first of three informational workshops at Pier 1. Over seventy participants attended the first informational session which included presentations from Port staff as well as the San Francisco Department of Public Health, San Francisco Office of Small Business, and the San Francisco Fire Department. The purpose of each presentation was to ensure awareness of the new regulations, permit requirements, answer questions and to assist vendors interested in participating in the program. Two subsequent workshops were held on September 29 and November 19, 2021.

In addition to the workshops, MEDA provided individual technical assistance to interested vendors and seminars with small focus groups to provide additional detail about the new law. Technical assistance included supporting vendors in obtaining business registration, seller's permits, business insurance, and completion of the Port's permit application. Forty-five vendors participated in one-on-one technical assistance and seminars with fifteen submitting applications to the Port to date and twelve applications pending submittal.

Below are observations and recommendations from MEDA to maximize vendor compliance with existing laws:

Observations:

- Vendors have found the insurance requirements cumbersome and confusing.
- Public Health requirements related to food vending make it very difficult and costly for existing vendors to comply.

Recommendations:

- Regular permit holder meetings with Port staff would help provide feedback about the program and allow vendors to provide recommendations on program implementation.
- Enforcement to support permit holders particularly in the morning, would help discourage conflicts with unpermitted vendors.
- Continued technical assistance is necessary to assist vendors through the permit application process.

While some of these observations recommendations touch on areas that are difficult to address from the standpoint of existing laws and regulations as well as Port business practices, Port staff will continue to work, the vendors and the relevant regulatory agencies to address these concerns, including in relation to any new resources that may be made available in connection with the City-wide proposal summarized below.

City-wide Vending Permit Program

On December 14, 2021, Mayor London Breed introduced an ordinance to create a City-wide vending program that provides permitting and meaningful enforceable regulation of street vending on City property consistent with SB 946. The legislation can be found in Attachment B of this report. If adopted, the Mayor's ordinance will preserve and merge the Port's existing vending program into the City-wide effort.

Like the Port's legislation, the City-wide ordinance requires permits to vend merchandise and food, authorizes a permit fee, and grants authority for the establishments of rules and regulations to govern the time, place, and manner of vending. The proposed City-wide ordinance grants the authority to create rules and regulations to the Director of Public Works; Port staff worked with the Mayor's office to ensure that the proposal also allows the Port Commission to adopt additional requirements, specifically for Port property.

The City-wide ordinance will ban vending at United Nations Plaza except during farmer's markets. The ordinance does not regulate vending in the City's parks except for United Nations and Hallidie Plazas. The remainder of the proposed legislation mirrors the Port's policy of instituting a regulatory permit program consistent with the provisions of SB 946.

The legislation is scheduled to be heard in the Land Use and Transportation Committee of the Board of Supervisors in late January. If adopted, the City-wide ordinance would take effect in Spring 2022. Port staff welcomes the potential to harmonize the Port's program with a Citywide effort and potentially bring more resources to bear on vendor technical assistance as well as enforcement of laws and regulations on Port property. Port staff will continue to manage and implement our own program while providing input to the Mayor's Office and Public Works as the City-wide effort is developed.

Next Steps in Further Program Development

In addition to working on the recommendations noted above, Port staff see the following as key next steps over the coming months:

- As a growing number of staff are trained in safely monitoring and enforcing the vending rules, Port staff intends to work with SFPD and our City agency partners to step up more frequent enforcement actions, including the employment of

tactics to ensure that unpermitted vendors do not return in high-traffic areas such as Fisherman's Wharf and Alcatraz Landing.

- Port staff is in the process of review the vending stall locations with an eye towards confirming they are meeting the goals of providing safe paths of travel and positive visibility for the vendors, while not creating other negative impacts on the waterfront. These reviews may result in minor modifications to the stall locations, if so Port staff will work with BCDC to secure any needed review and concurrence.
- Port staff will monitor the demand for certain vending stalls and may expand the space allocation process used for Pier 45 and Pier 43 locations to ensure fair opportunities for all permittees in high-demand areas.
- Port staff will monitor the progress of the Mayor's new City-wide ordinance and continue to provide lessons learned and best practices to the program formation discussion as we work with the Mayor's office, Public Works Department, and Board of Supervisors to give the new law more definition, including as it relates to the Port's existing pilot program.

Port staff appreciates the support of the Port Commission in establishing this important program offering entrepreneurial opportunities while ensuring the ability of the public to enjoy the waterfront. Port staff will incorporate feedback from the January 11 hearing to further improve the program so that it can provide further benefits as the Port and the City economy recover from the impacts of the pandemic.

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Attachments:

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| Attachment A | Port Mobile Vending Program Administrative Regulations |
| Attachment B | City-wide Street Vendor Regulation Ordinance |

ATTACHMENT A

PORT MOBILE VENDING PROGRAM ADMINISTRATIVE REGULATIONS