



MEMORANDUM

June 9, 2023

TO: MEMBERS, PORT COMMISSION
Hon. Kimberly Brandon, President
Hon. Willie Adams, Vice President
Hon. Gail Gilman
Hon. Ed Harrington
Hon. Steven Lee

FROM: Elaine Forbes
Executive Director

SUBJECT: Update on the Port's Mobile Vending Program.

DIRECTOR'S RECOMMENDATION: Informational Only – No Action Required

EXECUTIVE SUMMARY

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

Since SB 946 was enacted in 2020 decriminalizing street vending, vending activity has increased on Port property. As the number of vendors increased, concerns were raised regarding public health and safety issues, including 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 "Original Vending Ordinance") that established a pilot program for permitting and regulating vending on Port property in compliance with SB 946. The Original Vending Ordinance was unanimously adopted by the Board of Supervisors on July 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.

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The Original Vending Ordinance took effect on September 4, 2021. On December 14, 2021, Mayor London Breed introduced a new ordinance (the “Citywide Program Ordinance”) amending the Public Works Code to create a new City-wide regulatory permit program for sidewalk vending. The Citywide Program Ordinance was adopted on March 15, 2022.

This report provides an update on the Port’s management of the mobile vendor permit pilot program in the wake of the adoption of the Citywide Program Ordinance, as well as outlining recent enforcement activities and next steps.

STRATEGIC OBJECTIVE

The Port 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.

BACKGROUND: 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 that did not comply with these standards. This provision rendered many local programs inoperative, including those in San Francisco.

To fill the regulatory void that SB 946 created, Supervisor Peskin introduced the Original Vending Ordinance to create a new regulatory program in the Port Code for street and sidewalk vending within the jurisdiction of the Port.

The Original Vending Ordinance prioritizes health and safety and 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 are best captured within the general findings set forth in Section 2(e) of the Original Vending 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 Original Vending Ordinance authorized 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 the 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 Mobile Vending Program requires vendors to obtain a sidewalk vendor permit from the Port and to comply with other applicable City requirements. Although the Original Vending 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.

CITYWIDE PROGRAM ORDINANCE

Like the Original Vending Ordinance, the Citywide Program Ordinance established a new citywide program that requires permits to vend merchandise and food, authorizes a permit fee, and grants authority for the establishment of rules and regulations to govern the time, place, and manner of vending. The Citywide Program 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 managing vendor activity on Port property according to the approach described above. While the Citywide Program Ordinance did maintain this operational authority with the Port, it also centralized all permit issuance activity with the Department of Public Works such that the Port is no longer authorized to issue new permits for vendors seeking to operate on Port property.

After the adoption of the Citywide Program Ordinance, Port staff met several times with Public Works permitting and enforcement staff so that both agencies could understand the Port's existing program as well as the new Citywide program and make sure that the intent of the Citywide Program ordinance was carried out. Public Works staff have advised that their permitting system will need to modify to reflect the Port's operational rules, where individual vendors are not assigned a specific location for all vending activities as they are under the Citywide program and anticipate that such modifications can be made using new resources requested under the FY 2023-2024 budget. In the meantime, to avoid negative impacts on vendors who went through the effort to obtain lawful permits, Port staff continue to recognize expired Port permits as valid until Public Works can fulfill its responsibility and continue to enforce the program's Operational Standards and Administrative Regulations as authorized under Port Commission Resolution 21-34.

ENFORCEMENT UPDATES

Port staff have also continued to coordinate enforcement activities among a range of partner agencies, including the Police Department, the Department of Public Health, Public Works, the state Alcoholic Beverage Control Agency ("ABC"), and others. Through this work Port staff have experimented with different enforcement tactics in different areas, targeting unpermitted merchandise and food vendors as well as other related activities at the Little Embarcadero, Alcatraz Landing, and outside Oracle Park before and after Giants games. Based on this continuing work, Port staff provides the following observations for the Commission's consideration:

- Port staff has found that there is more value in bringing sufficient staff to establish an enforcement presence for a defined area for an extended period to keep unpermitted vendors clear, as compared to the deterrent effect of issuing citations to unpermitted vendors without the ability to require the presentation of valid identification.
- 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 does not always see lasting benefits after the deployment concludes. In addition, as unpermitted vendors have resisted these efforts our enforcement encounters have occasionally risen to verbal conflict. The safeguarding of staff and public safety, therefore, requires significant coordination with public safety agencies.
- Port staff has seen an uptick in unlicensed alcohol and cannabis vending, which has taken advantage of the decriminalization of food and merchandise sales of other unpermitted vendors to operate out in the open. This criminal activity is a serious issue and strikes at the heart of the Port's effort to provide a clean, safe, and vibrant waterfront for visitors and residents. Further, Port staff have found that many of these vendors have employed networks of spotters and support workers which makes enforcement difficult once they are in place. Port staff have met with SFPD staff as well as the District Attorney's office to better understand how best to move forward in creating criminal consequences for these bad actors. The Port's SFPD

officers have made arrests and issued citations in recent weeks, but this effort will require increased coordination to show results.

- Considering the three bullets above, the Port has taken the proactive step of hiring two retired SFPD officers on a part-time basis as Mobile Vending Enforcement Coordinators to coordinate enforcement activities and to serve as a liaison with law enforcement and other agencies with the regulatory authority. Since mid-May the Mobile Vending Enforcement Coordinators have led two daylong enforcement deployments at the Little Embarcadero, participated in a multiagency deployment at a Giants game at Oracle Park, and served as liaison with ABC for a deployment at Fisherman's Wharf on the Friday before Memorial Day weekend.
- The Port is also in discussions to augment its full-time SFPD detail from one pair of full-time officers supplemented by officers on overtime to two pairs of full-time officers working on a platoon schedule to offer coverage seven days a week. Port and SFPD believe such an arrangement will allow for more consistent enforcement activities on Port property among the four officers and a better and more consistent engagement between Port staff and law enforcement. The Port has also extended an offer to a former SFPD officer to take on the role of Port Security Manager which has been vacant since the end of 2022. When these two staffing initiatives are complete in the upcoming weeks, the Port will have a much greater ability to provide needed coordination and resources for safe and effective vending enforcement.
- The approval of a grant to the Fisherman's Wharf Community Benefits District intended to further the effort to attract visitors to Fisherman's Wharf is also on the Port Commission's June 13 agenda. Port staff plan to tailor further vending enforcement strategy to support the activations called for under the plan, as well as to train the ambassadors in a manner that can help support the Port's awareness of vending activity and contribute to the refinement of future enforcement plans.

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 welcomes further feedback from the Port Commission as we continue to examine ways to improve enforcement against unpermitted vending and criminal activities.

Prepared by: Michael Martin
Assistant Port Director