



## MEMORANDUM

July 9, 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 supporting the proposed City ordinance regulating mobile vending and an informational presentation regarding the establishment of a licensed vending pilot program on Port property and associated regulations

**DIRECTOR'S RECOMMENDATION:** Approve the Attached Resolution No. 21-29

### **Executive Summary**

At the June 8, 2021 meeting of the Port Commission Port staff provided a briefing on SB 946, a state law enacted in 2018 which established a new regulatory regime for mobile and street vending. The goal was to expand opportunities for entrepreneurship by decriminalizing vending and requiring local agencies to establish permitting programs that do not present excessive barriers to entry, while at the same time allowing those local agencies to enforce regulations for public health and safety. Local agencies were prohibited from enforcing pre-existing permitting regimes that did not comply with the law.

Over the time since SB 946 was enacted, vending activity has increased on Port property. Over the course of the 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 on the sale of prepared food,

compliance with traffic and parking laws, and other 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 that would establish a pilot program for permitting and regulating vending on Port property in compliance with the requirements of SB 946. This staff report summarizes the contents of that proposed legislation and describes the work Port staff is doing to prepare proposed regulations for the pilot program that will be presented to the Port Commission for consideration and possible action once the ordinance is finally approved, anticipated in August of 2021.

### **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** *(This section was included in the June 8, 2021 staff report)*

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. The SB 946 limitation on vending 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 these vendors to operate. In an effort to improve the management of these spaces, Port staff worked closely with the City agency working group to provide input to Sup. Peskin and the City Attorney's Office as they developed the proposed mobile vendor ordinance introduced at the Board of Supervisors on May 18.

**Proposed Ordinance** *(This section was included in the June 8, 2021 staff report)*

Supervisor Peskin’s mobile vendor regulation ordinance will create a new regulatory program in the Port Code for street and sidewalk vending within the jurisdiction of the Port. The new law will bring existing municipal codes related to sidewalk vending into compliance with SB 946. By introducing this ordinance Supervisor Peskin 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. Supervisor Peskin introduced the ordinance on May 18, 2021.

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

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 law as currently drafted 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 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 the 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. Port staff will return to the Port Commission after the ordinance is approved to propose such additional regulations for consideration and approval. The following is an anticipated schedule for adoption of the mobile vendor regulation ordinance and associated regulations:

<b>Action</b>	<b>Date*</b>
Port Commission Informational Hearing	June 8, 2021
Land Use Committee Hearing	July 12, 2021
Port Commission Hearing: Action to endorse proposed amendments	July 13, 2021

to Port Code; informational regarding proposed rules and regulations to be presented for action at next hearing	
First Read Full Board of Supervisors	July 19, 2021
Second Read Full Board of Supervisors	July 26, 2021
Mayor Signs	July 30, 2021
Port Commission Hearing: Action to authorize rules and regulations	August 10, 2021
Ordinance Takes Effect	August 30, 2021

\* Note that all dates are subject to change

**Port Staff Strategy in Developing Regulations** *(This section was included in the June 8, 2021 staff report)*

As detailed in the staff report for the June 8, 2021 Port Commission hearing, Port staff observes that the waterfront is precisely the type of place that SB 946 sought to better organize in support of vending. Visitor traffic provides business opportunities for vendors but also represents a challenge in terms of ensuring public health and safety in a potentially crowded area and potentially detracting from the scenic and natural character of the waterfront. Accordingly, Port staff is seeking to develop a program administration framework that delivers these entrepreneurial opportunities in a manner that enhances rather than detracts from the public waterfront experience, especially as public health restrictions are lifted and foot traffic is expected to increase over the coming months. While the circumstances and regulatory approach are somewhat different, the Port’s experience in developing and administering a program allocating spaces to street performers in Fisherman’s Wharf shows how such an organizing effort can create real benefits for all visitors to the waterfront while allowing individuals to enliven the scene with their talents and initiative.

In response to the proposed ordinance, Port staff have begun developing approaches to a number of issues we see as critical to launching a successful pilot. These include:

- An application process and associated documents that comply with the requirements of the ordinance.
- Appropriate time, place and manner regulations, including a proposed map of locations that Port staff believes are appropriate for vending and do not impede the sidewalk path of travel and the enjoyment of the natural resources and recreational opportunities the waterfront provides.
- A strategy to provide outreach, engagement, and technical assistance to vendors to assist permit issuance and compliance.
- A proposed enforcement approach that complies with the ordinance and leverages the coordination with the other agencies that have regulatory jurisdiction over the various types of vending covered in the program.

## **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 proposed Mobile Vendor Regulation 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 sellers 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.

The proposed Mobile Vendor Regulation Ordinance limits 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 for the initial year of operation, an amount comparable to that implemented by the City of Santa Monica for the kickoff of their program. Once more data is available regarding the number of vendors wishing to participate and the cost of administering the Port's sidewalk vendor permit program, Port staff will return to the Port Commission with recommendations on whether and by how much to adjust the annual fee, and whether a potential requirement for vendors to report on sales and pay a percentage to the Port would be a viable and equitable means to recover the Port's reasonable costs of administration as defined under the ordinance. The table below provides an overview of fees associated with merchandise vending.

Fee Description	Amount
San Francisco Business License	\$50-100
Port Vendor Permit	\$100
California Sellers Permit	\$0

As stated earlier, vendors wishing to obtain a permit to sell food on Port property will be required to procure a permit to operate a food facility from the Department of Public Health. The Department of Public Health have agreed to waive all food facility permit fees for the first year of the sidewalk vending 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 Marshall.

### **Operational Standards and Designated Locations**

The mobile sidewalk vending ordinance authorizes the Port Commission to adopt requirements regulating the time, place, and manner of sidewalk vending along the waterfront. Attachment B of this report provides a first draft of proposed 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 promulgate 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 vending will only be permitted in designated vending locations. A map of proposed locations is included in Attachment B of this report. Each vending location will be identified by signage and marked on the pavement.

Each designated location will allow for up to three vendors in one location. Vending locations will be made available to permitted vendors on a first come first serve basis. The Port may add, remove, or alter designated vending locations as deemed necessary.

### **Enforcement Actions**

SB 946 and the mobile vendor regulation ordinance outline enforcement methods for non-compliance including administrative fines and impoundment of vending equipment. A violation by a sidewalk vendor who holds a valid sidewalk vending permit from the Port will be punishable by an administrative citation, in amounts not to exceed the following in compliance with SB 946:

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 dollars (\$200) 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 mobile vendor regulation ordinance empowers enforcement officials to order a cessation of any vending activity they determine to be a safety hazard or public nuisance. The 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 Mayor's Office of Economic and Workforce Development and the Mission Economic Development Agency (MEDA) to establish a comprehensive public education and outreach campaign to inform existing sidewalk 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. 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.

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.

### **Next Steps**

As noted above, Port staff will incorporate feedback from the Port Commission and the public at the July 13, 2021 meeting in its further efforts to develop regulations as required by the ordinance. Port staff will keep the Port Commission apprised as the proposed ordinance makes its way through the Board of Supervisors process and will return to the Port Commission on August 10, 2021 to seek authorization to implement the program's rules and regulations.

Prepared by: Michael Martin  
Assistant Port Director

Boris Delepine  
Legislative Affairs Manager

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

**RESOLUTION NO. 21-29**

- WHEREAS, Charter Section 3.581 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 sidewalk vending program which provides permitting and regulation of street vendors on Port property in accordance with SB 946; now therefore be it

RESOLVED, in furtherance of the Port Commission authority and duty under Charter Section B3.581 to use, conduct, operate, maintain, manage, regulate, and control the Port area of San Francisco, the Port Commission supports revisions to the Port Code 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 in substantially the form attached hereto; and be it further

RESOLVED, that the Port Commission recommends and urges the Board of Supervisors to approve and adopt the Mobile Vendor Regulation Ordinance, including the Port Code amendments described therein.

***I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of July 13, 2021.***

---

Secretary

**ATTACHMENT A**

Mobile Vending Ordinance as introduced at the Board of Supervisors on June 15, 2021

## **ATTACHMENT B**

1. The Port Commission adopts the following Operational Standards and Administrative Regulations to support and achieve objective health, safety, and welfare standards for sidewalk vending of food and merchandise on Port property.
  - a. Vending is restricted to non-motorized conveyances, stands, or pushcarts, which must be not more than 10 feet in length and not more than 10 feet in depth, including wheels, axles, and other appurtenances.
  - b. No sidewalk vendor shall erect, place, or maintain any tent, canopy or other temporary shelter (excluding umbrellas) in the public right-of-way.
  - c. A sidewalk vendor may have one (1) umbrella. When in use, the umbrella shall not exceed 10 feet in height as measured from ground level to its highest point. The umbrella cannot be attached to any public or private fixture, such as the sidewalk, street furniture, fence, bench, or trees. The umbrella must be made of a sturdy and safe material and must be attached and anchored to the sidewalk vending equipment in such a way that sudden bursts of wind will not dislodge it.
  - d. No external power, piping, or plumbing is allowed. The sidewalk vending equipment must be entirely self-contained.
  - e. Signage is permitted only if attached to the sidewalk vending equipment or the sidewalk vendor's person.
  - f. Operations must not damage public or private property.
  - g. Sidewalk vending equipment must not lean against or attach to a building or structure.
  - h. All sidewalk vendors shall be limited to two (2) chairs. The chairs may be placed behind or next to (but not in front of) the sidewalk vending equipment.
  - i. Vendors are prohibited from using any parking stall or designated parking area for vending conveyances, stands, or carts to sell food or merchandise.
  - j. Food, goods, and merchandise must be securely fastened to the sidewalk vending equipment.
  - k. Hours of operations for sidewalk vendors on Port property shall be between the hours of 8 am to 9 pm.
  - l. Sidewalk vendors shall not leave their sidewalk vending equipment or their food, goods, or merchandise unattended at any time. For the purposes of these Regulations, unattended means that the vendor is not within 10 feet of the sidewalk vending equipment or the vendor's food, goods, or merchandise.

- m. No sidewalk vending equipment shall be chained or fastened to any pole, sign, tree, or other object in the public right-of-way.
- n. All sidewalk vendors must display their Port-issued sidewalk vending decal on their sidewalk vending equipment when operating. Specifically, the decal shall be placed directly on the upper left-hand side of the side that faces the public.
- o. Under no circumstance shall food, goods, or merchandise be displayed using or placed directly upon a street, sidewalk, pathway, structure (bench, planters, tree, trash container, signpost, etc.), or any public place.
- p. No sidewalk vendor shall display food, goods, or merchandise by placing any blanket, tarp, or other covering in any public space, including in a park or in the public right-of-way, or on any public fixtures, benches, or structures.
- q. Sidewalk vending equipment shall be parallel to the curb, with the longest side of the equipment parallel to the curb.
- r. No sidewalk vendor shall use any power source that poses a fire or public safety hazard, any generator, or wet cell battery with removable fill caps. No sidewalk vendor shall connect or maintain an electrical cord to an adjacent building or to a City power source.
- s. Any food, goods, merchandise, boxes, or accessory items shall be stored entirely beneath the sidewalk vending equipment, as applicable, and shall not be stored or piled alongside, behind, or in front of the sidewalk vending equipment.
- t. No sidewalk vendor or their sidewalk vending equipment shall obstruct the entrance or exit of any property or the ability of the public to pass by in both directions on an adjacent sidewalk or road right-of-way.
- u. In addition to prohibitions on the sale of alcohol, ammunition, animals, counterfeit goods, firearms, or tobacco, which exist in local, state, or federal law, by these Rules and Regulations, vendors are prohibited from selling or offering any harmful, dangerous items or noise making devices, such as archery equipment, knives, sling shots, toy trumpets, or vuvuzelas.
- v. The minimum recommended sidewalk width of a sidewalk for sidewalk vending shall be fifteen feet with a minimum two-foot clearance required along the curbside for carts operating adjacent to existing on-street parallel parking.
- w. All applicable parking regulations shall be observed.
- x. No occupancy is allowed within SFMTA's Oracle Park restricted streets from two hours before until two hours after events, unless written consent from SFMTA is first obtained.

- y. Vendors are responsible for clean-up and removal of any food item, package, refuse, waste, litter or any items or materials occurring because of or related to their food and merchandise sales.
  - z. Vendors are prohibited from placing any liquid or solid waste in Port trashcans.
  - aa. Vendors are prohibited from using speakers, amplifiers, musical instruments or noise-making devices.
  - bb. Vendors must bring their own vermin-proof trash receptacles and remove any and all waste, refuse and litter collected or discarded as a result of preparing, selling or consuming food items or merchandise on Port property.
  - cc. Vendors must maintain, possess, and display or show all local authority permits required by the State, City and County.
  - dd. Violations of these rules and regulations shall be punishable by administrative fines under the City's Administrative Code Section 2A.8.
  - ee. The Port of San Francisco reserves the right to amend, change or alter any of these rules in conformance with local and state law at any time and as needed.
  - ff. Notwithstanding the above rules, due to limited egress and ingress and to protect the scenic and natural character of the waterfront, vending will only be permitted in designated vending locations identified on the attached map linked [here](#).
  - gg. At such time as a sufficient number of vendors have obtained a Port vending permit, Port staff shall implement a fair and equitable process for allocating spaces to individual vendors on a rotating basis. Once such a process is in place, no vendor shall vend in any space allocated to a different vendor.
2. The Port Commission delegates authority to the Executive Director to promulgate further Administrative Regulations to implement Operational Standards 1.a through 1.hh, inclusive, which Administrative Rules and Regulations shall have the same force and effect as these Operational Standards.