



AFFIDAVIT OF SERVICE

Nicolas Huff, Bureau Manager
San Francisco Public Works, Bureau of Street Use & Mapping
49 South Van Ness Avenue, Suite 1600
San Francisco, CA 94103

I, Alec Longaway, Legal Assistant for Board of Appeals, hereby certify that on this **3rd** day of **April 2024**, I served the attached **Notice of Withdrawal** for **Appeal No. 24-009, San Francisco Carts & Concessions, Inc. vs. San Francisco Public Works, Bureau of Street Use & Mapping**, subject property at **100 Geary St., 233 Geary St., 251 Geary St., and 345 Stockton St.**, on the respondent via email to: nicolas.huff@sfdpw.org

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed in San Francisco, California.

April 3, 2024

Date

Alec Longaway

Alec Longaway

cc:

OTHER PARTIES
OR CONCERNED CITIZENS:

San Francisco Carts & Concessions, Inc., Appellant(s)
c/o Stanley Roth, Agent for Appellant(s)
9 Magee Court
Moraga, CA 94556
stanleyroth@gmail.com

BOARD OF APPEALS, CITY & COUNTY OF SAN FRANCISCO

Appeal of
SAN FRANCISCO CARTS & CONCESSIONS, INC.,)
Appellant(s))
vs.)
SAN FRANCISCO PUBLIC WORKS)
BUREAU OF STREET USE & MAPPING,)
Respondent

Appeal No. **24-009**

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN THAT on February 7, 2024, the above named appellant(s) filed an appeal with the Board of Appeals of the City and County of San Francisco from the decision or order of the above named department(s), commission, or officer.

The substance or effect of the decision or order appealed from is the REVOCATION on January 31, 2024, of four Mobile Food Facility Permits belonging to San Francisco Carts & Concessions, Inc. (These permits expired on 11/15/23 and cannot be renewed because San Francisco Carts and Concessions Inc. has not submitted updated Public Health permits i.e. Certificate of Sanitation, as required by law) at 100 Geary St., 233 Geary St., 251 Geary St., and 345 Stockton St.

APPLICATION NO. 22MFF-00039, 22MFF-00040, 22MFF-00041, 22MFF-00042

FOR HEARING ON April 3, 2024

Address of Appellant(s):

Address of Other Parties:

| | |
|--|-----|
| San Francisco Carts & Concessions, Inc., Appellant(s) c/o Stanley Roth, Agent for Appellant(s) 9 Magee Court Moraga, CA 94556 | N/A |
|--|-----|

NOTICE OF WITHDRAWAL

The aforementioned matter has been **WITHDRAWN** at the request of the appellant(s). See attached letter. Upon withdrawal of an appeal, the Board of Appeals loses jurisdiction over the subject determination, and the **REVOCATION** of the Mobile Food Facility Permit by the San Francisco Public Works, Bureau of Street Use & Mapping becomes **FINAL**. If you have any questions regarding this notice, please call the Board office at (628) 652-1150.

Date of Withdrawal: April 3, 2024

Date Notice Released to Department(s): April 3, 2024



WITHDRAWAL REQUEST

Instructions:

This form is to be used by appellants who wish to withdraw their appeal or requestors who wish to withdraw their rehearing or jurisdiction request. **Please note: when an appeal is withdrawn, the Board loses jurisdiction over the determination at issue and any suspension of the determination will be lifted.**

Once withdrawn, an appeal cannot be reinstated for any reason. You are strongly encouraged to contact a Board staff member to discuss the ramifications of withdrawing your appeal prior to submitting this form.

To file a Withdrawal Request, please fill out this form and email it to the Board of Appeals.

Email to: boardofappeals@sfgov.org

The Board will send written confirmation to all parties that the matter has been withdrawn.

Appeal No.: 24-009

Rehearing or Jurisdiction Request No.: _____

Address of Subject Property: _____

Hearing Date: 4/3/2024

Name of Appellant(s)/Requestor: San Francisco Carts and Concessions, Inc.

Phone: 925-250-8731 Fax: _____

Email: Stanleyroth@gmail.com

Please sign below to confirm the following statement:

I/We hereby withdraw this appeal.

The reasons for this action are [optional]: **Letter attached**


Signature of Appellant/Requestor or Agent

4/3/2024
Date

Signature of Appellant or Agent

Date

Dear Board of Appeals,

My wife and I are withdrawing our appeal for San Francisco Carts and Concessions, on calendar at today's hearing. We have decided to close the door on our 49-year Legacy Business relationship with San Francisco and move on to a new chapter in our lives.

For the past year in both phone calls and emails, DPW has held up our Mobile Food Facility Permit renewal based solely on DPW's insistence that the approval requirements of Article 5.8 necessitated us providing a valid Health Permit for our temporary "prepackaged food" menu.

Despite our having provided a prepackaged Health Permit without issue in 2021, 2022, and 2023, we attempted over the past year to explain that the new California Health Code exempted our operation from needing such a permit. This sole issue was the grounds for revocation set forth in DPW's letter of revocation.

In response, I wrote an extensive brief showing DPW's interpretation of the need for a health permit was wrong, since SB972 waived the requirement effective January 1, 2023. Last night, when reviewing the DPW's reply brief, my wife and I realized that DPW had actually abandoned the health permit issue and added a totally new position:

*"DPW has determined that the renewal of the Permits was not predicated on compliance with the annual Certificate of Sanitation and Fire Marshall approval requirements of Article 5.8. **Even so**, DPW's nonrenewal of the Permits was proper because the Permits were the incorrect permits for the Appellant's proposed reselling of prepackaged bottled water."*

After 5 years of constantly having the goal posts moved every time we satisfied or overcame an obstacle put in front of us by the City, the above statement made it clear that proving the DPW was wrong in one area was just the beginning of another area of battle. Even if the Board overturned the DPW on the health permit exemption (which the DPW now claims was NOT the reason for our revocation), we would soon be fighting again to try and keep our Permits from being transferred to Article 5.9, where we would lose our unlimited menu rights, automatic annual renewal of our permits, fixed guaranteed location rights if the sidewalk laws changed or could be defended in the future, and 40+ years of grandfathered rights exempting us from sidewalk widths, cart size, colored curb prohibitions, and even giving us the ability to cover our carts with tents to protect our employees from standing in the sun all day.

San Francisco has the responsibility and power to do whatever it thinks is best for the City. We wish the City well. We can leave knowing we ran an exemplary business for 5 decades that provided jobs to over 4,000 people, paid the City more than \$1 million dollars in permit fees and rents, contributed to the City's economy by purchasing over \$12M in goods and services from local businesses, and earned a Certificate of Excellence from the San Francisco Health Department for decades, achieving inspection scores at all of our carts and commissary consistently scoring between 95%-100% (with 7 years of perfect 100% scores).

We also had a policy known amongst the homeless community that anyone who was hungry could always get a free hot dog and a drink at any of our carts, simply by asking.

We leave San Francisco knowing we tried to do the very best job we could do for our community. We know we have earned the respect of our employees, our customers, and most importantly, of our children—one an orthopedic surgeon, one a CEO of a education technology company, and the youngest the head IOS engineer at a venture-capital startup. Not a bad legacy for a hot dog vendor and a teacher. Our children have all bought homes in the same community they grew up in, and they are raising our 6 grandchildren within minutes of our home. This is a blessing we are grateful for, and where we've decided to focus all of our energy and time going forward.

Thank you for helping us start our business in 1974, thank you for giving us the opportunity to grow our business and provide a loving home and educations for 3 children, and thank you for being there with us at the end of our journey as we start a new stage in our lives.

With appreciation.

Stan and Heather Roth
4/3/24

BOARD OF APPEALS, CITY & COUNTY OF SAN FRANCISCO

Appeal of
SAN FRANCISCO CARTS & CONCESSIONS, INC.,)
Appellant(s))
vs.)
SAN FRANCISCO PUBLIC WORKS)
BUREAU OF STREET USE & MAPPING,)
Respondent

Appeal No. **24-009**

NOTICE OF APPEAL

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The substance or effect of the decision or order appealed from is the REVOCATION on January 31, 2024, of four Mobile Food Facility Permits (These permits expired on 11/15/23 and cannot be renewed because San Francisco Carts and Concessions Inc. has not submitted updated Public Health permits i.e. Certificate of Sanitation, as required by law) at 100 Geary St., 233 Geary St., 251 Geary St., and 345 Stockton St..

Permit Nos. 22MFF-00039, 22MFF-00040, 22MFF-00041, 22MFF-00042

FOR HEARING ON April 3, 2024

Address of Appellant(s):

Address of Other Parties:

| | |
|--|-----|
| San Francisco Carts & Concessions, Inc., Appellant(s) c/o Stanley Roth, Agent for Appellant(s) 9 Magee Court Moraga, CA 94556 | N/A |
|--|-----|



Date Filed: February 7, 2024

**CITY & COUNTY OF SAN FRANCISCO
BOARD OF APPEALS**

PRELIMINARY STATEMENT FOR APPEAL NO. 24-009

I / We, **SAN FRANCISCO CARTS AND CONCESSIONS, INC.**, hereby appeal the following departmental action: **REVOCAION** of Mobile Food Facility Permit Nos. **22MFF-00039, 22MFF-00040, 22MFF-00041, and 22MFF-00042** by **San Francisco Public Works, Bureau of Street Use & Mapping**, which was issued or became effective on: **January 31, 2024**. The subject permits are for the following locations: **100 Geary St., 233 Geary St., 345 Stockton St., and 251 Geary St.**

BRIEFING SCHEDULE:

Appellant's Brief is due on or before: 4:30 p.m. on **March 14, 2024, (no later than three Thursdays prior to the hearing date)**. The brief may be up to 12 pages in length with unlimited exhibits. It shall be double-spaced with a minimum 12-point font. An electronic copy shall be emailed to: boardofappeals@sfgov.org, julie.rosenberg@sfgov.org, Gregory.slocum@sfdpw.org and Nicolas.huff@sfdpw.org.

Respondent's and Other Parties' Briefs are due on or before: 4:30 p.m. on **March 28, 2024, (no later than one Thursday prior to hearing date)**. The brief may be up to 12 pages in length with unlimited exhibits. It shall be doubled-spaced with a minimum 12-point font. An electronic copy shall be emailed to: boardofappeals@sfgov.org, julie.rosenberg@sfgov.org and stanleyroth@gmail.com.

Hard copies of the briefs do NOT need to be submitted to the Board Office or to the other parties.

Hearing Date: **Wednesday, April 3, 2024, 5:00 p.m., Room 416 San Francisco City Hall, 1 Dr. Carlton B. Goodlett Place**. The parties may also attend remotely via Zoom. Information for access to the hearing will be provided before the hearing date.

All parties to this appeal must adhere to the briefing schedule above, however if the hearing date is changed, the briefing schedule MAY also be changed. Written notice will be provided of any changes to the briefing schedule.

In order to have their documents sent to the Board members prior to hearing, **members of the public** should email all documents of support/opposition no later than one Thursday prior to hearing date by 4:30 p.m. to boardofappeals@sfgov.org. Please note that names and contact information included in submittals from members of the public will become part of the public record. Submittals from members of the public may be made anonymously.

Please note that in addition to the parties' briefs, any materials that the Board receives relevant to this appeal, including letters of support/opposition from members of the public, are distributed to Board members prior to hearing. All such materials are available for inspection on the Board's website at www.sfgov.org/boa. You may also request a hard copy of the hearing materials that are provided to Board members at a cost of 10 cents per page, per S.F. Admin. Code Ch. 67.28.

The reasons for this appeal are as follows:

See attachment to the Preliminary Statement of Appeal.

Appellant or Agent:

Signature: Via Email

Print Name: Stanley Roth, agent for appellant

SAN FRANCISCO CARTS AND CONCESSIONS, INC.
9 MAGEE COURT
MORAGA, CA 94556

VIA EMAIL

February 7, 2024

San Francisco Board of Appeals
49 S Van Ness Avenue
San Francisco, CA 94103

To the Board of Appeals:

I am responding to a letter from the San Francisco Department of Public Works dated January 31, 2024, which the Board of Appeals and I received on that same date. I would like to appeal the determinations made by the DPW in that letter.

The letter implies that I have failed to obtain Fire and Health Department permits which the DPW states are required by code before DPW can renew our Legacy Business Mobile Food Facility vending permits. This is simply not true.

At hearing, I will show that the DPW previously waived our needing Fire Marshall approval when we stipulated, in 2021, that we would limit our vending permits to selling only pre-packaged, bottled water. The DPW waiver is on page 1 of each of our current permits.

As for our needing health permits as a prerequisite to renewing our vending permits, California changed the law in 2023. The 2023 California Retail Food Code states that "as a result of SB 972, sidewalk vendors and other compact mobile food operations with 25 square feet or less of display area that sell only bagged snacks, cans of soda, bottled water, whole fruits and vegetables, canned goods that do not need to be refrigerated, and other similar foods are no longer required to obtain a health permit from their local health enforcement agency. Our carts meet the above listed criteria.

I look forward to presenting these and other facts at a hearing before the Board.

Sincerely,



Stanley Roth, President



Street-Use and Mapping

T. 628.271.2000 | 49 South Van Ness Ave. 3rd Floor, San Francisco, CA 94103

1/31/24

To San Francisco Carts & Concessions Inc. dba Stanley's Steamers Hot Dogs:

We are writing in regards to the following expired Mobile Food Facility Permits:

22MFF-00039, 22MFF-00040, 22MFF-00041, 22MFF-00042

These permits expired on 11/15/2023. Our staff has sought to obtain an updated Public Health permit (i.e. Certificate of Sanitation) so that we may renew the aforementioned permits pursuant to your request. We are unable to renew these permits.

Section 184.91 **MOBILE FOOD FACILITY – INSPECTION AND ANNUAL CERTIFICATE OF SANITATION AND FIRE MARSHAL APPROVAL** of the San Francisco Public Works Code states the following:

All Mobile Food Facilities having a permit issued pursuant to this Article and the approvals of the Director of Health and Fire Marshal to operate with the City shall be subject to inspection at any time during operating hours. All Mobile Food Facilities shall obtain an annual Certificate of Sanitation and Fire Marshal approval on or before the annual renewal of the Mobile Food Facility permit for the Location(s) of said Mobile Food Facility as specified in said permit. The annual Certificate of Sanitation and Fire Marshal approval shall be at a time and place designated by the Director of Health and Fire Marshal, respectively. Failure to appear for the annual renewal as described above shall be deemed a violation of this Article and may be cause for suspension or revocation of said permit.

Our office determines renewal eligibility based on Public Works Code and Orders related to Mobile Food Facilities, we then provide a list of eligible renewals to the Treasurer and Tax Collector who are responsible for billing permittees for renewal. Stanley Steamers' permits have not been included on the eligible list provided to the billing office.

This determination may be appealed within 15 days to the Board of Appeals. Office visits are by appointment only:

Board of Appeals

49 South Van Ness Suite 1475

San Francisco, CA 94103

Boardofappeals@sfgov.org

A handwritten signature in black ink, appearing to read "Greg P. Slocum".

Gregory P. Slocum

Commercial Permit Manager

Applicant/Permitee

Date

Printed : 11/3/2022 10:51:53 AM Plan Checker Theresa Muehlbauer

REVOCABLE PERMIT IS GRANTED SUBJECT TO THE FOLLOWING CONDITIONS

1. The permittee shall comply with all guidelines and conditions set forth in Article 5.8 of the Public Works Code and Department of Public Works Order No. 182,101 (Guidelines for Issuance of Permit, Inspection of Mobile Food Facilities Operating within Public right-of-way).
2. The permittee shall pay an annual fee, to the Department of Public Works, 49 South Van Ness Avenue, Suite 300, San Francisco, CA 94103, Attention: Street-Use Permits.
3. This permission shall not become effective until the permittee shall have delivered to the Department current approvals from DPH, SFFD and business license.
4. The facility shall be confined to the area identified on the plans submitted and approved by the Department Public Works.
5. The permittee shall not place or store any food trays or carts, dirty dishes, trays or carts for linen and utensils and cooking equipment on any portion of the sidewalk or roadway area of public street with the exception of refuse collection receptacles.
6. The permittee shall maintain the quiet, safety and cleanliness of the facility and location.
7. The permittee shall provide adequate storage and disposal of garbage. Noise and odors shall be contained within immediate area of the facility to not be a nuisance to the neighborhood.
8. The permittee shall prominently post and display notice urging patrons to leave the premises and neighborhood in a quiet, peaceful, and orderly fashion and to not litter or block driveways.
9. The permittee shall pick up and dispose of any containers and trash left by patrons within 100' radius area around the Mobile Food Facility.
10. The permittee shall comply with all rules and regulations of Department of Public Health (California & Health Safety Code 110005 and Business and Tax Regulations Codes), San Francisco Fire Department (Section 113 of the San Francisco Fire Code).
11. The permission granted herein is a revocable license. The Director of Public Works may only revoke said permission subject to applicable law.
12. The permit shall not be assignable except with prior written consent of the City and County of San Francisco.
13. The Board of Supervisors reserves the right to exact a rental fee for the use of the sidewalk area, in the event that such a policy is adopted.
14. The permittee and any permitted successor or assign recognize and understand that this permit may create a possessory interest.
15. No person shall produce or allow to be produced by any machine or device, music or entertainment or any combination of same, on commercial or industrial property over which the person has ownership or control, a noise level more than eight dBA above the local ambient at any point outside of the property plane. With respect to noise generated from a licensed Place of Entertainment, in addition to the above dBA criteria a secondary low frequency dBC criteria shall apply to the definition above. No noise or music associated with a licensed Place of Entertainment shall exceed the low frequency ambient noise level defined in Section 2901(f) of the Police Code by more than 8 dBC.
16. No person shall produce or allow to be produced by any machine or device, or any combination of same, on public property, a noise level more than ten dBA above the local ambient at a distance of twenty-five feet or more, unless the machine or device is being operated to serve or maintain the property or as otherwise provided under the Noise Ordinance in the Police Code.

Exceptions

22MFF-00039

| Street Name | From St | To St | Message | Job | Contact | Dates |
|-------------|-----------|---------------|--|-------------|--|-------------------------|
| GEARY ST | | | | | | |
| | GRANT AVE | STOCKTON ST - | DPT Blue Book Traffic Restriction. Time of day during which lanes must be kept clear: NORTH 7AM - 7PM EVERYDAY // SOUTH 7AM - 7PM EVERYDAY | | | |
| | GRANT AVE | STOCKTON ST - | Please refer to Figure 12 of Section 9.4(A) of the DPW Order No. 171,442 for special conditions for excavation in the vicinity of AWSS. | | | |
| | GRANT AVE | STOCKTON ST - | Downtown Streetscape Zone. Please See DPW Order 172596 for standard sidewalk and restoration requirements. | | BSM Front Desk 554-5810 - (415) 554-5810 | |
| | GRANT AVE | STOCKTON ST - | Conflict with existing Street Use Permit. | 12BW-0042 | Refer to Agent - Refer to Agent | |
| | GRANT AVE | STOCKTON ST - | Conflict with existing Street Use Permit. | 12BW-0061 | Refer to Agent - Refer to Agent | |
| | GRANT AVE | STOCKTON ST - | Conflict with existing Street Use Permit. | 15ECN-0594 | | Jun 22 2015- |
| | GRANT AVE | STOCKTON ST - | Conflict with existing Street Use Permit. | 18CN-0131 | (415)602-0464 - (415)602-0464 | |
| | GRANT AVE | STOCKTON ST - | Conflict with existing Street Use Permit. | 18MSE-0372 | 415-602-0464 - 415-602-0464 | |
| | GRANT AVE | STOCKTON ST - | Conflict with existing Street Use Permit. | 18MSE-0422 | 415-716-9099 - 415-716-9099 | |
| | GRANT AVE | STOCKTON ST - | Conflict with existing Street Use Permit. | 21MFF-00111 | (925) 376-1124 - (925) 376-1124 | Nov 12 2021-Nov 15 2022 |

Exhibit A : Location Schedule and Food Items

| Location and Food | Day Of Week | Start time | End time |
|--|-------------|------------|----------|
| 100 GEARY ST | Sunday | 6AM | 12AM |
| Northwest Corner of Grant & Geary St, on Geary -- Hot dogs, condiments, soft pretzels, soft drinks, coffee, cold beverages, pastries, bakery goods, cookies, ice cream, candy, soups, churros, chestnuts, nuts, fresh fruit, fruit juices, desserts, potato chips and popcorn. | | | |
| 100 GEARY ST | Monday | 6AM | 12AM |
| Northwest Corner of Grant & Geary St, on Geary -- Hot dogs, condiments, soft pretzels, soft drinks, coffee, cold beverages, pastries, bakery goods, cookies, ice cream, candy, soups, churros, chestnuts, nuts, fresh fruit, fruit juices, desserts, potato chips and popcorn. | | | |
| 100 GEARY ST | Tuesday | 6AM | 12AM |
| Northwest Corner of Grant & Geary St, on Geary -- Hot dogs, condiments, soft pretzels, soft drinks, coffee, cold beverages, pastries, bakery goods, cookies, ice cream, candy, soups, churros, chestnuts, nuts, fresh fruit, fruit juices, desserts, potato chips and popcorn. | | | |
| 100 GEARY ST | Wednesday | 6AM | 12AM |
| Northwest Corner of Grant & Geary St, on Geary -- Hot dogs, condiments, soft pretzels, soft drinks, coffee, cold beverages, pastries, bakery goods, cookies, ice cream, candy, soups, churros, chestnuts, nuts, fresh fruit, fruit juices, desserts, potato chips and popcorn. | | | |
| 100 GEARY ST | Thursday | 6AM | 12AM |
| Northwest Corner of Grant & Geary St, on Geary -- Hot dogs, condiments, soft pretzels, soft drinks, coffee, cold beverages, pastries, bakery goods, cookies, ice cream, candy, soups, churros, chestnuts, nuts, fresh fruit, fruit juices, desserts, potato chips and popcorn. | | | |
| 100 GEARY ST | Friday | 6AM | 12AM |
| Northwest Corner of Grant & Geary St, on Geary -- Hot dogs, condiments, soft pretzels, soft drinks, coffee, cold beverages, pastries, bakery goods, cookies, ice cream, candy, soups, churros, chestnuts, nuts, fresh fruit, fruit juices, desserts, potato chips and popcorn. | | | |
| 100 GEARY ST | Saturday | 6AM | 12AM |
| Northwest Corner of Grant & Geary St, on Geary -- Hot dogs, condiments, soft pretzels, soft drinks, coffee, cold beverages, pastries, bakery goods, cookies, ice cream, candy, soups, churros, chestnuts, nuts, fresh fruit, fruit juices, desserts, potato chips and popcorn. | | | |

"IMPROVING THE QUALITY OF LIFE IN SAN FRANCISCO" We are dedicated individuals committed to teamwork, customer service and continuous improvement in partnership with the community.

Customer Service

Teamwork

Continuous Improvement



City and County of San Francisco

San Francisco Public Works - Bureau of Street Use and Mapping
49 South Van Ness Ave, Suite 300 - San Francisco, CA 94103
sfpublicworks.org - tel (628) 271-2000



**22MFF-00040 (Original: 11MFF-0158)
Renewed**

Mobile Food Facility Permit

Address : 233 GEARY ST

Cost: \$182.00

Block:0314 **Lot:** 001 **Zip:** 94102

This permit is non-transferable without approval from DPW and shall comply with DPW, DPH and SFFD regulations and this permit is subject to revocation.

Permittee

Name: San Francisco Carts & Concessions, Inc. DBA Stanley's Steamers Hot Dogs

Address: 9 Magee Court Moraga, CA 94553

Contact: Stanley Roth

Phone: (925) 376-1124

Conditions

Original Grant Date: 10/9/1992
SFPD Permit#: 79326
SFFD Permit interchangeable with: #14036, #14037, & #14038
DPH Permit interchangeable with : #009, #008, #003, #007

Permittee understands that in lieu of required documentation from the Fire Marshal being provided as part of their renewal application, as is required by Section 184.83(d)(2) of the Public Works Code, the permittee shall not engage in operational activity regulated by Fire Code unless applicable San Francisco Fire Department permits are later granted to the permittee for such activity. The permittee may only vend under this permit operating under activity not regulated by Fire Code until applicable approvals from the Fire Marshal are later obtained subject to Section 184.81 of the Public Works Code and applicable sections of San Francisco Fire Code.

Facility Type

Push Cart

No. of Locations (See Exhibit A)

1

Start Date

11/03/2022

End Date

11/15/2023

To Be Sold

Hot dogs, condiments, soft pretzels, soft drinks, coffee, cold beverages, pastries, bakery goods, cookies, ice cream, candy, soups, churros, chestnuts, nuts, fresh fruit, fruit juices, desserts, potato chips and popcorn.

Certificate of Sanitation

#008

SFFD Permit

N/A

SF Business Certificate

392127

The undersigned Permittee hereby agrees to comply with all requirements and conditions noted on this permit

Applicant/Permitee

Date

Printed : 11/3/2022 10:57:21 AM Plan Checker Theresa Muehlbauer

REVOCABLE PERMIT IS GRANTED SUBJECT TO THE FOLLOWING CONDITIONS

1. The permittee shall comply with all guidelines and conditions set forth in Article 5.8 of the Public Works Code and Department of Public Works Order No. 182,101 (Guidelines for Issuance of Permit, Inspection of Mobile Food Facilities Operating within Public right-of-way).
2. The permittee shall pay an annual fee, to the Department of Public Works, 49 South Van Ness Avenue, Suite 300, San Francisco, CA 94103, Attention: Street-Use Permits.
3. This permission shall not become effective until the permittee shall have delivered to the Department current approvals from DPH, SFFD and business license.
4. The facility shall be confined to the area identified on the plans submitted and approved by the Department Public Works.
5. The permittee shall not place or store any food trays or carts, dirty dishes, trays or carts for linen and utensils and cooking equipment on any portion of the sidewalk or roadway area of public street with the exception of refuse collection receptacles.
6. The permittee shall maintain the quiet, safety and cleanliness of the facility and location.
7. The permittee shall provide adequate storage and disposal of garbage. Noise and odors shall be contained within immediate area of the facility to not be a nuisance to the neighborhood.
8. The permittee shall prominently post and display notice urging patrons to leave the premises and neighborhood in a quiet, peaceful, and orderly fashion and to not litter or block driveways.
9. The permittee shall pick up and dispose of any containers and trash left by patrons within 100' radius area around the Mobile Food Facility.
10. The permittee shall comply with all rules and regulations of Department of Public Health (California & Health Safety Code 110005 and Business and Tax Regulations Codes), San Francisco Fire Department (Section 113 of the San Francisco Fire Code).
11. The permission granted herein is a revocable license. The Director of Public Works may only revoke said permission subject to applicable law.
12. The permit shall not be assignable except with prior written consent of the City and County of San Francisco.
13. The Board of Supervisors reserves the right to exact a rental fee for the use of the sidewalk area, in the event that such a policy is adopted.
14. The permittee and any permitted successor or assign recognize and understand that this permit may create a possessory interest.
15. No person shall produce or allow to be produced by any machine or device, music or entertainment or any combination of same, on commercial or industrial property over which the person has ownership or control, a noise level more than eight dBA above the local ambient at any point outside of the property plane. With respect to noise generated from a licensed Place of Entertainment, in addition to the above dBA criteria a secondary low frequency dBC criteria shall apply to the definition above. No noise or music associated with a licensed Place of Entertainment shall exceed the low frequency ambient noise level defined in Section 2901(f) of the Police Code by more than 8 dBC.
16. No person shall produce or allow to be produced by any machine or device, or any combination of same, on public property, a noise level more than ten dBA above the local ambient at a distance of twenty-five feet or more, unless the machine or device is being operated to serve or maintain the property or as otherwise provided under the Noise Ordinance in the Police Code.

Exceptions

22MFF-00040

| Street Name | From St | To St | Message | Job | Contact | Dates |
|-------------|-------------|-------------|--|-------------|--|-------------------------|
| GEARY ST | | | | | | |
| | STOCKTON ST | POWELL ST - | DPT Blue Book Traffic Restriction. Time of day during which lanes must be kept clear: NORTH 7AM - 7PM EVERYDAY // SOUTH 7AM - 7PM EVERYDAY | | | |
| | STOCKTON ST | POWELL ST - | Please refer to Figure 12 of Section 9.4(A) of the DPW Order No. 171,442 for special conditions for excavation in the vicinity of AWSS. | | | |
| | STOCKTON ST | POWELL ST - | Downtown Streetscape Zone. Please See DPW Order 172596 for standard sidewalk and restoration requirements. | | BSM Front Desk 554-5810 - (415) 554-5810 | |
| | STOCKTON ST | POWELL ST - | Banners are allowed on this street | | | Oct 28 2011- |
| | STOCKTON ST | POWELL ST - | Conflict with existing Street Use Permit. | 12BW-0012 | Refer to Agent - Refer to Agent | |
| | STOCKTON ST | POWELL ST - | Conflict with existing Street Use Permit. | 12BW-0042 | Refer to Agent - Refer to Agent | |
| | STOCKTON ST | POWELL ST - | Conflict with existing Street Use Permit. | 12BW-0061 | Refer to Agent - Refer to Agent | |
| | STOCKTON ST | POWELL ST - | Conflict with existing Street Use Permit. | 12ECN-1025 | 800-743-5000 - 800-743-5000 | Sep 26 2012- |
| | STOCKTON ST | POWELL ST - | Conflict with existing Street Use Permit. | 14SMF-0008 | Refer to Agent - Refer to Agent | |
| | STOCKTON ST | POWELL ST - | Conflict with existing Street Use Permit. | 18MSE-0258 | Refer to Agent - Refer to Agent | |
| | STOCKTON ST | POWELL ST - | Conflict with existing Street Use Permit. | 19SW-00043 | Refer to Agent - Refer to Agent | |
| | STOCKTON ST | POWELL ST - | Conflict with existing Street Use Permit. | 21MFF-00108 | 9253767724 - 9253767724 | Nov 12 2021-Nov 15 2022 |
| | STOCKTON ST | POWELL ST - | Conflict with existing Street Use Permit. | 21MFF-00109 | 9253767724 - 9253767724 | Nov 12 2021-Nov 15 2022 |
| | STOCKTON ST | POWELL ST - | Conflict with existing Street Use Permit. | 21MFF-00119 | 831-402-7802 - 831-402-7802 | Nov 16 2021-Nov 15 2022 |
| | STOCKTON ST | POWELL ST - | Conflict with existing Street Use Permit. | 22VDR-00102 | 415-410-8367 - 415-410-8367 | Oct 13 2022-Nov 15 2023 |

Exhibit A : Location Schedule and Food Items

| Location and Food | Day Of Week | Start time | End time |
|--|-------------|------------|----------|
| 233 GEARY ST | Sunday | 6AM | 12AM |
| Fronting 229 Geary St at Stockton St -- Hot dogs, condiments, soft pretzels, soft drinks, coffee, cold beverages, pastries, bakery goods, cookies, ice cream, candy, soups, churros, chestnuts, nuts, fresh fruit, fruit juices, desserts, potato chips and popcorn. | | | |
| 233 GEARY ST | Monday | 6AM | 12AM |
| Fronting 229 Geary St at Stockton St -- Hot dogs, condiments, soft pretzels, soft drinks, coffee, cold beverages, pastries, bakery goods, cookies, ice cream, candy, soups, churros, chestnuts, nuts, fresh fruit, fruit juices, desserts, potato chips and popcorn. | | | |
| 233 GEARY ST | Tuesday | 6AM | 12AM |
| Fronting 229 Geary St at Stockton St -- Hot dogs, condiments, soft pretzels, soft drinks, coffee, cold beverages, pastries, bakery goods, cookies, ice cream, candy, soups, churros, chestnuts, nuts, fresh fruit, fruit juices, desserts, potato chips and popcorn. | | | |
| 233 GEARY ST | Wednesday | 6AM | 12AM |
| Fronting 229 Geary St at Stockton St -- Hot dogs, condiments, soft pretzels, soft drinks, coffee, cold beverages, pastries, bakery goods, cookies, ice cream, candy, soups, churros, chestnuts, nuts, fresh fruit, fruit juices, desserts, potato chips and popcorn. | | | |
| 233 GEARY ST | Thursday | 6AM | 12AM |
| Fronting 229 Geary St at Stockton St -- Hot dogs, condiments, soft pretzels, soft drinks, coffee, cold beverages, pastries, bakery goods, cookies, ice cream, candy, soups, churros, chestnuts, nuts, fresh fruit, fruit juices, desserts, potato chips and popcorn. | | | |
| 233 GEARY ST | Friday | 6AM | 12AM |
| Fronting 229 Geary St at Stockton St -- Hot dogs, condiments, soft pretzels, soft drinks, coffee, cold beverages, pastries, bakery goods, cookies, ice cream, candy, soups, churros, chestnuts, nuts, fresh fruit, fruit juices, desserts, potato chips and popcorn. | | | |
| 233 GEARY ST | Saturday | 6AM | 12AM |
| Fronting 229 Geary St at Stockton St -- Hot dogs, condiments, soft pretzels, soft drinks, coffee, cold beverages, pastries, bakery goods, cookies, ice cream, candy, soups, churros, chestnuts, nuts, fresh fruit, fruit juices, desserts, potato chips and popcorn. | | | |

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22MFF-00041 (Original: 11MFF-0140)
Renewed

Mobile Food Facility Permit**Address :** 345 STOCKTON ST**Cost:** \$182.00**Block:**0295 **Lot:** 016 **Zip:** 94108

This permit is non-transferable without approval from DPW and shall comply with DPW, DPH and SFFD regulations and this permit is subject to revocation.

Permittee**Name:** San Francisco Carts & Concessions, Inc. DBA Stanley's Steamers Hot Dogs**Address:** 9 Magee Court Moraga, CA 94553**Contact:** Stanley Roth**Phone:** (925) 376-1124**Conditions**

Original Grant Date: 11/9/1982

SFPD Permit #: 63086

SFFD Permit interchangeable with #14036, #14037, & #14038

DPH Permit interchangeable with :#009, #008, #003, #007

Permittee understands that in lieu of required documentation from the Fire Marshal being provided as part of their renewal application, as is required by Section 184.83(d)(2) of the Public Works Code, the permittee shall not engage in operational activity regulated by Fire Code unless applicable San Francisco Fire Department permits are later granted to the permittee for such activity. The permittee may only vend under this permit operating under activity not regulated by Fire Code until applicable approvals from the Fire Marshal are later obtained subject to Section 184.81 of the Public Works Code and applicable sections of San Francisco Fire Code.

Facility Type

Push Cart

No. of Locations (See Exhibit A)

1

Start Date

11/03/2022

End Date

11/15/2023

To Be Sold

Hot dogs, condiments, soft pretzels, soft drinks, coffee, cold beverages, pastries, bakery goods, cookies, ice cream, candy, soups, churros, chestnuts, nuts, fresh fruit, fruit juices, desserts, potato chips and popcorn.

Certificate of Sanitation

#003

SFFD Permit

N/A

SF Business Certificate

392127

The undersigned Permittee hereby agrees to comply with all requirements and conditions noted on this permit

Applicant/Permitee

Date

Printed : 11/3/2022 11:01:25 AM Plan Checker Theresa Muehlbauer

REVOCABLE PERMIT IS GRANTED SUBJECT TO THE FOLLOWING CONDITIONS

1. The permittee shall comply with all guidelines and conditions set forth in Article 5.8 of the Public Works Code and Department of Public Works Order No. 182,101 (Guidelines for Issuance of Permit, Inspection of Mobile Food Facilities Operating within Public right-of-way).
2. The permittee shall pay an annual fee, to the Department of Public Works, 49 South Van Ness Avenue, Suite 300, San Francisco, CA 94103, Attention: Street-Use Permits.
3. This permission shall not become effective until the permittee shall have delivered to the Department current approvals from DPH, SFFD and business license.
4. The facility shall be confined to the area identified on the plans submitted and approved by the Department Public Works.
5. The permittee shall not place or store any food trays or carts, dirty dishes, trays or carts for linen and utensils and cooking equipment on any portion of the sidewalk or roadway area of public street with the exception of refuse collection receptacles.
6. The permittee shall maintain the quiet, safety and cleanliness of the facility and location.
7. The permittee shall provide adequate storage and disposal of garbage. Noise and odors shall be contained within immediate area of the facility to not be a nuisance to the neighborhood.
8. The permittee shall prominently post and display notice urging patrons to leave the premises and neighborhood in a quiet, peaceful, and orderly fashion and to not litter or block driveways.
9. The permittee shall pick up and dispose of any containers and trash left by patrons within 100' radius area around the Mobile Food Facility.
10. The permittee shall comply with all rules and regulations of Department of Public Health (California & Health Safety Code 110005 and Business and Tax Regulations Codes), San Francisco Fire Department (Section 113 of the San Francisco Fire Code).
11. The permission granted herein is a revocable license. The Director of Public Works may only revoke said permission subject to applicable law.
12. The permit shall not be assignable except with prior written consent of the City and County of San Francisco.
13. The Board of Supervisors reserves the right to exact a rental fee for the use of the sidewalk area, in the event that such a policy is adopted.
14. The permittee and any permitted successor or assign recognize and understand that this permit may create a possessory interest.
15. No person shall produce or allow to be produced by any machine or device, music or entertainment or any combination of same, on commercial or industrial property over which the person has ownership or control, a noise level more than eight dBA above the local ambient at any point outside of the property plane. With respect to noise generated from a licensed Place of Entertainment, in addition to the above dBA criteria a secondary low frequency dBC criteria shall apply to the definition above. No noise or music associated with a licensed Place of Entertainment shall exceed the low frequency ambient noise level defined in Section 2901(f) of the Police Code by more than 8 dBC.
16. No person shall produce or allow to be produced by any machine or device, or any combination of same, on public property, a noise level more than ten dBA above the local ambient at a distance of twenty-five feet or more, unless the machine or device is being operated to serve or maintain the property or as otherwise provided under the Noise Ordinance in the Police Code.

Exceptions

22MFF-00041

| Street Name | From St | To St | Message | Job | Contact | Dates |
|-------------|-------------|-------------|--|-------------|--|-------------------------|
| POST ST | | | | | | |
| | STOCKTON ST | POWELL ST - | Blocks with Bicycle Route designations require special attention. For details see Section 10 of DPT's Blue Book and Section 6.3 of DPW's Order No. 171.442. | | | |
| | STOCKTON ST | POWELL ST - | DPT Blue Book Traffic Restriction. Time of day during which lanes must be kept clear: NORTH 7AM - 7PM MONDAY THROUGH FRIDAY // SOUTH 7AM - 7PM MONDAY THROUGH FRIDAY | | | |
| | STOCKTON ST | POWELL ST - | Please refer to Figure 12 of Section 9.4(A) of the DPW Order No. 171,442 for special conditions for excavation in the vicinity of AWSS. | | | |
| | STOCKTON ST | POWELL ST - | Downtown Streetscape Zone. Please See DPW Order 172596 for standard sidewalk and restoration requirements. | | BSM Front Desk 554-5810 - (415) 554-5810 | |
| | STOCKTON ST | POWELL ST - | Conflict with existing Street Use Permit. | 12BW-0042 | Refer to Agent - Refer to Agent | |
| | STOCKTON ST | POWELL ST - | Conflict with existing Street Use Permit. | 12BW-0061 | Refer to Agent - Refer to Agent | |
| | STOCKTON ST | POWELL ST - | Conflict with existing Street Use Permit. | 15MSE-0186 | Refer to Agent - Refer to Agent | |
| | STOCKTON ST | POWELL ST - | Conflict with existing Street Use Permit. | 15SW-0026 | Refer to Agent - Refer to Agent | |
| | STOCKTON ST | POWELL ST - | Conflict with existing Street Use Permit. | 16MSE-0452 | Refer to Agent - Refer to Agent | |
| | STOCKTON ST | POWELL ST - | Conflict with existing Street Use Permit. | 16V-0051 | Refer to Agent - Refer to Agent | |
| | STOCKTON ST | POWELL ST - | Conflict with existing Street Use Permit. | 17SW-0010 | Refer to Agent - Refer to Agent | |
| | STOCKTON ST | POWELL ST - | Conflict with existing Street Use Permit. | 21MFF-00110 | 9253767724 - 9253767724 | Nov 12 2021-Nov 15 2022 |
| | STOCKTON ST | POWELL ST - | Conflict with existing Street Use Permit. | 21MFF-00123 | 831-402-7802 - 831-402-7802 | Jan 16 2021-Nov 15 2022 |
| | STOCKTON ST | POWELL ST - | Proposed Paving. | PAVING | Paul Barradas - | Apr 16 2025-Apr 15 2026 |

Exhibit A : Location Schedule and Food Items

| Location and Food | Day Of Week | Start time | End time |
|--|-------------|------------|----------|
| 345 STOCKTON ST | Sunday | 6AM | 12AM |
| Northwest Corner of Post & Stockton Streets, on Post -- Hot dogs, condiments, soft pretzels, soft drinks, coffee, cold beverages, pastries, bakery goods, cookies, ice cream, candy, soups, churros, chestnuts, nuts, fresh fruit, fruit juices, desserts, potato chips and popcorn. | | | |
| 345 STOCKTON ST | Monday | 6AM | 12AM |
| Northwest Corner of Post & Stockton Streets, on Post -- Hot dogs, condiments, soft pretzels, soft drinks, coffee, cold beverages, pastries, bakery goods, cookies, ice cream, candy, soups, churros, chestnuts, nuts, fresh fruit, fruit juices, desserts, potato chips and popcorn. | | | |
| 345 STOCKTON ST | Tuesday | 6AM | 12AM |
| Northwest Corner of Post & Stockton Streets, on Post -- Hot dogs, condiments, soft pretzels, soft drinks, coffee, cold beverages, pastries, bakery goods, cookies, ice cream, candy, soups, churros, chestnuts, nuts, fresh fruit, fruit juices, desserts, potato chips and popcorn. | | | |
| 345 STOCKTON ST | Wednesday | 6AM | 12AM |
| Northwest Corner of Post & Stockton Streets, on Post -- Hot dogs, condiments, soft pretzels, soft drinks, coffee, cold beverages, pastries, bakery goods, cookies, ice cream, candy, soups, churros, chestnuts, nuts, fresh fruit, fruit juices, desserts, potato chips and popcorn. | | | |
| 345 STOCKTON ST | Thursday | 6AM | 12AM |
| Northwest Corner of Post & Stockton Streets, on Post -- Hot dogs, condiments, soft pretzels, soft drinks, coffee, cold beverages, pastries, bakery goods, cookies, ice cream, candy, soups, churros, chestnuts, nuts, fresh fruit, fruit juices, desserts, potato chips and popcorn. | | | |
| 345 STOCKTON ST | Friday | 6AM | 12AM |
| Northwest Corner of Post & Stockton Streets, on Post -- Hot dogs, condiments, soft pretzels, soft drinks, coffee, cold beverages, pastries, bakery goods, cookies, ice cream, candy, soups, churros, chestnuts, nuts, fresh fruit, fruit juices, desserts, potato chips and popcorn. | | | |
| 345 STOCKTON ST | Saturday | 6AM | 12AM |
| Northwest Corner of Post & Stockton Streets, on Post -- Hot dogs, condiments, soft pretzels, soft drinks, coffee, cold beverages, pastries, bakery goods, cookies, ice cream, candy, soups, churros, chestnuts, nuts, fresh fruit, fruit juices, desserts, potato chips and popcorn. | | | |

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sfpublicworks.org - tel (628) 271-2000



**22MFF-00042 (Original: 11MFF-0157)
Renewed**

Mobile Food Facility Permit

Address : 251 GEARY ST

Cost: \$182.00

Block:0314 **Lot:** 014 **Zip:** 94102

This permit is non-transferable without approval from DPW and shall comply with DPW, DPH and SFFD regulations and this permit is subject to revocation.

Permittee

Name: San Francisco Carts & Concessions, Inc. DBA Stanley's Steamers Hot Dogs

Address: 9 Magee Court Moraga, CA 94553

Contact: Stanley Roth

Phone: (925) 376-1124

Conditions

Original Grant Date: 12/21/1982

SFPD Permit #: 64267

SFFD Permit interchangeable with: #14036, #14037, & #14038

DPH Permit interchangeable with : #009, #008, #003, #007

Permittee understands that in lieu of required documentation from the Fire Marshal being provided as part of their renewal application, as is required by Section 184.83(d)(2) of the Public Works Code, the permittee shall not engage in operational activity regulated by Fire Code unless applicable San Francisco Fire Department permits are later granted to the permittee for such activity. The permittee may only vend under this permit operating under activity not regulated by Fire Code until applicable approvals from the Fire Marshal are later obtained subject to Section 184.81 of the Public Works Code and applicable sections of San Francisco Fire Code.

Facility Type

Push Cart

No. of Locations (See Exhibit A)

1

Start Date

11/03/2022

End Date

11/15/2023

To Be Sold

Hot dogs, condiments, soft pretzels, soft drinks, coffee, cold beverages, pastries, bakery goods, cookies, ice cream, candy, soups, churros, chestnuts, nuts, fresh fruit, fruit juices, desserts, potato chips and popcorn.

Certificate of Sanitation

#007

SFFD Permit

N/A

SF Business Certificate

392127

The undersigned Permittee hereby agrees to comply with all requirements and conditions noted on this permit

Applicant/Permitee

Date

Printed : 11/3/2022 11:04:43 AM Plan Checker Theresa Muehlbauer

REVOCABLE PERMIT IS GRANTED SUBJECT TO THE FOLLOWING CONDITIONS

1. The permittee shall comply with all guidelines and conditions set forth in Article 5.8 of the Public Works Code and Department of Public Works Order No. 182,101 (Guidelines for Issuance of Permit, Inspection of Mobile Food Facilities Operating within Public right-of-way).
2. The permittee shall pay an annual fee, to the Department of Public Works, 49 South Van Ness Avenue, Suite 300, San Francisco, CA 94103, Attention: Street-Use Permits.
3. This permission shall not become effective until the permittee shall have delivered to the Department current approvals from DPH, SFFD and business license.
4. The facility shall be confined to the area identified on the plans submitted and approved by the Department Public Works.
5. The permittee shall not place or store any food trays or carts, dirty dishes, trays or carts for linen and utensils and cooking equipment on any portion of the sidewalk or roadway area of public street with the exception of refuse collection receptacles.
6. The permittee shall maintain the quiet, safety and cleanliness of the facility and location.
7. The permittee shall provide adequate storage and disposal of garbage. Noise and odors shall be contained within immediate area of the facility to not be a nuisance to the neighborhood.
8. The permittee shall prominently post and display notice urging patrons to leave the premises and neighborhood in a quiet, peaceful, and orderly fashion and to not litter or block driveways.
9. The permittee shall pick up and dispose of any containers and trash left by patrons within 100' radius area around the Mobile Food Facility.
10. The permittee shall comply with all rules and regulations of Department of Public Health (California & Health Safety Code 110005 and Business and Tax Regulations Codes), San Francisco Fire Department (Section 113 of the San Francisco Fire Code).
11. The permission granted herein is a revocable license. The Director of Public Works may only revoke said permission subject to applicable law.
12. The permit shall not be assignable except with prior written consent of the City and County of San Francisco.
13. The Board of Supervisors reserves the right to exact a rental fee for the use of the sidewalk area, in the event that such a policy is adopted.
14. The permittee and any permitted successor or assign recognize and understand that this permit may create a possessory interest.
15. No person shall produce or allow to be produced by any machine or device, music or entertainment or any combination of same, on commercial or industrial property over which the person has ownership or control, a noise level more than eight dBA above the local ambient at any point outside of the property plane. With respect to noise generated from a licensed Place of Entertainment, in addition to the above dBA criteria a secondary low frequency dBC criteria shall apply to the definition above. No noise or music associated with a licensed Place of Entertainment shall exceed the low frequency ambient noise level defined in Section 2901(f) of the Police Code by more than 8 dBC.
16. No person shall produce or allow to be produced by any machine or device, or any combination of same, on public property, a noise level more than ten dBA above the local ambient at a distance of twenty-five feet or more, unless the machine or device is being operated to serve or maintain the property or as otherwise provided under the Noise Ordinance in the Police Code.

Exceptions

22MFF-00042

| Street Name | From St | To St | Message | Job | Contact | Dates |
|-------------|-------------|-------------|--|-------------|--|-------------------------|
| GEARY ST | | | | | | |
| | STOCKTON ST | POWELL ST - | DPT Blue Book Traffic Restriction. Time of day during which lanes must be kept clear: NORTH 7AM - 7PM EVERYDAY // SOUTH 7AM - 7PM EVERYDAY | | | |
| | STOCKTON ST | POWELL ST - | Please refer to Figure 12 of Section 9.4(A) of the DPW Order No. 171,442 for special conditions for excavation in the vicinity of AWSS. | | | |
| | STOCKTON ST | POWELL ST - | Downtown Streetscape Zone. Please See DPW Order 172596 for standard sidewalk and restoration requirements. | | BSM Front Desk 554-5810 - (415) 554-5810 | |
| | STOCKTON ST | POWELL ST - | Banners are allowed on this street | | | Oct 28 2011- |
| | STOCKTON ST | POWELL ST - | Conflict with existing Street Use Permit. | 12BW-0012 | Refer to Agent - Refer to Agent | |
| | STOCKTON ST | POWELL ST - | Conflict with existing Street Use Permit. | 12BW-0042 | Refer to Agent - Refer to Agent | |
| | STOCKTON ST | POWELL ST - | Conflict with existing Street Use Permit. | 12BW-0061 | Refer to Agent - Refer to Agent | |
| | STOCKTON ST | POWELL ST - | Conflict with existing Street Use Permit. | 12ECN-1025 | 800-743-5000 - 800-743-5000 | Sep 26 2012- |
| | STOCKTON ST | POWELL ST - | Conflict with existing Street Use Permit. | 14SMF-0008 | Refer to Agent - Refer to Agent | |
| | STOCKTON ST | POWELL ST - | Conflict with existing Street Use Permit. | 18MSE-0258 | Refer to Agent - Refer to Agent | |
| | STOCKTON ST | POWELL ST - | Conflict with existing Street Use Permit. | 19SW-00043 | Refer to Agent - Refer to Agent | |
| | STOCKTON ST | POWELL ST - | Conflict with existing Street Use Permit. | 21MFF-00108 | 9253767724 - 9253767724 | Nov 12 2021-Nov 15 2022 |
| | STOCKTON ST | POWELL ST - | Conflict with existing Street Use Permit. | 21MFF-00109 | 9253767724 - 9253767724 | Nov 12 2021-Nov 15 2022 |
| | STOCKTON ST | POWELL ST - | Conflict with existing Street Use Permit. | 21MFF-00119 | 831-402-7802 - 831-402-7802 | Nov 16 2021-Nov 15 2022 |
| | STOCKTON ST | POWELL ST - | Conflict with existing Street Use Permit. | 22MFF-00040 | 9253767724 - 9253767724 | Nov 16 2022-Nov 15 2023 |
| | STOCKTON ST | POWELL ST - | Conflict with existing Street Use Permit. | 22VDR-00102 | 415-410-8367 - 415-410-8367 | Oct 13 2022-Nov 15 2023 |

Exhibit A : Location Schedule and Food Items

| Location and Food | Day Of Week | Start time | End time |
|--|-------------|------------|----------|
| 251 GEARY ST | Sunday | 6AM | 12AM |
| Geary St, in front of Macy's -- Hot dogs, condiments, soft pretzels, soft drinks, coffee, cold beverages, pastries, bakery goods, cookies, ice cream, candy, soups, churros, chestnuts, nuts, fresh fruit, fruit juices, desserts, potato chips and popcorn. | | | |
| 251 GEARY ST | Monday | 6AM | 12AM |
| Geary St, in front of Macy's -- Hot dogs, condiments, soft pretzels, soft drinks, coffee, cold beverages, pastries, bakery goods, cookies, ice cream, candy, soups, churros, chestnuts, nuts, fresh fruit, fruit juices, desserts, potato chips and popcorn. | | | |
| 251 GEARY ST | Tuesday | 6AM | 12AM |
| Geary St, in front of Macy's -- Hot dogs, condiments, soft pretzels, soft drinks, coffee, cold beverages, pastries, bakery goods, cookies, ice cream, candy, soups, churros, chestnuts, nuts, fresh fruit, fruit juices, desserts, potato chips and popcorn. | | | |
| 251 GEARY ST | Wednesday | 6AM | 12AM |
| Geary St, in front of Macy's -- Hot dogs, condiments, soft pretzels, soft drinks, coffee, cold beverages, pastries, bakery goods, cookies, ice cream, candy, soups, churros, chestnuts, nuts, fresh fruit, fruit juices, desserts, potato chips and popcorn. | | | |
| 251 GEARY ST | Thursday | 6AM | 12AM |
| Geary St, in front of Macy's -- Hot dogs, condiments, soft pretzels, soft drinks, coffee, cold beverages, pastries, bakery goods, cookies, ice cream, candy, soups, churros, chestnuts, nuts, fresh fruit, fruit juices, desserts, potato chips and popcorn. | | | |
| 251 GEARY ST | Friday | 6AM | 12AM |
| Geary St, in front of Macy's -- Hot dogs, condiments, soft pretzels, soft drinks, coffee, cold beverages, pastries, bakery goods, cookies, ice cream, candy, soups, churros, chestnuts, nuts, fresh fruit, fruit juices, desserts, potato chips and popcorn. | | | |
| 251 GEARY ST | Saturday | 6AM | 12AM |
| Geary St, in front of Macy's -- Hot dogs, condiments, soft pretzels, soft drinks, coffee, cold beverages, pastries, bakery goods, cookies, ice cream, candy, soups, churros, chestnuts, nuts, fresh fruit, fruit juices, desserts, potato chips and popcorn. | | | |

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Customer Service

Teamwork

Continuous Improvement

BRIEF SUBMITTED BY THE APPELLANT(S)

SAN FRANCISCO CARTS AND CONCESSIONS, INC.
9 MAGEE COURT
MORAGA, CA 94556

March 14, 2024

San Francisco Board of Appeals
49 S Van Ness Avenue
San Francisco, CA 94103

RE: Appeal #24-009

To the Board of Appeals:

I am responding to the January 31, 2024 letter from the San Francisco Department of Public Works (“DPW”), revoking my four Legacy Business Mobile Food Facility vending permits numbered 22MFF-00039 to 22MFF-00042 (“Permits”). I am appealing the determinations made by the DPW in this matter, and asking the Board to overturn my permit revocations. My response includes the following arguments:

- Possessing Health and Fire permits Under Article 5.8 is not an absolute requirement. Some food items legally sold from carts under California law do not require having either a Health permit or a Fire permit;
- The DPW reference to the renewal requirements of Section 184.91 fails to mention another Article 5.8 section that empowers vendors to sell any items they choose to sell “so long as the item and its preparation comply with all applicable State and local laws”;
- The sole menu item I’ve currently specified to be sold under my Permits is *prepackaged bottled water*, which has already been exempted from needing a Fire Permit in 2021;

- On January 1, 2023, the new California Retail Food Code, based on the 2022 passage of Senate Bill 972, took effect and exempted carts having a footprint of 25 square feet or less and selling prepackaged bottled water from needing a health permit anywhere in California;
- The Retail Food Code specifically preempts local health departments from modifying State standards, and clearly states that “it is the intent of the Legislature to occupy the whole field of health and sanitation standards for RETAIL FOOD FACILITIES” throughout California;
- The DPW has already established the precedent of issuing my Permits with the 2021 Fire Permit exemption included. I have only been asking that the same exemption be documented on my Permits to reflect the new State health code exemption for bottled water which legally took effect more than 15 months ago.
- In response, the DPW has moved to revoke my permits that were granted in 1981, 1982, and 1992 and are part of my Legacy Business status.

ARGUMENT

I. Possessing Health and Fire Permits Is Not an Absolute Requirement

There is no “absolute” requirement that a Permit holder provide a Health and Fire Permit as a pre-condition to every Permit renewal. The requirement is only to provide Health and/or Fire Permits when they are required, under law, for the specific food item or items being sold.

The DPW letter implies that I had a duty to obtain Fire and Health permits, which the DPW states are required by Section 184.91 of Article 5.8 as a prerequisite to the DPW renewing our mobile vending Permits:

“Section 184.91 - All Mobile Food Facilities shall obtain an annual Certificate of Sanitation and Fire Marshall approval on or before the annual renewal of the Mobile Food Facility permit for the Location(s) of said Mobile Food Facility as specified in said permit.”

What the DPW position fails to reference is another equally important section of Article 5.8, Section 184.85(b)(10) which states: *“A Mobile Food Facility shall be permitted to sell any food and/or drink item that the Vendor elects to sell **so long as the item and its preparation comply with all applicable State and local laws.**”* [\[Exhibit 1\] \(click link\)](#).

In other words, the test of whether or not a vendor is required to tender a Fire or Health Permit as a condition of Permit renewal *is whether or not the food or food items being sold are required to have a Fire and/or Health Permit under California law.*

II. In 2023, SB-972 Exempted the Sale of Bottled Water From Needing Any Health Permit In California, When Sold from a Pushcart of 25 Square Feet or Less.

I’ve attached a 2022 “Legislative Summary” of SB-972, which outlined changes effective January 1, 2023 in the new 2023 California Retail Food Code. The summary included the following language.

“The law [SB-972] becomes effective January 1, 2023 and will require health enforcement agencies and local jurisdictions to adopt or amend certain regulations related to food facilities operating within their jurisdiction...” *“SB 972 creates a new exemption from health permitting requirements for compact mobile*

food operations that sell only (i) prepackaged food that is not potentially hazardous and (ii) whole produce. Any local business licensing or permitting programs that currently require food vendors to obtain a permit from their local health enforcement agency prior to applying for a business license should be updated to account for this new exemption.” [Exhibit 2].

It is especially important to note the language of the summary that states **it is the local permitting agency that is both the recipient of the application and the entity that needs to update its programs and codes “to account for this new exemption.”**

Counties (and the cities they regulate) do not have the authority to override or ignore State health code directives.

Section 113705 of the California Retail Food Code preempts local standards:

*“**Legislative intent to preempt local standards:** The Legislature finds and declares that the public health interest requires that there be uniform statewide health and sanitation standards for RETAIL FOOD FACILITIES to assure the people of this state that the FOOD will be pure, safe, and unADULTERATED. Except as provided in Section 113709, it is the intent of the Legislature to occupy the whole field of health and sanitation standards for RETAIL FOOD FACILITIES, and the standards set forth in this part and regulations adopted pursuant to this part shall be exclusive of all local health and sanitation standards relating to RETAIL FOOD FACILITIES [Exhibit 3]*

The only "Authority to Establish Local Requirements" is defined in Section 113709, immediately following Sec.113705, which confers the ability to a) adopt a grading system for food facilities; b) prohibit a specific type of food facility completely (i.e., authority to deny Microenterprise Home Kitchen Operations (“MEKHO”) [see Exhibit 4]);

c) adopt an employee health certification program; d) regulate CONSUMER (not vendor) use of toilet and handwashing facilities; and e) regulate time, place, and manner for Food Truck stops under Section 22455 of the Vehicle Code.

The health permit exemption for pushcarts selling only non-hazardous, prepackaged foods from carts measuring 25 square feet or less is a **MANDATE** from the State to the counties, and then to the cities. If it were possible to ignore the mandate, one would assume at least one major county or city in California inundated with food carts would have done so by now.

I have attached Exhibit 5 below which shows the website views of all of the major County Health Departments in California: Alameda County (14 cities), Contra Costa (19 cities), Los Angeles County (88 cities), Marin (11 cities), Merced (43 cities), Orange County (34 cities) , Sacramento (7 cities) , San Bernadino (102 cities), San Diego (18 cities) , San Luis Obispo (12 cities), San Mateo County (59 cities) , Santa Barbara (8 cities) , Santa Clara County (34 cities), Solano County (7 cities), and Sonoma County 9 cities. Only San Francisco is not following the 2023 Retail Food Code manadate.**[Exhibit 5]**

III. The DPW Has Already Established the Precedent That An Exempt Fire Permit Can Be Documented On A DPW Permit.

In 2021, the DPW agreed to waive our needing a Fire Permit from the Fire Marshall when we stipulated the only food item we would be selling going forward would be bottled water. Please note each of our Permits that are the subject of this revocation proceeding currently contain the following language on the first page of each Permit:

“Permittee understands that in lieu of required documentation from the Fire Marshal being provided as part of their renewal application, as is required by Section 184.83(d)(2) of the Public Works Code, the permittee shall not engage in operational activity regulated by Fire Code unless applicable San Francisco Fire Department permits are later granted to the permittee for such activity. The permittee may only vend under this permit operating under activity not regulated by Fire Code until applicable approvals from the Fire Marshal are later obtained subject to Section 184.81 of the Public Works Code and applicable sections of San Francisco Fire Code.” [Exhibit 6]

In our case, electing to sell only bottled water in 2021 eliminated the need for a Fire Permit, which DPW acknowledged and documented on all of our Permits. Please note we did not need a formal “exemption” from the Fire Department for this change. Common sense decreed that if we weren’t using propane or heating our bottled waters, no Fire Permit was necessary, despite the language of Section 184.91 quoted by the DPW. The DPW graciously added the language to our Permits on its own.

I kept and paid for my Health Permits in 2020, 2021, and 2022 because the California Health Code, at that time, still required a Health Permit for prepackaged foods, even bottled water, sold from a pushcart. That Health Permit requirement for bottled water was eliminated in the 2023 Retail Food Code and I intentionally gave up my existing health permits to conserve dwindling cash reserves.

CONCLUSION

The DPW is attempting to revoke my Legacy vending permits because I have failed to provide allegedly required health permits for my one specified menu item— prepackaged

bottled water, sold from a cart measuring 25 square feet or less. Under the provisions of the new 2023 California Retail Food Code, my food item and my cart are specifically exempted from needing a health permit anywhere in California.

The DPW response has been to continue to demand I obtain such a health permit, and when I refused to do so, it revoked my 43-year-old Legacy vending permits.

Neither DPW nor SF Health have given me any explanation (in response to my questions) as to how or why I am wrong. DPW has told me it's a requirement of the Health Department, and the Health Department has told me San Francisco has yet to "update" certain codes administratively which "ties the hands" of the Health Department.

In light of these two non-explanations being the only explanations I've received, I hope the Board understands my reluctance to spend \$1,118 to cover an Application Fee, Plan Check Review fee, Fire Department Referral Fee (to have the Fire Marshall agree a Fire Permit isn't needed for water), and an Annual Permit Fee that recurs every year. I would also have to show compliance with, and incur the cost of, renting a non-required commissary.

The DPW has cited Section 184.81 of Article 5.8 as "proof" that I have breached an alleged duty to provide the DPW with both a Health and Fire permit, which DPW claims is required as part of the "annual Permit renewal process." In response, I have provided the language of Section 184.85(b)(10) of Article 5.8 which clearly states that I am allowed to sell any food products I choose to sell, provided they comply with State and local laws.

Currently, selling bottled water from a cart measuring 25 square feet or less complies with all State and local laws, and is specifically exempt from the requirement to obtain a health permit to legally do so. There is no application one needs to go through to prove no application for an exempt permit is needed. It is simply exempt under the Retail Food Code.

Finally, I have shown that the DPW has previously added language to my Permits allowing renewal to go forth selling bottled water without needing a “required” Fire Permit. By simply limiting my operation to selling products that do not require either a Health Department or Fire Department approval, I am in compliance with “State and local law,” as required by Article 5.8, Section 184.85(b)(10) as set forth in Exhibit 1.

My request to the Board is to please overrule the DPW’s decision to revoke my Permits, and have DPW simply add similar language on my Permits as they have for my Fire Permit exemption—i.e., that I agree not to engage in any sales activity requiring a Health Permit “unless such permits are later granted to permittee for such activity.” Thank you for hearing my appeal. I am looking forward to answering any of your questions at the hearing.

I’m also attaching some historical background in the next few pages. It is not needed to reach a decision in this case, but it might provide information as to how we got here.

With appreciation,

Stanley Roth, Owner
SF Carts and Concessions

P.S. - Printable copies of all exhibits are provided at the end of this brief.

HISTORICAL INFORMATION (OPTIONAL)

I started my business in 1974, selling pretzels in Fisherman's Wharf when I was 25 years old. SFPD would not accept my application for a food vendor permit, so I obtained a Street Artist License and sold my pretzels as "Baked Sculptures of Flour and Water." The Police Department promptly revoked my Street Artist license, but the Board of Permit Appeals ruled that our pretzels would henceforth be declared "Works of Art" in the City. **[Exhibit 7]**. In later appeals, the Board required the SFPD to accept my application for a Peddler Permit and upon SFPD denial, granted me the first San Francisco food vendor permit. Over the past 48 years, my wife and I built an exemplary business, for which we were awarded Legacy Business status in 2022 **[Exhibit 8]**

In 2019, SB-946 decriminalized food vending throughout California. Dozens of bacon-wrapped hot dog carts began setting up in our reserved DPW permitted locations. **[Exhibit 9]**. When we asked the police to move the vendors down the street so we could operate *in the locations we were paying the City for*, we were told by SFPD that they had been instructed "not to engage" with the vendors. When we asked SF Health why these carts were being allowed to operate without Health and Fire permits while we were still being charged for ours, Stephanie Cushing, the Director of Environmental Health, wrote me an email noting her inspectors were being threatened by the vendors and the Police Department was refusing to engage to protect them **[Exhibit 10]**.

On December 18, 2019, my wife and I were also threatened. When I asked a vendor in our Macys location to please move a few feet up the street so we could open, a man came across the street, put a finger in my chest and warned "if you ever interfere with our carts again, you will be leaving Union Square...for good, if you know what I mean." We

closed our carts and I had to lay off the 14 people who worked for us, just 7 days before Christmas at the busiest time of the year. The City shut down for Covid two months later.

When closed for Covid, I asked the City how the flower stands and Street Artists still had protected sidewalk locations when I did not. I was told the flower stands had fixed power and water at their sidewalk sites which essentially gave them an “encroachment” on the sidewalk. I have still received no explanation about Street Artists.

I contacted the Union Square BID and proposed we install “power pedestals” at our locations and plug our high-end coffee carts into the power pedestals as a way of protecting our sidewalk spaces. **[Exhibit 11] [Exhibit 12]**. This would not only protect our locations, but would give me a competitive product at our sites that didn’t compete with the dozens of new hot dog carts everywhere in Union Square.

The BID agreed and wrote us a letter of support. **[Exhibit 13]**. I contacted SFPUC and even got approval to bring power and water to our locations. DPW then informed me that putting a vertical pedestal on the sidewalk would violate DPW policies around pedestrian obstructions. Their suggestion was to apply for Major Encroachment Permits and flush mount our utilities. The City said it would waive the fees. I spent 5 months filling out the paperwork to obtain Major Encroachment Permits at our sites.

On December 2, 2021, I received a bill from DPW for \$5,273 for *each* location. **[Exhibit 14]**. The City said it would not be able to waive the fees, and the DPW contact I had been working with told me I probably shouldn’t do a Major Encroachment Permit because 1) it could take 2 years to process, 2) every agency involved in our application could charge additional fees, and 3) after 2 years waiting and paying more fees, there was no guarantee of approval. I withdrew our Major Encroachment Permit applications.

The DPW engineer who had helped us put together the applications reached out to me with an idea. He said if we put a right to have power and water at our locations into an ordinance, the ordinance would negate needing a Major Encroachment Permit. We came up with the idea of creating a new category of cart vendor called a “Legacy Pushcart Peddler” and worked on creating a new “Article 5.10.” I hired an attorney to work with the City Attorney to draft the ordinance language. After several months, on April 1, 2022, we submitted a draft of Article 5.10, creating a category of “Legacy Pushcart Peddler” allowing power and water at our permitted sites. A few days later we were told that another City Attorney had overruled the City Attorney we’d been working with, saying the City didn’t want to complicate the existing language of Article 5.8.

But the City Attorney we’d been working with had good news. Her team agreed we could get a Minor Encroachment Permit that would accomplish our goal—power and water at our sites. I had spent thousands of dollars in attorney’s fees working on the failed Legacy Pushcart Peddler ordinance, but I moved on to the new Minor Encroachment project.

Supervisor Peskin’s office was our contact. The project took another 6 months to draft the ordinance, costing us thousands of dollars in additional attorney’s fees. Supervisor Peskin introduced a draft at Land Use Committee in October 2022, just to get “something” on the docket which we could amend later. **[Exhibit 15]**.

By now we had been out of business and without income since December 2019. We had taken out an SBA Economic Injury Disaster Loan in 2020 that was gone and that we were now repaying from a home refi. Our savings were gone. We were selling off carts and other equipment to raise cash. The Minor Encroachment Ordinance was our only hope of being able to save and reopen our business.

We also had a \$300,000 commissary inside the Union Square Garage that we had built with an SBA Loan in 2014. Rec and Park had finally waived the \$4,200/month rent we'd been paying in 2020 and 2021, which we paid during Covid in the hopes we could reopen.

And then came the unthinkable. DPW took the position that if we obtained the Minor Encroachment Permits and spent \$170,000 per location to trench the streets and sidewalks to put in power and water, the DPW Director needed an "at will" right to revoke our permits and forfeit our entire investment. The SFPUC took the position that if we ever gave up our locations, even due to revocation, we would have to **RETRENCH THE STREETS AND REMOVE THE POWER CONDUIT WE HAD INSTALLED**. That would have brought the cost of installing power and water (and then having to remove it) to more than \$1M.

The attorney we'd hired said the City was trying to get rid of us and just wanted us to quit. He said the positions of DPW and PUC were "unconscionable" and "outrageous" and beyond financial feasibility.

So we are here today asking to keep our Legacy Permits intact in the hopes that future SF officials will see the logic of letting us reopen a business we literally dedicated our entire lives to. By stipulating we are selling only bottled water, we avoid having to pay for expensive Fire and Health permits we aren't using.

As for our commissary, even though we built it from scratch in an empty area of the Union Square garage—and invested \$300,000 in doing so and are still paying the loan back along with our SBA EIDL loan-- we had to forfeit it to Rec and Park last year. Rec and Park then turned around and gave our \$300,000 commissary "free of charge" to Miller and Lux, the new tenants of the Union Square Plaza cafes.

That is how we got to tonight's hearing.

EXHIBITS

(10) A Mobile Food Facility shall be permitted to sell any food and/or drink item that the Vendor elects to sell so long as the item and its preparation comply with all applicable State and local laws.

(c) Notwithstanding the locational requirements of Subsection (b)(1), if a Pushcart Peddler has a valid permit for a specific Location dated as of July 19, 1995, said Peddler is exempt from Subsection (b)(1)(B) and the Director may issue an exception to Subsection (b)(1)(A) for such Peddler as long as the permitted pedestrian passage satisfies applicable federal and State access requirements.

(d) If a Mobile Food Facility has a valid permit dated prior to July 1, 2013 for a particular time and Location, said Facility is exempt from the locational requirements of Subsections (b)(4)-(6) for purposes of the specific time(s) and Location(s) identified in said permit. Any modification to such time or Location shall be subject to all the requirements of this Article.

(e) The Director, after a public hearing, may adopt such orders, policies, regulations, rules, or standard plans and specifications as he or she deems necessary in order to preserve and maintain the public health, safety, welfare, and convenience. Such orders, policies, regulations, or rules may include, but are not limited to, permit application materials, placement of and information contained on signs, site conditions, accessibility of sidewalks and streets. When such orders, policies, regulations, or rules will affect the operations and enforcement of the Municipal Transportation Agency, the Department of Public Health, or the Fire Department, the Director shall consult with and provide an opportunity to comment to the Director of the affected Department prior to adoption of such orders, policies, regulations, or rule.

■ (Added by Ord. 298-10, File No. 101352, App. 12/3/2010; amended by Ord. [119-13](#), File No. 120193, App. 6/28/2013, Eff. 7/28/2013)

SEC. 184.86. MOBILE FOOD FACILITIES, MAXIMUM PERMISSIBLE.

(a) In no case may a single permittee obtain more than seven (7) separate Mobile Food Facility permits.

(b) If a Pushcart Peddler has seven (7) or more valid permits for specific Locations dated as of July 19, 1995, said permits shall not be counted toward the maximum permissible number of Facilities in Subsection (a).

■ (Added by Ord. 298-10, File No. 101352, App. 12/3/2010)

SEC. 184.86.1. MOBILE FOOD FACILITIES FROM FORMULA RETAIL USES.

(a) If a Mobile Food Facility is operated by or otherwise an affiliate of a formula retail use as defined in Planning Code Section 303.1 that is a eating and drinking use, restaurant, or limited-restaurant, as such terms are defined in Planning Code Articles 7 and 8, the following restrictions shall apply:

(1) The Mobile Food Facility is prohibited within the boundaries of those zoning districts where formula retail is prohibited or subject to conditional use authorization as set forth in Planning Code Section 303.1.

(2) Notwithstanding the above restrictions, this Subsection shall not apply if the subject Mobile Food Facility is operating in accordance with the terms of Section 184.87 (Single Day of Operations) or Section 184.89(e) (in connection with a City-permitted temporary use).

(b) For purposes of this Section, the term "affiliate" includes, but is not limited to, an individual or entity that has the corporate name of or is owned in whole or in part by the formula retail uses described above, has a direct financial or contractual relationship with such uses, or is the franchisee of such uses.

(Added by Ord. [119-13](#), File No. 120193, App. 6/28/2013, Eff. 7/28/2013; amended by Ord. [235-14](#), File No. 140844, App. 11/26/2014, Eff. 12/26/2014)

■

LEGISLATIVE ALERT:

SB 972 - Sidewalk Food Vending

California Senate Bill 972 (“SB 972”) makes important changes to the California Retail Food Code (“CalCode”) relevant to the preparation and sale of food by sidewalk vendors and other compact mobile food operations (“CMFOs”). The law revises certain equipment requirements for CMFOs, streamlines permitting processes for CMFOs and the facilities that support them, and prohibits all criminal penalties for violations of CalCode by the operator of a CMFO.

The law becomes effective January 1, 2023 and will require health enforcement agencies and local jurisdictions to adopt or amend certain regulations related to food facilities operating within their jurisdiction.

This legislative alert is intended to provide information about the new law for cities, counties, food facility manufacturers, and other interested stakeholders.

For any jurisdiction that already has sidewalk vending regulations that comply with existing state law, no further action is required. SB 972 does not make any changes to a local jurisdiction’s ability to regulate sidewalk accessibility, waste disposal, littering, illegal dumping, or any other rules or regulations that fall outside of the purview of the California Retail Food Code (which only regulates the sale of food in California). SB 972 also does not make any changes to local jurisdictions’ abilities to enforce those regulations.

Bottled Water Exemption

A local authority that currently treats health permits as a prerequisite for a local business license or sidewalk vending permit may need to update its licensing requirements.

As a result of SB 972, sidewalk vendors and other compact mobile food operations with 25 square feet or less of display area that sell only bagged snacks, cans of soda, bottled water, whole fruits and vegetables, canned goods that do not need to be refrigerated, and other similar foods are no longer required to obtain a health permit from their local health enforcement agency. Many cities and counties currently require any business that sells food - including sidewalk vendors - to first obtain a health permit prior to applying for a local business license or vending permit that would allow them to conduct business in the jurisdiction. SB 972 creates a new exemption from health permitting requirements for compact mobile food operations that sell only (i) prepackaged food that is not potentially hazardous and (ii) whole produce. Any local business licensing or permitting programs that currently require food vendors to obtain a permit from their local health enforcement agency prior to applying for a business license should be updated to account for this new exemption.

SB 972 defines “Compact Mobile Food Operations” (CMFOs) and establishes a new chapter in CalCode with regulations that are specific to CMFOs.

SB 972 defines “compact mobile food operation” as a mobile food facility that operates from an individual or from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance.

Chapter 1 General Provisions

EXHIBIT 3

113700. California retail food code

These provisions shall be known, and may be cited, as the California Retail Food Code, hereafter referred to as "this part."

113703. Food safety, illness prevention, and honest presentation

The purpose of this part is to safeguard public health and provide to CONSUMERS FOOD that is safe, unADULTERATED, and honestly presented through adoption of science-based standards.

113705. Legislative intent to preempt local standards

The Legislature finds and declares that the public health interest requires that there be uniform statewide health and sanitation standards for RETAIL FOOD FACILITIES to assure the people of this state that the FOOD will be pure, safe, and unADULTERATED. Except as provided in Section 113709, it is the intent of the Legislature to occupy the whole field of health and sanitation standards for RETAIL FOOD FACILITIES, and the standards set forth in this part and regulations adopted pursuant to this part shall be exclusive of all local health and sanitation standards relating to RETAIL FOOD FACILITIES.

113707. Regulations

The DEPARTMENT shall adopt regulations to implement and administer this part.

113709. Authority to establish local requirements

This part does not prohibit a local governing body from adopting an evaluation or grading system for FOOD FACILITIES, from prohibiting any type of FOOD FACILITY, from adopting an EMPLOYEE health certification program, from regulating the provision of CONSUMER toilet and handwashing facilities, from adopting requirements for the public safety regulating the type of vending and the time, place, and manner of vending from vehicles upon a street pursuant to its authority under subdivision (b) of Section 22455 of the Vehicle Code, or from prohibiting the presence of pet dogs in outdoor dining areas of food facilities.

113711. References to previous laws

In all LAWS and regulations, references to Chapter 4 (commencing with Section 113700) or the California Uniform Retail Food Facilities Law, shall mean this part or the California Retail Food Code.

113713. Primary responsibility for enforcement

(a) Primary responsibility for enforcement of this part shall be with the local



EXHIBIT 4

Use of Section 113709 authority to authorize or not authorize MEHKOs when given that specific authority by the State legislature to do so in 2019

Microenterprise Home Kitchen Operations (MEHKO)

Assembly Bill (AB) 626 authored by Assemblyman Garcia, Chapter 470, Statutes of 2018, was signed into law by Governor Brown on September 18, 2018; effective January 1, 2019. This bill amends the California Health and Safety Code to establish a “microenterprise home kitchen operation”, referred to as MEHKOs, as a new type of retail food facility that will allow an individual to operate a restaurant in their private residence. The new law also establishes requirements for “Internet Food Service Intermediary” (IFSI) entities, which provides a platform on its Internet Web site or mobile application, where a microenterprise home kitchen operation (MEHKO) can advertise food for sale. IFSIs are required to obtain a registration from the California Department of Public Health – Food and Drug Branch prior to advertising or promoting MEHKOs on their internet web site or mobile application.

MEHKO

Effective January 1, 2019, the new law gives a city or county "full discretion" to authorize the MEHKOs in their jurisdiction. Under the regulations, until a county or a city authorizes these types of operations, MEHKOs will not be able to be issued a health permit to operate. To learn if a city and/or county has adopted an ordinance or resolution, or to find information about the full permit and operational requirements to operate a MEHKO in your area, please contact your local environmental health agency.

MEHKO Income Adjustment (PDF)
General Permit Requirements for MEHKOs (PDF)
Environmental Health Agency Food Safety Website Link (PDF)
Environmental Health Agency Link to MEHKO Ordinance/Resolution (PDF)

Regulations and Statutes

Assembly Bill 626 - Microenterprise home kitchen operations *Link coming soon*
California Retail Food Code (PDF)

Internet Food Service Intermediary

CDPH-Food and Drug Branch will begin accepting registration applications for internet food service intermediary's registration beginning January 1, 2019.

General Requirements for Internet Food Service Intermediaries (PDF)
CDPH Internet Food Service Intermediary Registration Application (PDF)
Registered Internet Food Service Intermediary (PDF)

Mobile Food Facilities (MFF)

EXAMPLES OF CMFO



To submit plans to build and/or obtain a permit for your CMFO (CART) use the CMFO Plan Check Requirements and Examples of Structural Requirements for a CMFO for guidance.

A summary of CMFO (cart) structural requirements that may be required are found here.

**FOR
PREPACKAGED
FOOD**

No Health Permit Required

| REQUIREMENTS | Less than 25 sq/ft of prepackaged, non-potentially hazardous food/drinks or whole produce | Greater than 25 sq/ft of prepackaged non-potentially hazardous food/drinks or whole produce | Prepackaged potentially hazardous food |
|---|---|---|--|
| Health Permit | No | Yes | Yes |
| Plan Check | No | Yes | Yes |
| Hand sink | No | No | No |
| Mechanical refrigeration | No | No | Yes ^{2*} |
| CFO B allowed as a commissary ^{3*} | N/A | Yes | No |
| MEHKO allowed as a commissary | N/A | Yes | Yes |
| Approved CMFO storage locations other than permitted commissaries ^{4*} | N/A | Yes | Yes |



ENVIRONMENTAL PROTECTION

1131 Harbor Bay Parkway, Alameda, CA 94502

(510) 567-6700



CONTRA COSTA ENVIRONMENTAL HEALTH DIVISION
 2120 Diamond Boulevard, Suite 100, Concord, CA 94520
 (925) 608-5500 - (925) 608-5502 FAX
<http://cchealth.org/eh/>
retailfood@cchealth.org

EXHIBIT 5-2

MOBILE FOOD FACILITY (MFF) PERMIT TO OPERATE APPLICATION

ALL FEES MUST BE PAID BEFORE INSPECTION. PAYMENT ALONE DOES NOT GUARANTEE THE RIGHT TO OPERATE.
 FOR PERMIT COST PLEASE REFER TO THE CURRENT FEE SCHEDULE: <https://cchealth.org/eh/food/pdf/fees.pdf>.

Select One: New MFF MFF Renewal (2023 2024) Change of Ownership (for an existing MFF)

| | | |
|------------------------|--|--|
| A. PROGRAM DESCRIPTION | <input type="checkbox"/> Unlimited Food Preparation Unit (PE 0718) | <input type="checkbox"/> Pre-packaged Non-PHF Vehicle (greater than 25 sq feet) (PE 0738) |
| | <input type="checkbox"/> Limited Food Preparation Unit (PE 0708) | <input type="checkbox"/> Whole Uncut Produce (greater than 25 sq feet) (PE 0740) |
| | <input type="checkbox"/> Pre-packaged Ice Cream Vehicle (PE 0728) | <input type="checkbox"/> Mobile Support Unit (PE 0745) |
| | <input type="checkbox"/> Pre-packaged Non-PHF/Ice Cream Push Carts <input type="checkbox"/> 1-4 carts (PE 701) <input type="checkbox"/> 5-10 carts (PE 702) <input type="checkbox"/> 11 or more (PE 703) Total # of units: _____ | <input type="checkbox"/> Auxiliary Conveyance Unit (PE 0746) <input type="checkbox"/> Additional Operating Unit (PE 0747) |

| | | | |
|----------------------|--|----------------------------|-----------------|
| B. OWNER INFORMATION | Type of Ownership: <input type="checkbox"/> Individual <input type="checkbox"/> Co-Owner <input type="checkbox"/> LLC <input type="checkbox"/> INC. <input type="checkbox"/> LP <input type="checkbox"/> LLP <input type="checkbox"/> Veteran/Non-Profit* <small>(Attach certificate of LP, LLP, Articles of Incorporation or Organization) * Requires copy of DD-214 or proof of Non-Profit status</small> | | |
| | Owner Name (Last Name, First Name or Corporation) | | |
| | Owner Address | City/State/Zip | Primary Phone |
| | Drivers License - ID Number | Drivers License - Exp Date | Alternate Phone |

| | | | | | |
|-------------------------|--|----------------|-----------------------|--|--|
| C. BUSINESS INFORMATION | Name of Business (DBA) | | Business Phone Number | Business Email (for electronic correspondence) | |
| | Type of MFF Unit: <input type="checkbox"/> MFF Motorized Truck <input type="checkbox"/> Trailer <input type="checkbox"/> Vehicle (e.g. van, pickup truck) <input type="checkbox"/> Pushcart/Stand | Lic | (VIN) | HCD Insignia Number | |
| | Primary Commissary Name | Cor | City/State/Zip | | |
| | Billing Name (Last Name, First Name/Corporation) | | | | |
| | Billing Address | City/State/Zip | Primary Phone | | |

Only carts "greater than 25 sq. feet" required to apply for a health permit.

| | |
|----------------------|---|
| TERMS AND CONDITIONS | <i>I understand that failure to make the required corrections and/or repeat violations may result in re-inspection fees charged to my operations. Additional legal action (s) may be taken against my operations by Contra Costa Environmental Health (CCEH). I understand that failure to comply with the requirements of the California Retail Food Code may result in my operating permit being suspended and/or revoked.</i> |
| | <i>The undersigned hereby applies for a Permit to Operate in Contra Costa County and agrees to operate in accordance with all applicable state and local regulations, laws, and such inspection procedures needed to ensure compliance. Payment of the required fees and late penalties, if any, to secure a valid permit is required before commencing or continuing operations. Failure to do so may result in a misdemeanor citation, permit suspension/revocation proceedings, and/or closure. Notify Contra Costa Environmental Health of any change in the type of business activity, name, billing address, or ownership by calling the number above. (PERMITS AND FEES ARE NOT TRANSFERABLE).</i> |
| | <i>Your permit to operate expires at the end of each calendar year. Your MFF must be inspected and receive a permit to operate. An MFF operating without a valid permit may be assessed a penalty of three times the permit fee.</i> |

Print Owner/Operator: _____ Signature: _____ Date: _____

OFFICE USE ONLY

| | | | | |
|---------------|----------------|--|---------------|-------------|
| FA # | PR # | AR # | XR | RECEIVED BY |
| AMOUNT DUE \$ | AMOUNT PAID \$ | <input type="checkbox"/> CARD <input type="checkbox"/> CASH <input type="checkbox"/> CHECK# _____ | DATE RECEIVED | REHS |



COUNTY OF LOS ANGELES

Public Health

Starting January 1, 2023

Compact Mobile Food Operations (CMFOs) are the new food carts

EXHIBIT 5-3



Low-risk

(Pre-packaged non-perishable foods)

Permitted carts changing food preparation or commissary must call Plan Check at (626) 430-5560



Moderate-risk

(Pre-packaged perishable foods and Limited food preparation)

Moderate-risk CMFOs may do some limited food preparation on-site



- * Hot/cold holding
- * Reheating



with adequate utensils

- * Slicing of washed produce
- * Prepare food for immediate service

CMFOs have new commissary options

PERMIT EXEMPTION



Permitted facilities

For general information, please call Industry Engagement at (626) 430-5156

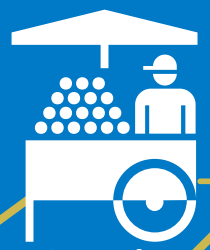


Private homes (storage only)

Permit Exemption

CMFOs selling 25 sq ft or less of only prepackaged non-potentially hazardous food are exempt from permitting. Examples of such foods are packaged chips, nuts, bottled drinks, and whole produce.

For more information, please call (626) 430-5156



25 sq ft





EXHIBIT 5-4

Find services, forms and information Search

- HOME
- HOW DO I?
- GOVERNMENT
- FOR RESIDENTS
- FOR BUSINESS
- RECREATION
- CONTACTS

You are here: Home > Departments > Community Development Agency > Environmental Health Services > Food Program > 100% Pre-Packaged Food Facility Requirements

100% Pre-Packaged Food Facility Requirements

Community Development Agency

Exemption

Featured Links

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- [Customer Service](#)

Community Development Agency

- ⊕ **Building and Safety**
- ⊕ **Environmental Health Services**
- ⊕ **Planning**
- ⊕ **Sustainability**
- ⊕ **Environmental Planning**
- ⊕ **Housing**
- ⊕ **Federal Grants**
- ⊕ **Mapping**
- ⊕ **Code Enforcement**

Upon constructing, remodeling or otherwise opening food facilities selling pre-packaged foods only, the following guidelines are provided to define the limitations of this type of facility:

- No cooking, food preparation, packaging or repackaging of food products
- No ice making, bagging or dispensing
- No beverage or coffee dispensing, mixing or preparation
- No unwrapped beef jerky, candy or other unpackaged food products
- No beer taps or wine dispensers, or other types of drink dispensers

If the proposed facility conforms to the above restrictions, the facility may be permitted as a 100% pre-packaged food facility. If your facility has less than 25 square feet of storage, including both retail and back stock storage, for 100% non-potentially hazardous foods, you are not required to obtain a permit to operate in Marin County. If you have more than 25 square feet of storage, the following items, as defined in the California Retail Food Code (CalCode) and the California Plan Check Guide for Retail Food Facilities will apply:

1. Submit three sets of plans for review and approval. An application and a plan check fee will be required for "New Limited Operation: Pre-packaged Only."
2. Provide an employee restroom. Provide approved finishes (floor, base cove, walls and ceilings) and indicate this on the plans. The walls and ceilings must be of a durable, SMOOTH, nonabsorbent, and EASILY CLEANABLE surface. Floor surfaces shall be covered at the juncture of the floor and wall with a 3/8" radius coving and shall extend up the wall at least four inches. Provide flooring and paint chip samples with the plan submittal.
3. Provide a janitorial room or area with a janitorial sink. Provide approved finishes (floor, base cove, walls and ceilings) and indicate this on the plans. The walls and ceilings must be of a durable, SMOOTH, nonabsorbent and EASILY CLEANABLE surface. The floor and base cove around the sink perimeter (at least three feet) must be covered at the juncture of the floor and wall with a 3/8" radius coving and shall extend up the wall at least four inches. Provide flooring and paint chip samples with the plan submittal. In addition, provide eight feet of wall protection on all sides of the janitorial sink. Mop and broom hangers and chemical storage shelving are also required.
4. If backup food storage will be required, provide approved floor, base cove, walls and ceilings in the food storage area. NSF approved food storage shelving is required. Clearly define this area on the plans.
5. Show all food areas on the plans. Clearly define the food sales from non-related food items.
6. If refrigeration and freezer units are to be installed, also include these units on the plans. If prepackaged POTENTIALLY HAZARDOUS FOODS are to be sold, all units must meet NSF #7 Standards. Provide manufacturer specification sheets for approval.
7. Provide a hot water heater that produces at least 3,000 total connected watts or 10,000 BTU's. Provide a specification sheet for approval.



EXHIBIT 5-5

COMPACT MOBILE FOOD OPERATION (CMFO) FREQUENTLY ASKED QUESTIONS

Effective January 1, 2023, California Retail Food Code (CRFC) was amended to promote economic inclusion while modernizing the CRFC so that food vendors can obtain a permit and join the regulated vending economy. The law established a new definition for Compact Mobile Food Operations (CMFO) and criterion for permitting. Below are some of the most frequently asked questions about these changes.

Q1: What is a compact mobile food operation (CMFO)?

A1: A CMFO is a mobile food facility that operates from an individual or from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized unenclosed conveyance that can be approved to sell whole produce, packaged food, or to conduct limited food preparation.

Q2: Do I need a Health Permit from Environmental Health?

A2: Yes, a permit is required. EXCEPTION: a CMFO having 25 square feet or less of display area and selling *only* commercially prepackaged non-perishable / non-potentially hazardous foods (NPHFs) or whole uncooked produce, does not require a permit.

Exemption

Q3: What is considered “prepackaged food”?

A3: Prepackaged food is food from an approved source that has been processed by a manufacturer, permitted food facility, or other approved source, and properly packaged and labeled to prevent any direct human contact with the food product prior to sale and / or consumption by the consumer.

Q4: What is non-potentially hazardous food (NPHF)?

A4: Food that does not require refrigeration or hot holding to prevent bacterial growth and is unlikely to cause food borne illness.

Q5: How do I measure 25 square feet of prepackaged non-potentially hazardous food (NPHF) to be exempt from permitting?

A5: To be exempt from permitting, the total footprint of the food display area of the CMFO must not exceed 25 square feet.

Q6: How do I get a Health Permit?

A6: Contact Merced County Environmental Health at (209) 381-1100, or you may email MobileFood@countyofmerced.com.

Q7: What kind of food can I prepare from a CMFO?

A7: A properly equipped CMFO can engage in limited food preparation as described below.

When is a Health Permit Required?

EXHIBIT 5-6

Health Permit Not Required

- 25 square feet or less of display and food storage back stock only prepackaged, nonpotentially hazardous food or uncut whole produce is offered

Health Permit Required

- More than 25 square feet of display area of any type of food is offered
- Selling any amount of potentially hazardous, open, or cut food

ORANGE COUNTY HEALTH DEPARTMENT →



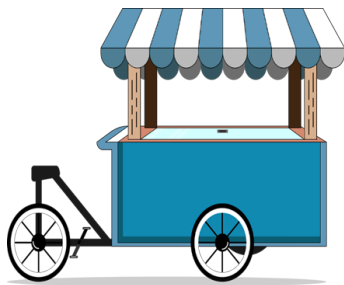
Mobile & Compact Mobile Food
Facility Operations

Note: All food must come from an approved source.



Compact Mobile Food Operation Permit Exemption

No health permit is required when selling food from a...



Cart



Stand/Rack

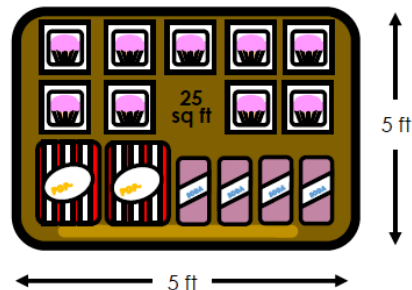


Person

AND when selling is limited to...



**Only prepackaged, labeled,
shelf stable food or whole
produce**



**25 sq. ft. or less of selling
space/display**

(Example: 5 ft x 5ft, 4x6, 3x8, etc.)

The following safety conditions must be followed...

- Food is stored and protected at least 6 inches above the ground
- Food has overhead protection
- Prepackaged, shelf stable food must be from approved sources.

Please contact your local city and county business license and permit department for approved operating locations.

For more information call (916) 875-8440 or email EMDinfo@saccounty.gov



Compact Mobile Food Operations Construction Guidelines Prepackaged Food

Adopted by

San Bernardino County Department of Public Health Environmental Health Services

INTRODUCTION:

On September 23, 2022, Senate Bill 972 (SB 972) was signed by the Governor and becomes effective January 1, 2023. This bill modifies the California Retail Food Code (CRFC) to relax some structural and operational requirements for lower risk sidewalk food vending operations. SB 972 created a new category of Mobile Food Facilities termed Compact Mobile Food Operation (CMFO).

This document provides information on the structural requirements based on the CRFC for CMFOs that handle only prepackaged foods.

EXEMPTION

CMFO REQUIREMENTS:

| REQUIREMENTS | Less than 25 sq/ft of prepackaged food/drinks or whole produce | Greater than 25 sq/ft of prepackaged non-potentially hazardous food/drinks or whole produce | Prepackaged potentially hazardous food |
|---|--|---|--|
| Health permit | No ^{1*} | Yes | Yes |
| Plan check | No | Yes | Yes |
| Hand sink | No | No | No |
| Mechanical refrigeration | No | No | Yes ^{2*} |
| CFO B allowed as a commissary ^{3*} | N/A | Yes | No |
| Approved CMFO storage locations other than permitted commissaries ^{4*} | N/A | Yes | Yes |

1* If no plan check/health permit is required, please check with San Bernardino County Environmental Health Services to determine if other permits are required.

2* Mechanical refrigeration not required if handling only prepackaged ready-to-eat foods (such as ice cream).

3* Cottage Food Operation only permitted to be used as commissary for prepackaged, non-potentially hazardous food.

4* Contact San Bernardino County Environmental Health Services office for more information on other approved storage locations for CMFOs.



County of San Diego
 DEPARTMENT OF ENVIRONMENTAL HEALTH & QUALITY
 FOOD AND HOUSING DIVISION
 5500 Overland Ave. San Diego, CA 92123 | (858) 505-6900



EXHIBIT 5-9

Effective January 1, 2023, the California Retail Food Code (CRFC) was amended to promote economic inclusion while modernizing the CRFC so that sidewalk food vendors can obtain a permit and join the regulated vending economy. The law established a new definition for Compact Mobile Food Operations (CMFO) and criterion for permitting. Below are frequently asked questions about these changes.

A CMFO is a mobile food facility that operates from an individual or from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized unenclosed conveyance that can be approved to sell packaged food or conduct limited food preparation.

Exemption



Yes, a permit is required, unless your compact mobile food operation has 25 square feet or less of display area and sells only prepackaged, nonpotentially hazardous (non-perishable) foods or whole uncooked produce, then the operation is exempt from permitting requirements.

To be exempt from permitting, the total amount of display and non-displayed food inventory must not exceed 25 sq feet measurement. The footprint is limited to no greater than 5 feet x 5 feet.

Prepackaged food is food that has been processed by a manufacturer, a food facility, or other approved source, and is properly labeled and sealed to prevent any direct human contact with the food prior to sale.

Non-potentially hazardous food does not require refrigeration or hot holding to prevent bacterial growth and is unlikely to cause food borne illness. Some examples include cut mango, cut cucumbers, cut jicama, pretzels, and churros.

?

A CMFO can conduct limited food preparation when the equipment to support the proposed menu is approved by the Department of Environmental Health and Quality (DEHQ).

Limited food preparation is food preparation that is restricted to the following, based on the CMFO's ability to support safe preparation and food storage based on the proposed menu:

1. Dispensing and portioning of nonpotentially hazardous food (nonPHF) or dispensing and portioning for immediate service to a customer of food that has been held at the required temperatures.
2. Slicing and chopping of nonPHF food or produce that has been washed at an approved facility.



Compact Mobile Food Operations Construction Guidelines Prepackaged Non-Potentially Hazardous Food (Non-PHF)

INTRODUCTION:

On September 23, 2022, Senate Bill 972 (SB 972) was signed by the Governor and becomes effective January 1, 2023. This bill modifies the California Retail Food Code (CRFC) to relax some structural and operational requirements for lower risk sidewalk food vending operations. SB 972 created a new category of Mobile Food Facilities termed Compact Mobile Food Operation (CMFO).

This document provides information on the structural requirements based on the CRFC for CMFO's that handle only prepackaged foods.

CMFO REQUIREMENTS:

Exemption: no health permit required under 25 sq ft.

| REQUIREMENTS | Less than 25 sq/ft of prepackaged food/drinks or whole produce | Greater than 25 sq/ft of prepackaged non-potentially hazardous food/drinks or whole produce | Prepackaged potentially hazardous food |
|---|--|---|--|
| Health Permit | No ^{1*} | Yes | Yes |
| Plan Check | No | Yes | Yes |
| Hand sink | No | No | No |
| Mechanical refrigeration | No | No | Yes ^{2*} |
| CFO B allowed as a commissary ^{3*} | N/A | Yes | No |
| Approved CMFO storage locations other than permitted commissaries ^{4*} | N/A | Yes | Yes |
| CMFO Example | See figure A on page 3 | See figure B on page 3 | See figure D on page 3 |

^{1*} If no plan check/health permit is required, please check with your local city jurisdiction to determine if other permits are required.

^{2*} Mechanical refrigeration not required if handling only prepackaged ready-to-eat foods (such as ice cream).

^{3*} Cottage Food Operation only permitted to be used as commissary for prepackaged, non-potentially hazardous food.

^{4*} Contact your local environmental health office for more information on other approved storage locations for CMFOs



CMFO REQUIREMENTS

| REQUIREMENTS | Less than 25 sq/ft of prepackaged, non-potentially hazardous food/drinks or whole produce | Greater than 25 sq/ft of prepackaged non-potentially hazardous food/drinks or whole produce | Prepackaged potentially hazardous food |
|--|---|---|--|
| Health Permit | No | Yes | Yes |
| Plan Check | No | Yes | Yes |
| Hand sink | No | No | No |
| Mechanical refrigeration | No | No | Yes ^{2*} |
| MEHKO allowed as commissary ^{3*} | N/A | N/A | N/A |
| CFO B allowed as a commissary ^{4*} | N/A | Yes | No |
| Approved CMFO storage locations other than permitted commissaries ⁵ | N/A | Yes | Yes |

FIGURE A



MENU EXAMPLES:
Whole Uncut Produce
Prepackaged Chips
Prepackaged Candies
Prepackaged Soda
Prepackaged Popsicles

PREPACKAGED – NON PHF / WHOLE UNCUT PRODUCE

LESS THAN 25 sq/ft OF RETAIL
NO PERMIT REQUIRED

FIGURE B



MENU EXAMPLES:
Whole Uncut Produce
Prepackaged Chips
Prepackaged Candies
Prepackaged Soda

PREPACKAGED – NON PHF / WHOLE UNCUT PRODUCE

GREATER THAN 25 sq/ft OF RETAIL
PLAN SUBMITTAL & PERMIT REQUIRED



COUNTY of SANTA BARBARA PUBLIC HEALTH

EXHIBIT 5-12

Mobile Food & Commissaries

Permitted Vehicles and Food Carts

Santa Barbara County approved vehicles and food carts will have a decal on their mobile food vehicle or on the side of a permitted food cart reflecting the Month and Year of Expiration. A health permit is not required if selling less than 25 square feet of prepackaged (and labeled), non-potentially hazardous food (e.g. whole uncut produce or prepackaged chips, sodas, popsicles, or candies).

Vehicle Permit Renewals

It is the owner's responsibility to maintain a valid Santa Barbara County health permit on their vehicle/cart or notify this Agency in writing at the time of any change in ownership, sale of the vehicle, or if the vehicle stops operation in Santa Barbara County.

Vehicles operating without a valid permit are subject to closure.

Vehicles with permits that have lapsed for 60 days or more will need to meet current California Retail Food Code requirements, which may involve upgrades and plan submittal before a new permit is issued. For more information call 805-681-4900.

Definitions

- **Mobile Food Facility (MFF)** - any vehicle upon which food is sold or distributed at retail. Mobile Food facilities are permitted.
- **Mobile Support Unit (MSU)** refers to a vehicle, used in conjunction with a commissary, that travels to, and services mobile food facilities as needed to replenish supplies, including food and potable water, clean the interior of the unit, or dispose of liquid or solid wastes.
- **NEW Compact Mobile Food Operation (Food Cart)** – a mobile food facility where food is sold from a pushcart, other non-motorized sidewalk vending cart, or temporary stand.
- **Commissary** - a food facility in which food, equipment, and/or supplies are stored or handled, food is prepared or prepackaged for sale or service at other locations, utensils are cleaned, liquid or solid wastes are disposed of, and potable water is obtained for used in MFFs.
- **Mobile Food Facility Schedule of Stops** - Provides information to EHS as to the location and times of individual Mobile Food Facility operation. Failure to notify EHS of any changes may result in the suspension or revocation of your Health Permit to operate as a Mobile Food Facility.



County of Santa Clara

Consumer Protection Division

Unpermitted Food Vending in Santa Clara County

Santa Clara County Department of Environmental Health (DEH) works to safeguard public health and ensure food provided to consumers is safe, unadulterated, and honestly presented, by regulating the food sold or distributed to the public.

Vendors who sell/peddle ONLY prepackaged non-potentially hazardous foods and whole, uncut produce at a display less than 25 square feet are exempt from obtaining a permit to operate from the Department of Environmental Health.

 **Exemption**

What are some health concerns associated with unpermitted potentially hazardous food sales?

- Poor personal hygiene
- No handwashing on site
- Don't know where the food was purchased
- Food is not kept hot and left out all day
- Food may be prepared in a dirty home kitchen, in the garage, in a backyard, or outside Food stored or prepared on the floor and on unclean surfaces
- No food safety training to people who handle the food
- Food is undercooked
- No refrigerators to keep food cold
- Unsafe cooking equipment



Compact Mobile Food Construction Guidelines Prepackaged Food

INTRODUCTION:

On September 23, 2022, Senate Bill 972 (SB 972) was signed by the Governor and becomes effective January 1, 2023. This bill modifies the California Retail Food Code (CRFC) to relax some structural and operational requirements for lower risk sidewalk food vending operations. SB 972 created a new category of Mobile Food Facilities termed Compact Mobile Food Operation (CMFO).

Compact Mobile Food Operation (CMFO) means an unenclosed mobile food facility that operates from an individual or from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance.

CMFO REQUIREMENTS:

Exempt under 25 sq. ft.

| REQUIREMENTS | Less than 25 sq/ft of prepackaged food/drinks or whole produce | Greater than 25 sq/ft of prepackaged non-potentially hazardous food/drinks or whole produce | Prepackaged potentially hazardous food |
|---|--|---|--|
| Health Permit | No ^{1*} | Yes | Yes |
| Plan Check | No | Yes | Yes |
| Hand sink | No | No | No |
| Mechanical refrigeration | No | No | Yes ^{2*} |
| MEHKO allowed as commissary ^{3*} | N/A | Yes | Yes |
| CFO B allowed as a commissary ^{4*} | N/A | Yes | No |
| Approved CMFO storage locations other than permitted commissaries ^{4*} | N/A | Yes | Yes |
| CMFO Example | See figure A on page 3 | See figure B on page 3 | See figure D on page 3 |

Compact Mobile Food Operations

On September 23, 2022, Governor Newsom signed SB 972, a bill that modifies the California Retail Food Code (CRFC) and allows some sidewalk food vendors to obtain public health permits. The new law established a new retail food facility, among other changes, and is effective on **January 1, 2023.**

Compact Mobile Food Operation (CMFO) in section 113831 of the CRFC is defined as a "mobile food facility that operates from an individual or from a push cart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance."

A CMFO may have non-prepackaged food and conduct limited food preparation with potentially hazardous foods and non-potentially hazardous foods. Examples of menu items that easily fit within limited food preparation include but are not limited to: hot dogs, shaved ice, roasted nuts, popcorn, churros, fruit cups, precooked corn, and tamales. The menu that can be prepared from a CMFO depends on the equipment present on the CMFO.

Before operation begins, a CMFO will need the following:

- Health permit required.
- Commissary which can either be a permitted food facility or a permitted Cottage Food Operation (CFO) Class B. A CFO can serve as a commissary for a maximum of 2 CMFO's with endorsement from Environmental Health.
- Handwashing is required if there is handling of open food on the CMFO.
- Warewashing is required if there is handling of raw meats, raw poultry, or raw fish on the CMFO.
- Mechanical refrigeration is required for cold holding potentially hazardous foods at or below 41°F. Hot-holding unit is required for hot holding potentially hazardous foods at or above 135°F.
- Food handler cards required.
- Potentially hazardous food prepared at an approved facility and served from a CMFO shall be destroyed at the end of the operating day.
- Restroom access if parked at one location for more than 1 hour.
- Routine inspection conducted annually.

Exempt



Exemptions: A health permit and an inspection does not apply for CMFOs that have less than 25 square feet of display space AND sell only non-potentially hazardous prepackaged food or whole uncooked produce.

For more information, please contact Sonoma County Environmental Health at (707) 565- 6565 or visit us at: <https://sonomacounty.ca.gov/Health/Environmental-Health-and-Safety/>

Sometimes a pretzel is sculpture

By Donald Canter
Urban Affairs Writer

For the sake of satisfying the letter of the law, pretzels will be forthwith classified in San Francisco as baked sculptures.

The Board of Permit Appeals yesterday made that historic ruling, to prevent police from putting two young enterprising pretzel vendors out of business.

With the help of some sympathetic police officers, the duo, Darryl Cohen and Stanley Roth, received a permit for selling pretzels within days after San Francisco voters passed Proposition J last June.

That measure gives street artists the right to sell their wares on the public streets, provided they submit an affidavit stating a description of their merchandise and a declaration that it is fabricated by the artists themselves.

As Cohen and Roth tell it, some police officers, knowing well about the pretzels, accepted their street artists' application listing them as baked sculptures.

Because they buy them from bakeries as pretzel-shaped dough but do their own baking, they saw nothing wrong with declaring that their baked sculptures were the products of their own handiwork.

"To me, there is very little difference between baking pretzels out of dough and artists who buy a piece of leather, punch a few holes in it and sell it as a belt," said Roth.

The police originally granted him and his partner, both former college stu-



dents, permits.

Later, police sent them a letter saying the permit was not valid, unless the health department sanctioned their pretzel operation.

But when the health department did just that, the police revoked their license on the basis of an informal opinion by the city attorney's office that the street artists ordinance did not relate to food.

Said permit reviewer Peter Boudoures:

"You look like clean young people to me and willing to work. I'm sympathetic to you. In view of the fact that you've been given the merry-go-round I consider you a hardship case. I wish you good luck."

By a vote of 4 to 1, the pretzel, thus was officially designated a baked sculpture.

John O'Meara, the retired banker who recently cast the swing vote that allowed McDonald's to open a non-union hamburger palace on Mission Street, cast the dissenting vote.



EXHIBIT 8

Legacy Business Registry Official Certification

On the recommendation of the Office of Small Business and the Historic Preservation Commission,
the San Francisco Small Business Commission hereby attests that

SF Carts and Concessions, Inc.

is a certified Legacy Business with the City and County of San Francisco and has met the application criteria established by Section 2A.242 of the San Francisco Administrative Code for the Legacy Business Registry. The Legacy Business Program acknowledges that longstanding, community-serving establishments are valuable cultural assets and the "soul of the city," and their preservation is critical to maintaining the unique character of San Francisco.

Business Start Date: **May 25, 1974**
Date Placed on Registry: **April 25, 2022**
Resolution #: **008-22-LBR**

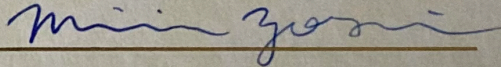
 4/25/22
President, San Francisco Small Business Commission Date



EXHIBIT 9

EXHIBIT 10

Cushing, Stephanie (DPH) <Stephanie...> December 4, 2019 at 3:02 PM



RE: Illegal Hot Dog Carts

To: SRoth@SFCarts.com <SRoth@SFCarts.com>



Dear Stan: I will make my staff aware of these illegal food carts. I think that that last time that we tried to engage the PD with us, they said "no". My staff have been threatened by the illegal operators.

I will follow up with my public information officer to find out where our "Protect your Health" campaign is. We ask that the public look for the permit diamond before purchasing.

I am sorry that this happened to you. It certainly is a new world.

Stephanie

From: SRoth@SFCarts.com <SRoth@SFCarts.com>

Sent: Wednesday, December 04, 2019 11:57 AM

To: Cushing, Stephanie (DPH) <Stephanie.Cushing@sfdph.org>

Subject: Illegal Hot Dog Carts

EXHIBIT 11

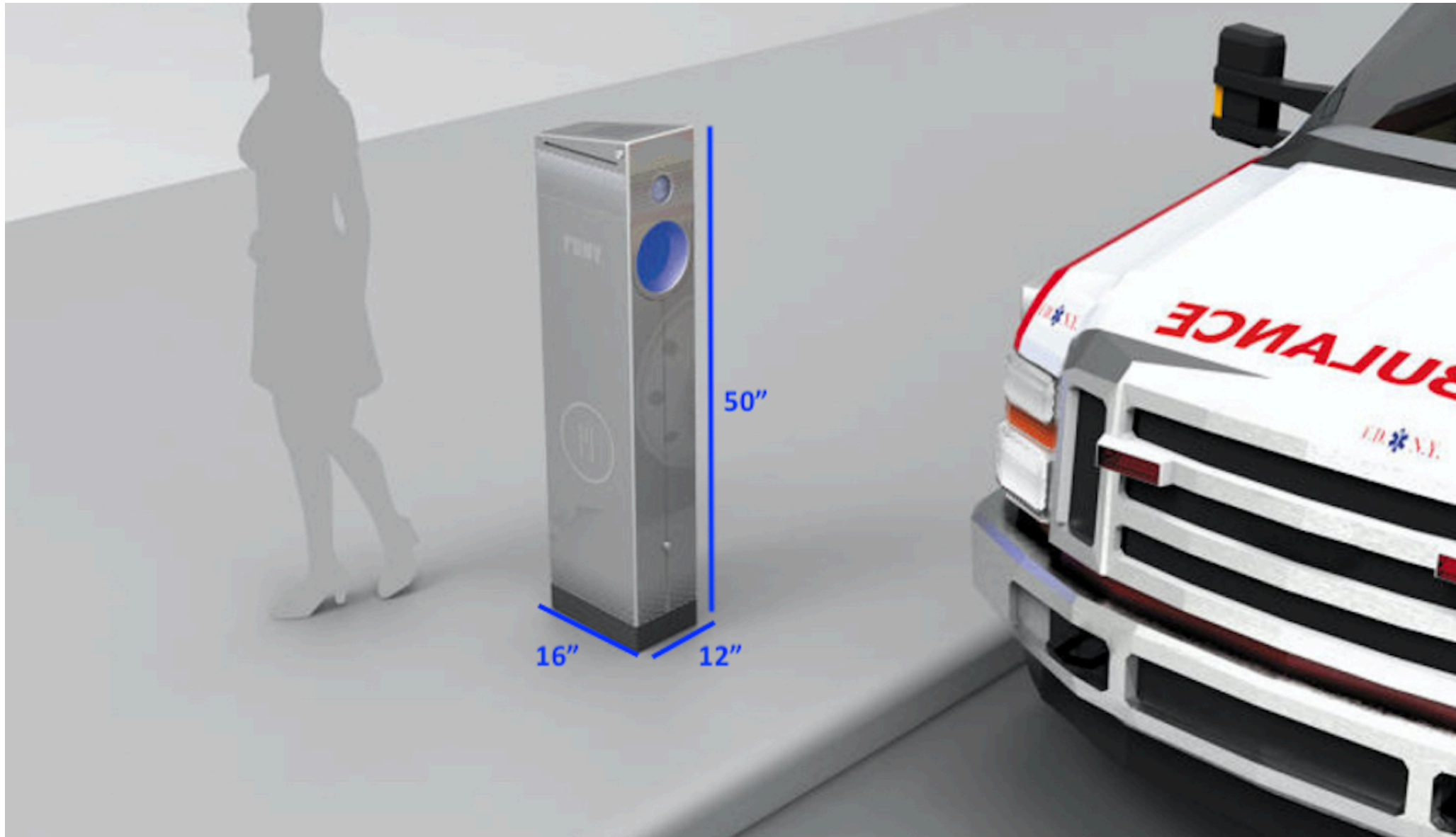




EXHIBIT 12



EXHIBIT 13

UNION SQUARE
BUSINESS IMPROVEMENT
DISTRICT

Stanley Roth
San Francisco Carts and Concessions
333 Post Street
San Francisco, CA 94108

July 29, 2020

Dear Mr. Roth,

The Union Square Business Improvement District is highly supportive of your efforts to gain access to the City's power and water at the existing food/coffee cart locations of Post and Stockton, Stockton and Geary and at Macy's front entrance . The City providing power and water at your permitted locations will allow you to provide the Union Square area with fresh, high-quality foods and coffee and espresso drinks from contemporary and well-designed carts that match the upscale character of the district.

By upgrading your current infrastructure from generator power and coolers to your proposed power source provided by the City and refrigeration units, the other Union Square merchants adjacent to your carts would have less noise, less fumes, less greenhouse gases, less sidewalk clutter, a more attractive cart as their neighbor, and higher quality food with which to attract pedestrians to their doorsteps. Furthermore, this would allow Union Square to set the example of activating its outdoor space with beautiful food carts that enhance the neighborhood and operate as 100% green businesses.

We are confident that the City providing your carts with access to power and water will very positively impact your small, locally owned business, the other businesses around the Square, and the public realm experience for all in Union Square.

Sincerely,

Karin Flood

UNION SQUARE BUSINESS IMPROVEMENT DISTRICT

323 GEARY STREET, SUITE 203 SAN FRANCISCO, CA 94102
TEL(415)781-7880 FAX(415)781-0258 VISITUNIONSQUARESF.COM

Exhibit 14
Major Encroachment Permit

From: bsmpermits@sfdpw.org

Subject: Charge for Permit 21ME-00017 (251 GEARY ST)

Date: December 2, 2021 at 4:45 PM **To:** stanleyroth@gmail.com

Dear San Francisco Carts & Concessions, Inc. DBA Stanley's Steamers Hot Dogs,

Below is the invoice for permit number 21ME-00017 (251 GEARY ST) for the amount of \$5,273.00. Please click on the link below to make payment via Link2Gov (Visa, Mastercard, American Express and Discover).

DPW Permit #:21ME-00017

Amount Due: \$5,273.00 ← **\$5,273 per location**

Invoice #:339518 Customer ID:49902

Pay Invoice Now: [Click Here](#)

View or save invoice as a PDF, [Click Here](#)

View or save draft copy of this permit, [Click Here](#)

Please do not respond to this email. It has been sent from an unmonitored mailbox. If you have questions, please contact Kathy Liu at or email Kathy.Liu@sfdpw.org

To manage your distribution list, use this link:

[Manage List](#)

LEGISLATIVE DIGEST

[Public Works Code - Minor Encroachment Permits for Legacy Pushcart Peddlers]

Ordinance amending the Public Works Code to create the Legacy Pushcart Peddler designation, provide that utility access in the public right-of-way for Legacy Pushcart Peddlers is a minor encroachment, and clarify the revocation and restoration requirements for all minor encroachment permits; and affirming the Planning Department's determination under the California Environmental Quality Act.

Existing Law

The Office of Small Business maintains a registry of Legacy Businesses in San Francisco, comprised of longstanding, community-serving businesses. (Administrative Code Section 2A.242(a).) The criteria to qualify as a Legacy Business are set forth in Administrative Code Section 2A.242. This ordinance does not amend or alter any of the criteria or other requirements that govern the Legacy Business Registry.

Pushcart Peddlers are regulated under Article 5.8 of the Public Works Code (Section 184.80 et seq.). A Pushcart is defined as “[a]ny wagon, cart, or any other food-serving device, whether stationary or movable, wherein or wherefrom any food or foodstuffs are sold, served, distributed, offered for sale at retail, or given away to the public, whether consumed at said pushcart or elsewhere.” (Public Works Code Section 184.80.) A Pushcart Peddler is defined as “[a]ny person or entity engaged in the business of operating a pushcart within the City and County of San Francisco.” (*Id.*) Pushcart Peddlers who operate on public right-of-way under the jurisdiction of the Department of Public Works (“Public Works”) must obtain a permit from Public Works. (*Id.*, § 184.81.)

Currently, the Director of Public Works may grant permission to a property owner abutting any court, alley or street to install and maintain minor encroachments such as fences, retaining walls, steps or stairways and other minor structures in the sidewalk fronting such property. (Public Works Code Section 723.2(a).) Public Works Code Section 723.2 sets forth the process for obtaining a minor encroachment permit and the associated fees and assessments. Encroachments into the public right-of-way by non-fronting property owners are governed by the major encroachment permit process set forth in Public Works Code Section 786.

Amendments to Current Law

This ordinance would amend Public Works Code Section 184.80 to define a Legacy Pushcart Peddler as “[a]ny Pushcart Peddler that has been added to the City’s Legacy Business Registry pursuant to Administrative Code Section 2A.242, as amended from time to time.”

EXHIBIT 15-2

This ordinance would amend Public Works Code Section 723.2 to provide that minor encroachment permits include encroachments that are necessary for a Legacy Pushcart Peddler to obtain water or electric utility service, in any court, alley, or street, where such encroachments satisfy criteria established by the Director and the City Engineer. These encroachments include flush-mounted fixtures, pushcarts, or other pushcart components and infrastructure that must be hardwired to the fixture on a 24-hour basis. Prior to obtaining a minor encroachment permit, the Legacy Pushcart Peddler must obtain approval to access water or electric utility service from the applicable authorities. This ordinance would also waive the public right-of-way occupancy assessment fee for these Legacy Pushcart Peddler encroachments.

Additionally, this ordinance would amend Public Works Code Section 723.2 to clarify the existing procedure for the granting, revocation, and restoration obligations for all types of minor encroachment permits.

Finally, this ordinance would amend Public Works Code Section 786 to provide that Legacy Pushcart Peddler encroachments are governed by Section 723.2.

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BRIEF(S) SUBMITTED BY RESPONDENT DEPARTMENT(S)

March 28, 2024

President Jose Lopez
Vice President Alex Lemberg
Commissioner J.R. Eppler
Commissioner Rick Swig
Commissioner John Trasviña

City and County of San Francisco
Board of Appeals
49 South Van Ness, Suite 1475
San Francisco, CA 94103

Subject: Respondent's Brief (Appeal No. 24-009)

Dear President Lopez, Vice President Lemberg, and Commissioners Eppler, Swig, and Trasviña:

The Department of Public Works submits this respondent's brief for Appeal No. 24-009.

Introduction

The appeal before you is more straightforward than it appears initially. Appellant wishes to sell prepackaged bottled water using pushcarts placed on sidewalks. Appellant may do so as soon as Appellant applies for obtains the appropriate permits. Today, Appellant may apply for such permits without any action of the Board of Appeals. Therefore, the Board of Appeals should uphold the Department of Public Works' ("DPW") decision not to renew Appellant's expired permits, which covered the sale of assorted beverages and foods, including hot dogs.

Appellant challenges DPW's nonrenewal of Mobile Food Facility Permit Nos. 22MFF-00039, 22MFF-00040, 22MFF-00041, and 22MFF-00042 (the "Permits"), which expired on November 15, 2023. DPW had issued the Permits to San Francisco Carts and Concessions, Inc. DBA Stanley's Steamers Hot Dogs ("Appellant") pursuant to Article 5.8 of the Public Works Code (the "Mobile Foods Ordinance"), and DPW declined to renew the Permits due to Appellant's noncompliance with the requirements of the Public Works Code.

Appellant no longer intends to sell its eponymous hot dogs; rather, Appellant intends to sell only prepackaged bottled water. (Appellant’s brief at 1, 6.) On this basis, Appellant would be required to comply with Article 5.9 of the Public Works Code (the “Vending Ordinance,” attached as Exhibit 1), which regulates the sale of “[a]ny pre-packaged food, foodstuffs, confectionary, condiment, or beverage for human consumption that a Vendor is reselling in its original packaging.” (S.F. Public Works Code Sec. 5.9-2.) Appellant may apply for a permit issued under the Vending Ordinance at any time irrespective of this appeal.

Factual Background

Appellant contests DPW’s decision not to renew the Permits. DPW had issued the Permits in November 2022 under the Mobile Foods Ordinance based on Appellant’s plan to sell “[h]ot dogs, condiments, soft pretzels, soft drinks, coffee, cold beverages, pastries, bakery goods, cookies, ice cream, candy, soups, churros, chestnuts, nuts, fresh fruit, fruit juices, desserts, potato chips and popcorn.” (See, e.g., Mobile Food Facility Permit No. 22MFF-00039, attached as Exhibit 2.)

Historically, both the expiration and the renewal of Mobile Food Facilities permits take place in November. The permit renewal process requires the permittee to provide DPW with updated permit information including updated Department of Motor Vehicles credentials, if the permittee requires a DMV credential to operate; an updated certificate of insurance; and evidence that the permittee obtained an annual Certificate of Sanitation and Fire Marshal approval. (See S.F. Pub. Works Code Sec. 184.91.)

Here, Appellant sought to renew the Permits in November of 2021 without providing the annual Certificate of Sanitation and Fire Marshal approval. At that time, Stanley Roth, Appellant’s President, stated that Appellant would cease the sale of all menu items that required

preparation with the use of gas and flames, including hot dogs and Appellant's other typical menu items.

Along with many other challenges brought about by the COVID-19 pandemic, the pandemic rendered it difficult for many Mobile Food Facility Vendors to schedule inspections by the Department of Public Health and the Fire Department that were necessary to obtain their annual Certificate of Sanitation and Fire Marshal approval. In addition, shelter-in-place policies affected some Mobile Food Facility Vendors' ability to operate. (See, e.g., San Francisco Department of Public Health, Order of the Health Officer No. C19-07, attached as Exhibit 3.)

In November 2021 after consulting with the Department of Public Health and the Fire Department and verifying that the departments were not performing the inspections required for the issuance of the annual Certificate of Sanitation and Fire Marshal approval pursuant to Public Works Code Section 184.91, DPW temporarily deferred the annual Certificate of Sanitation and Fire Marshal approval requirement and allowed Mobile Facility Food Vendors to renew their permits without first obtaining the annual Certificate of Sanitation and Fire Marshal approval.

Appellant sought and obtained renewal of the Permits in November 2022; once again, DPW temporarily deferred the annual Certificate of Sanitation and Fire Marshal approval requirement and allowed Mobile Facility Food Vendors to renew their permits without first obtaining the annual Certificate of Sanitation and Fire Marshal approval. Even so, Appellant's website indicated Appellant was "temporarily closed and working on reopening soon" as of August 20, 2022. (Internet Archive of San Francisco Carts and Concessions Home Page, SFCarts.com, on August 20, 2022, <https://web.archive.org/web/20220820044922/https://sf carts.com/> (last visited March 26, 2024), attached as Exhibit 4.) As of February 22, 2023, Appellant's website indicate Appellant had

“discontinued its San Francisco Cart operations.” (Internet Archive of San Francisco Carts and Concessions Home Page, SFCarts.com, on February 23, 2023, <https://web.archive.org/web/20230223153919/https://sfcarts.com/> (last visited March 26, 2024), attached as Exhibit 5.) While DPW never sought to revoke the Permits, it appears the Permits could have been subject to revocation of the Permits due to Appellant’s inactivity in excess of six months. (S.F. Pub. Works Code Sec. 184.97(a)(6) (“The Director may suspend or revoke for good cause any permit or any permit Location, which has been issued pursuant to this Article, if ... such permit holder has engaged in or been found guilty of any of the following acts: ... The Mobile Food Facility has not operated in the permitted Location for a period of six (6) months or more.”), attached as Exhibit 6.)

In February 2023, the State of California and the City and County of San Francisco ended the pandemic-related emergency declarations. (City and County of San Francisco, Department of Public Health, Health Officer Order, February 28, 2023 (“February 2023 Health Order”), attached as Exhibit 7 at 1 (“Based on local, state, and national conditions, COVID-19 data and indicators, and the evolving scientific understanding of the risks posed by COVID-19, the Health Officer has determined it is now appropriate to rescind the local health orders and directives ... relating to COVID-19.”).) Thereafter, in June 2023, Appellant sought to renew the Permits and claimed that Appellant did not need to comply with the annual Certificate of Sanitation and Fire Marshal approval requirements due to the passage of Senate Bill 972 (approved by Governor Newsom on September 23, 2022 and effective January 1, 2023). DPW disagreed and indicated the Permits would not be renewed without the accompanying annual Certificate of Sanitation and Fire Marshal approval. The Permits expired in November 2023 and Appellant filed this appeal in January 2024.

ARGUMENT

DPW properly denied Appellant's permit renewal request because Appellant was not eligible to obtain a Mobile Food Facilities permit. Since Appellant no longer proposes to engage in vending as a Mobile Food Facility Vendor, as defined in the Mobile Foods Ordinance. Instead, Appellant's proposal to resell prepackaged bottled water appears to be eligible for a permit under the Vending Ordinance. However, Appellant has not elected to apply for a permit under the Vending Ordinance.

The arguments in Appellant's brief do not support the overturning of DPW's nonrenewal of the Permits. While DPW acknowledges that Senate Bill 972 includes a conditional exemption for compact mobile food operation with 25 square feet or less of display area from certain aspects of the Retail Food Code and "[s]ome food items legally sold from carts under California law do not require having either a Health permit or a Fire permit" (Appellant's Brief at 1), DPW would determine the applicability of the Senate Bill 972 exemption based on each permit application. Notably, Senate Bill 792 requires food facilities to "be approved by the [local] enforcement agency ... in accordance with all applicable local, state, and federal statutes, regulations, and ordinances" (Cal. Health & Safety Code Sec. 113715.) Upon further review of the applicable Health and Safety Code provisions, DPW has determined that the renewal of the Permits was not predicated on compliance with the annual Certificate of Sanitation and Fire Marshal approval requirements of Article 5.8. Even so, DPW's nonrenewal of the Permits was proper because the Permits were the incorrect permits for the Appellant's proposed reselling of prepackaged bottled water.

Appellant states correctly that in 2021, prior to the approval of Senate Bill 972, DPW allowed Appellant to defer compliance with the annual Certificate of Sanitation and Fire Marshal

approval requirements of Article 5.8, but DPW did not waive compliance with such requirements. Rather, DPW allowed Appellant to defer compliance with the annual Certificate of Sanitation and Fire Marshal approval requirements temporarily, due to the limited availability of Department of Public Health and Fire Department inspections during the COVID-19 pandemic.

Since DPW properly declined to renew the Permits and Appellant is not prevented from applying for the appropriate permit pursuant to the Vending Ordinance, the Board of Appeals should deny this appeal.

A. THE VENDING ORDINANCE (PUBLIC WORKS CODE ARTICLE 5.9), NOT THE MOBILE FOODS ORDINANCE (PUBLIC WORKS CODE ARTICLE 5.8), REGULATES APPELLANT’S PROPOSED VENDING ACTIVITIES.

Appellant proposes to sell only prepackaged bottled water. (Appellant’s Brief at 1, 6.) In San Francisco, the Mobile Food Ordinance regulates all Mobile Food Facilities, which include “[a]ny vehicle or pushcart used in conjunction with a commissary or other permanent food facility upon which food is sold or distributed at retail.” (S.F. Pub. Works Code Sec. 184.80.) Notably, a Mobile Food Facility “does not include any use that sells goods, wares, or merchandise other than food or drink intended for human consumption, *or a Vendor holding a valid permit pursuant to Article 5.9-1 who sells pre-packaged food, foodstuffs, confectionary, condiment, or beverage for human consumption that is being resold in its original packaging.*” (*Id.* (emphasis added).) The Permits at issue in this appeal were issued under the Mobile Foods Ordinance. However, Appellant’s sale of prepackaged bottled water would require Appellant to obtain a permit under the Vending Ordinance. (See generally S.F. Pub. Works Code, Art. 5.9.) The Vending Ordinance regulates the sale of “[a]ny pre-packaged food, foodstuffs, confectionary, condiment, or beverage for human consumption that a Vendor is reselling in its

original packaging” on sidewalks and other public right-of-way. (S.F. Pub. Works Code Sec. 5.9-2.)

B. SENATE BILL 972 DID NOT FULLY EXEMPT VENDORS FROM COMPLYING WITH THE RETAIL FOOD CODE AND OTHER LOCAL, STATE, AND FEDERAL STATUTES, REGULATIONS, AND ORDINANCES.

Senate Bill 972 includes a conditional exemption of “[a]ny compact mobile food operation with 25 square feet or less of display area” from certain aspects of the Retail Food Code, however, such compact mobile food operations must comply with Chapter 1 of California Retail Food Code (“General Provisions”) and other sections of the Retail Food Code, which require food facilities to “be approved by the [local] enforcement agency ... in accordance with all applicable local, state, and federal statutes, regulations, and ordinances.” (See Cal. Health & Safety Code Sec. 113715; *Cal. Grocers Ass’n v. City of Los Angeles*, 52 Cal.4th 177, 191 (2011) (“The Retail Food Code does not preempt all laws that have as their purpose the promotion of food health and safety; it preempts only those that establish ‘health and sanitation standards’ for retail food establishments, so as to ensure uniformity for such facilities.”). Even so, provided that the bottled water Appellant intends to sell is prepackaged and resold as prepackaged bottled water, Appellant is correct that Senate Bill 972 “[e]xempted” the sale of bottled water from “[n]eeding [a]ny” health permit when the bottled water is sold from a pushcart of 25 square feet or less. (See Appellant’s Brief at 3.) If an applicant seeks a permit under the Mobile Foods Ordinance, barring any extenuating circumstances such as a pandemic, the applicant would have to “obtain an annual Certificate of Sanitation and Fire Marshal approval on or before the annual renewal of the Mobile Food Facility permit for the Location(s) of said Mobile Food Facility as specified in said permit.” (S.F. Pub. Works Code Sec. 184.91.) Indeed, “[f]ailure to appear for the annual renewal as described above shall be deemed a violation of this Article and may be cause for suspension or revocation of said permit.” (*Id.*)

C. PUBLIC WORKS' TEMPORARY DECISION TO ALLOW APPELLANT TO DEFER COMPLIANCE WITH THE ANNUAL CERTIFICATE OF SANITATION AND FIRE MARSHAL REQUIREMENTS DURING THE COVID-19 PANDEMIC DID NOT EXEMPT APPELLANT FROM COMPLYING WITH THESE REQUIREMENTS PRIOR TO THE PASSAGE OF SENATE BILL 972.

Prior to the passage of Senate Bill 972, DPW temporarily allowed Appellant and other Article 5.8 permit applicants to defer compliance with the annual Certificate of Sanitation and Fire Marshal approval requirements and allowed such Vendors to renew their permits without the annual Certificate of Sanitation and Fire Marshal approval. DPW's decision to do so was a temporary accommodation necessitated by the COVID-19 pandemic. Rather than requiring Appellant to satisfy the requirements prior to the issuance of the Permits, the Permit allowed the Appellant to defer its satisfaction of the annual Certificate of Sanitation and Fire Marshal approval requirements until after the issuance of the Permit. In an effort to accommodate Appellant and in consideration of the potentially unpredictable timing of when the department of Public Health and/or the Fire Department would be able to inspect Appellant's business operations, DPW issued the Permits subject to the following condition:

Permittee understands that in lieu of required documentation from the Fire Marshal being provided as part of their renewal application, as is required by Section 184.83(d)(2) of the Public Works Code, the permittee shall not engage in operational activity regulated by Fire Code unless applicable San Francisco Fire Department permits are later granted to the permittee for such activity. The permittee may only vend under this permit operating under activity not regulated by Fire Code until applicable approvals from the Fire Marshal are later obtained subject to Section 184.81 of the Public Works Code and applicable sections of San Francisco Fire Code.

(Exhibit 2.)

Without waiving the annual Certificate of Sanitation and Fire Marshal approval requirements, the preceding condition provided Appellant with additional flexibility for complying with the requirements. Following the issuance of the February 2023 Health Order, DPW has resumed requiring applicants seeking Article 5.8 permits to comply with the annual Certificate of Sanitation and Fire Marshal approval requirements prior to the issuance of an Article 5.8 permit, subject to the Senate Bill 972 exemption, if applicable.

CONCLUSION

DPW's decision not to renew the Permits should be upheld. Since Appellant intends to resell prepackaged bottled water and no longer intends to sell hot dogs, Appellant would need to obtain a permit issued pursuant to the Vending Ordinance, not the Mobile Foods Ordinance.

DPW is available and prepared to assist Appellant as Appellant considers its next steps.

EXHIBIT 1

Vending Ordinance

(Public Works Code, Article 5.9)

ARTICLE 5.9:

PERMIT REGULATIONS FOR VENDORS

- Sec. 5.9-1. General Background and Findings.
- Sec. 5.9-2. Definitions.
- Sec. 5.9-3. Permit Required; Mandatory Display; Proof of Purchase.
- Sec. 5.9-4. Vendor Permit Type.
- Sec. 5.9-5. Permit Application; Fee.
- Sec. 5.9-6. Vending Restrictions.
- Sec. 5.9-7. Exemptions.
- Sec. 5.9-8. Delegation of Authority for Rulemaking.
- Sec. 5.9-9. Good Neighbor Policies.
- Sec. 5.9-10. Outreach and Education.
- Sec. 5.9-11. Enforcement.
- Sec. 5.9-12. Reporting Required.
- Sec. 5.9-13. Undertaking for the General Welfare.
- Sec. 5.9-14. Severability.

SEC. 5.9-1. GENERAL BACKGROUND AND FINDINGS.

(a) The City and County of San Francisco (“City”) is committed to supporting the growth of City jobs and providing space for new and expanding businesses, while maintaining public health, safety, and welfare.

(b) United Nations Plaza (“UN Plaza”) is a 1.66-acre public square that is a key entrance point to the City’s busy Civic Center. UN Plaza has longstanding public safety, health, and welfare challenges due in part to unregulated vending and criminal activity in the area. Unregulated vending contributes to congestion at UN Plaza resulting in the obstruction of pedestrian and chair-user access to the public right-of-way, obstruction of first responders’ lines of sight, and concealment of unlawful activity. Unregulated vending at UN Plaza fuels unlawful activity that leads to a high volume of 9-1-1 calls, incident reports, and arrests in and around UN Plaza’s immediate vicinity, including 4,046 calls for service, 168 incident reports, and 62 arrests at UN Plaza, in 2021 alone.

(c) UN Plaza is home to the Heart of the City Farmers’ Market (“Market”), a nonprofit, independent, farmer-operated food justice organization, that has served San Francisco’s low-income Tenderloin neighborhood since 1981. The Market is the largest farmers’ market Electronic Benefits Transfer (“EBT”) program in California, allowing CalFresh, CalWorks, and other cash benefit recipients to access food and cash benefits. Over 20,000 customers rely on the Market for groceries in large part because there are no supermarkets in the Tenderloin neighborhood. Recently, public safety concerns due to unregulated vending and criminal activity have caused the Market to lose five vendors. The unregulated vending and accompanying criminal activity at UN Plaza impact the ability of the City to provide a safe and accessible Market for the public, including families, children, and seniors, as well as the farmers who sell their goods.

(d) UN Plaza is heavily patronized year-round. Pre-pandemic, about 25,000 daily weekday San Francisco Municipal Railway (“MUNI”) and Bay Area Rapid Transit (“BART”) public transit riders would access the Civic Center station near UN Plaza, and about 3,500 City, state, and federal employees would make their way to work by passing through UN Plaza. Ridership on BART and Muni have continued to rebound since the depths of the pandemic, particularly in 2021, as much of the economy has reopened and many members of the community have received the COVID-19 vaccine. Further, congestion at UN Plaza is heightened on days that the Market is in operation.

(e) Vending, because it has 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, which is a City priority.

(f) A well-designed vending program is beneficial because it: (1) provides minimum standards for vending, including vendors’ equipment; (2) safeguards pedestrian and chair-user movement on sidewalks, streets, and other public spaces; (3) prevents unsanitary conditions and ensures that trash and debris are removed by vendors; and (4) prevents or minimizes public health, safety, or welfare hazards caused or exacerbated by unregulated vending.

(g) In 2018, then-Governor Jerry Brown signed Senate Bill 946 (“SB 946”), which decriminalized street vending across California and constrained local regulatory authority. SB 946 seeks to create entrepreneurial and economic development opportunities for immigrant and low-income communities, increase consumers’ access to desired goods, contribute to a safe and dynamic public space, and promote the safety and welfare of the public by encouraging local authorities to support and properly regulate vending.

(h) The City seeks to prioritize health and safety while expanding economic opportunities for those who aspire to vend lawfully in a manner consistent with SB 946. The City recognizes that regulation of vending benefits the City as a whole, as it leads to orderly commerce and safeguards public health. The City seeks to provide vendors with the ability to operate in a safe and professional manner that enhances the public’s experience while providing increased economic opportunities. To achieve these goals, the City needs to restrict and limit vending in certain areas and under certain circumstances to prevent or minimize public health, safety, and welfare concerns, while ensuring that the permit application process is accessible to all vendors, including vendors with limited business experience and limited English proficiency.

(i) In 2021, the Port of San Francisco initiated a vending program pursuant to Ordinance No. 118-21 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, to 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, which program shall be discontinued and merged with the vending program authorized for the City in this ordinance.

(j) This ordinance creates a vending program that provides for permitting and regulation of street vendors on City property that is both meaningfully enforceable and consistent with SB 946.

– (Added by Ord. [44-22](#), File No. 211292, App. 3/22/2022, Eff. 4/22/2022)

SEC. 5.9-2. DEFINITIONS.

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

Administrative Citation. An administrative fine for a violation of this Article 5.9, as described in Section 5.9-11.

Certified Farmers' Market. A farmers' market operated in accordance with California Health Code Section 440(d) and Chapter 10.5 (commencing with section 47000) of Division 17 of the California Food and Agricultural Code, as each may be amended, and any implementing regulations.

City. The City and County of San Francisco.

Department. The Department of Public Works.

Director. The Director of the Department of Public Works or the Director's designee.

Enforcement Official. Officers, employees, and contractors of the Department, and of such other departments and agencies of the City that the Director authorizes to assist in carrying out enforcement functions in a Memorandum of Understanding or otherwise.

Food. Any pre-packaged food, foodstuffs, confectionary, condiment, or beverage for human consumption that a Vendor is reselling in its original packaging.

Hallidie Plaza. The area defined by Section 2.01(b) of the Park Code.

Merchandise. Any item that is not Food and that is not an art or craft regulated under Article 24 (Regulating Street Artists) of the Police Code.

Notice of Violation. A Notice of Violation for a violation of this Article 5.9, as described in Section 5.9-11.

Roaming Vendor. A Vendor that moves from place to place and stops intermittently to complete a Vending transaction.

Rules and Regulations. The Rules and Regulations of Vendors as described in Section 5.9-8 of this Article.

Sidewalk Vendor. Sidewalk Vendor has the meaning set forth in California Government Code Section 51036, as it may be amended.

Stationary Vendor. A Vendor that Vends from one or more fixed locations.

Swap Meet. A swap meet operated in accordance with Article 6 (commencing with section 21660) of Chapter 9 of Division 8 of the California Business and Professions Code, as it may be amended, and any regulations adopted in accordance with that chapter, as they may be amended.

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

Vendor. A person or entity that Vends Food or Merchandise from a pushcart, pedal-driven cart, wagon, or other nonmotorized conveyance, or from one's person or a stand, display, showcase, table, rack, or other movable structure. The term Vendor includes but is not limited to Roaming Vendor, Sidewalk Vendor, and Stationary Vendor. In addition, if a Vendor Vends as an employee or agent of another person or entity, that person or entity is also a Vendor. The term Vendor does not include a person or entity that Vends from a Mobile Food Facility as defined by Public Works Code Section 184.80.

United Nations Plaza. The area defined by Section 2.01(b) of the Park Code.

■ (Added by Ord. [44-22](#), File No. 211292, App. 3/22/2022, Eff. 4/22/2022)

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

PURCHASE.

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

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

(c) Upon request by an Enforcement Official and in accordance with Section 5.9-5(a)(5), a Vendor shall immediately provide proof of ownership or authorization to sell the Food and/or Merchandise that the Vendor is Vending.

■ (Added by Ord. [44-22](#), File No. 211292, App. 3/22/2022, Eff. 4/22/2022)

SEC. 5.9-4. VENDOR PERMIT TYPE.

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

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

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

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

■ (Added by Ord. [44-22](#), File No. 211292, App. 3/22/2022, Eff. 4/22/2022)

SEC. 5.9-5. PERMIT APPLICATION; FEE.

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

(1) The name, phone number, and current mailing address of the Vendor.

(2) A description of the Food and/or Merchandise that the Vendor intends to Vend.

(3) The locations where the Vendor requests to Vend.

(4) An attestation by the Vendor that the Vendor procured the Food and/or Merchandise, whether new or used, through a transaction authorized by law, including but not limited to, bartering and foraging.

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

of proof thereof.

- (6) A certification by the Vendor that to the Vendor's knowledge and belief, the information submitted for the permit application is true.
- (7) Proof of Identity, as described in Administrative Code Section 95.2 and as it may be amended, of the Vendor.
- (8) If the Vendor is an agent of an individual, company, partnership, corporation, or other entity (each a "principal"), the name and business address of the principal.
- (9) Any other information deemed relevant by the Department.

(b) **Confidentiality of Permit Application Data.** The Department shall maintain confidentiality of Vendor's personal identifying information to the extent permitted by law. The Department shall inform applicants about the circumstances under which the information they provide in the application could become public or be disclosed.

(c) **Additional Permit Conditions.**

(1) Each permit that applies to a Vendor that uses an energy source, including but not limited to propane, butane, or battery, shall be conditioned on the Vendor obtaining approval from the Fire Marshal and complying with sections of the Fire Code that apply to the use of flammable gas, flammable liquids, compressed gas, open flames, and other energy sources. Separate fees may apply and be payable to the Fire Marshal.

(2) Each permit for Food Vending shall be conditioned on the Vendor obtaining a permit to operate a food facility from the Department of Public Health pursuant to Health Code Section 452, as it may be amended. Separate fees may apply and be payable to the Department of Public Health.

(3) Each Vendor permit issued pursuant to this Article 5.9 and the approval, as applicable, of the Fire Marshal (see subsection (c)(1)) and/or the Department of Public Health (see subsection (c)(2)), shall authorize inspection by the City of the Vendor's operations at any time during operating hours, as long as the inspecting agency provides at least 48-hours' notice.

(4) The applicable conditions of this subsection (c) are preconditions to the issuance of a Vendor permit. Lapse or revocation of approvals, as applicable, from the Fire Marshal or Department of Public Health shall, by operation of law, automatically invalidate any Vendor permit without further action by the Department.

(d) **Permit Fee.** The Department shall identify the reasonable regulatory costs for the administrative enforcement and any adjudication of this Article 5.9, including but not limited to the Department's costs to issue permits, perform investigations, conduct inspections, issue administrative citations or other enforcement actions, and audit permittees. The Department shall charge applicants for each Vendor permit and permit renewal an amount that does not exceed the reasonable regulatory costs described in this subsection (d), and may include the actual costs that other agencies, boards, commissions, or departments of the City incur in connection with the processing or administration of this Article 5.9, which fee shall be waived in accordance with California Business and Professions Code Section 16102, as it may be amended, and as applicable. After consulting with the Controller, and by no later than two months after the effective date of the ordinance in Board File No. 211292 establishing this Article 5.9, the Department shall publish on its website a schedule of all fees charged by the Department under this Section 5.9-5, and shall submit that fee schedule to the Clerk of the Board of Supervisors for inclusion in Board File No. 211292. The permit fee shall be adjusted annually in accordance with Public Works Code Section 2.1.2.

In addition, separate annual fees may apply and be payable to the Tax Collector, Department of Public Health, and the Fire Marshal for any approvals required by each department.

(e) **Permit Fee Waiver.** The Department shall adopt regulations via Director's Order authorizing the Director to fully waive fees for new permits and partially waive fees for permit renewals, for reasons including, but not necessarily limited to, economic hardship and a Vendors' status as a nonprofit corporation exempt from federal taxation under 26 U.S.C. Section 501(c)(3), as it may be amended. The partial waiver of renewal fees shall be on a sliding scale and the amount waived shall be determined based on the economic hardship of each individual Vendor or the financial circumstances of a nonprofit corporation.

(f) **Permit Expiration.** Each Vendor permit shall expire if not renewed by its Renewal Date in subsection (g)(1) unless revoked or unless the Director determines on issuance of the permit that the particular circumstances warrant a permit term of less than one year.

(g) **Permit Renewal.**

(1) Each Vendor permit may be renewed annually so long as the Vendor remains in compliance with this Article 5.9, including payment of all fees due to the City and compliance with the Good Neighbor Policies in Section 5.9-9. The permit renewal date ("Renewal Date") shall be the date that the Director issues the decision to renew the permit or conditionally renew the permit, and shall be the same day of the year, selected by the Director, for all Vendor permits.

(2) Each Vendor permit renewed by the Department shall be operative for 90 days from the date of renewal, but shall become inoperative if by the end of that 90-day period, the Vendor has not obtained approvals, as applicable, from the Fire Department and Department of Public Health. A permittee shall still owe the renewal fee in subsection (d) if the Vendor permit becomes inoperative under this subsection (g)(2), and shall not be entitled to a refund or proration as a result of the Vendor permit becoming inoperative.

(3) Pursuant to Section 76.1 of Article 2 of the Business and Tax Regulations Code, the fees in subsection (d), above, for renewing a Vendor permit shall be due and payable annually on or before March 31, for the 12-month period commencing with the most recent Renewal Date prior to March 31. If a permittee ceases Vending between the Renewal Date and the next March 31, such permittee shall still owe the fees due on that March 31 for the entire 12-month period commencing with the most recent Renewal Date prior to March 31, and shall not be entitled to any refund or proration.

(h) **Application Denial; Appeal.**

(1) The Department may reject an application for a Vendor permit for any of the following reasons:

(A) the applicant failed to provide any required information or prerequisite approvals identified in this Section 5.9-5, or provided incorrect or incomplete information, and failed to correct the application within a reasonable time identified by the Department;

(B) the applicant knowingly presented false and material information or knowingly omitted material information;

(C) the applicant previously received a permit, which permit was revoked pursuant to Section 5.9-11, and the revocation occurred within one year of the application;

(D) the applicant submitted a substantially similar application that was rejected within the past year;

(E) the proposed Vending location may lead to or exacerbate objective safety, health, and welfare concerns; or

(F) good cause, including but not limited to violations of federal, state, or City law that in the Department's judgment are relevant to whether the applicant would perform as a Vendor in a lawful manner.

(2) The applicant may appeal the Department's rejection of an application for a Vendor permit in writing to the Director within 30 days of the rejection. The Director may investigate the rejection and consider any

claims by the applicant, and shall either affirm or reverse the rejection within a reasonable time following receipt of the written appeal. Upon denial of a permit by the Director, an applicant may appeal the Director's decision, to the Board of Appeals, in accordance with Section 8 of the Business and Tax Regulations Code, as amended from time to time.

– (Added by Ord. [44-22](#), File No. 211292, App. 3/22/2022, Eff. 4/22/2022)

SEC. 5.9-6. VENDING RESTRICTIONS.

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

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

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

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

– (Added by Ord. [44-22](#), File No. 211292, App. 3/22/2022, Eff. 4/22/2022)

SEC. 5.9-7. EXEMPTIONS.

(a) This Article 5.9 does not govern:

- (1) Food products being sold as part of a fundraiser by a non-profit entity; or
- (2) the sale of an art or craft regulated under Article 24 (Regulating Street Artists) of the Police Code; or
- (3) the operation of, or any sale within, a Certified Farmers' Market; or
- (4) the operation of, or any sale within, a permitted Swap Meet; or
- (5) Vending on property regulated by Article 7 of the Park Code; except UN Plaza and Hallidie Plaza; or
- (6) Vending within areas permitted under Article 6 (Interdepartmental Staff Committee on Traffic and Transportation ("ISCOTT")) of the Transportation Code.

(b) This Article 5.9 does not supersede or alter Article 24 (Regulating Street Artists) of the Police Code. A Vendor permit authorizing the permittee to Vend either Merchandise or Food and Merchandise in accordance with Section 5.9-4 may also Vend an art or craft regulated under Article 24 (Regulating Street Artists) of the Police Code if the Vendor has obtained a Street Artist Certificate under Article 24 of the Police Code.

– (Added by Ord. [44-22](#), File No. 211292, App. 3/22/2022, Eff. 4/22/2022)

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

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

- (1) Standards for approving permits.
- (2) Additional requirements regulating the time, place, and manner of Vending, including prohibiting Vending in certain locations, if the Rules and Regulations are directly related to objective health, safety, or welfare concerns.
- (3) Notice requirements of new Rules and Regulations regarding the time, place, and manner of Vending, including locations where Vending is prohibited.
- (4) The process for granting fee waivers.
- (5) Requirements to maintain sanitary conditions.
- (6) Requirements necessary to ensure compliance with the Americans with Disabilities Act of 1990 (Public Law 101-336), as it may be amended, and other disability access standards.
- (7) Requirements necessary to ensure the public's use and enjoyment of natural resources and recreational opportunities.
- (8) Requirements necessary to prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of a park.
- (9) The process for selecting organizations to accept donated goods pursuant to Section 5.9-11(f)(3).
- (10) Any other Rules and Regulations in order to further the purposes of this Article 5.9 and promote public health, safety, or welfare.

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

(c) **Approval by the Public Works Commission.** Starting on September 1, 2022, any Rules and

Regulations adopted under the authority of subsection (a) shall be subject to approval of the Public Works Commission.

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

– (Added by Ord. [44-22](#), File No. 211292, App. 3/22/2022, Eff. 4/22/2022)

SEC. 5.9-9. GOOD NEIGHBOR POLICIES.

(a) Vendors shall operate in accordance with the following good neighbor policies:

(1) Vendors shall be individually responsible for any garbage, detritus, or debris that directly results from their Vending activity;

(2) Vendors shall contain noise and odors within the immediate area of the Vendor so as not to cause a nuisance to neighbors;

(3) Vendors shall urge patrons to not litter and to maintain the safety, cleanliness, quiet, peace, and orderliness of the area; and

(4) Vendors shall provide for proper and adequate storage and disposal of garbage, detritus, and debris.

(b) The Director may adopt additional and/or more specific good neighbor policies as long as they are consistent with the principles in this Section 5.9-9.

– (Added by Ord. [44-22](#), File No. 211292, App. 3/22/2022, Eff. 4/22/2022)

SEC. 5.9-10. OUTREACH AND EDUCATION.

(a) The Department shall conduct extensive outreach and education in a manner that is accessible to all Vendors, including Vendors with limited business experience and limited English proficiency, in order to provide Vendors sufficient notice regarding the requirements of this Article 5.9, including information about the application process and good neighbor policies, as well as any applicable Rules and Regulations.

(b) The Department shall also provide Vendors information about:

(1) How to obtain assistance filling out the permit application.

(2) Workforce development opportunities and job placement programs.

(c) The Department shall conduct extensive outreach and education prior to the operative date for enforcement of this Article 5.9 as stated in Section 5.9-11(a).

(d) If this Article 5.9 is modified to include new requirements or if the Department adopts new Rules and

Regulations, the Department shall conduct additional outreach and education for a period of 4 weeks in a manner that is accessible to all Vendors, including Vendors with limited business experience and limited English proficiency, before Enforcement Officials may issue a Notice of Violation concerning a new requirement or new Rule and Regulation pursuant to Section 5.9-11.

– (Added by Ord. [44-22](#), File No. 211292, App. 3/22/2022, Eff. 4/22/2022)

SEC. 5.9-11. ENFORCEMENT.

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

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

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

(d) **Written Warnings.**

(1) The Department shall use the information included in the Notice of Violation to issue a written warning for any violation of this Article 5.9, or the Rules and Regulations that interpret and implement this Article 5.9, within 15 calendar days of issuing the Notice of Violation. The written warning shall inform the Vendor of a reasonable time, identified by the Department, to correct the issue or if the Vendor fails to correct the issue, the Vendor may be subject to an Administrative Citation. If a Vendor is found Vending Food and/or Merchandise in a package that is different from the description listed in the Vendor's permit application pursuant to Section 5.9-5, the written warning shall inform the Vendor of a reasonable time, identified by the Department, to update the description of the Food and/or Merchandise in the Vendor's permit application, or the Vendor may be subject to an Administrative Citation for failing to update the description.

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

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

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

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

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

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

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

(2) Vending without a valid license or permit:

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

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

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

(D) If the Vendor submits proof of a valid permit that was effective at the time of the citation, the administrative fines set forth in subsections (A) through (C) of this subsection (e)(2) shall be reduced to equal the administrative fines set forth in subsections (A) through (C) of subsection (e)(1), as those amounts may be revised pursuant to subsection (e)(5).

(3) Failure to pay an Administrative Citation described in this subsection (e) shall not be punishable as an infraction or misdemeanor; further, additional fines, fees, assessments, or any other financial conditions beyond those authorized in this subsection (e) may not be assessed.

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

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

(6) Within 30 days of issuance, the Vendor shall pay the Administrative Citation unless the Vendor files a written appeal with the Director. The grounds of appeal are limited to error or abuse of discretion in the issuance of the Administrative Citation. The Director may make an ability-to-pay determination pursuant to subsection (e)(4), but inability to pay shall not be grounds for rescinding the Administrative Citation or reducing the amount required to satisfy the fine to an amount less than the amount specified in subsection (e)(4). The Director shall consider any claims or defenses by the appellant, and shall issue and mail a written decision on the appeal within a reasonable time of receipt of the written appeal. Within 20 days of the

Director's decision upholding a fine in whole or in part, the Vendor shall pay the Administrative Citation. The Vendor may seek judicial review of an Administrative Citation pursuant to subsection (c)(1) in San Francisco Superior Court pursuant to Government Code Section 53069.4.

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

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

(f) **Temporary Order to Cease Vending and Removal.**

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

(2) (A) After the Enforcement Official orders an unpermitted Vendor to cease Vending, the Vendor must discontinue any Vending and remove all Food, Merchandise, and any other Vending paraphernalia from property within the City's jurisdiction. A failure to promptly obey any such order from an Enforcement Official is a violation of this Article 5.9.

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

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

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

- (1) An administrative fine as described in subsection (e).
- (2) **Civil Action.**

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

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

■ (Added by Ord. [44-22](#), File No. 211292, App. 3/22/2022, Eff. 4/22/2022)

SEC. 5.9-12. REPORTING REQUIRED.

The Department shall report to the Board of Supervisors regarding the implementation of this Article 5.9, annually for the first three years after the effective date of the ordinance in Board File No. 211292 establishing this Article; and once every three years thereafter. The report shall include but not be limited to the following: number of applications; number of permits issued; number of permits renewed; locations approved for Vending; locations excluded from Vending; outreach and education efforts; outreach and education outcomes; number of Notice of Violations issued; number of written warnings issued; number of Administrative Citations issued; fines collected; and outstanding fines.

■ (Added by Ord. [44-22](#), File No. 211292, App. 3/22/2022, Eff. 4/22/2022)

SEC. 5.9-13. UNDERTAKING FOR THE GENERAL WELFARE.

In enacting and implementing this Article 5.9, the City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

■ (Added by Ord. [44-22](#), File No. 211292, App. 3/22/2022, Eff. 4/22/2022)

SEC. 5.9-14. SEVERABILITY.

If any section, subsection, sentence, clause, phrase, or word of this Article 5.9, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the Article. The Board of Supervisors hereby declares that it would have passed this Article 5.9 and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of the Article or application thereof would be subsequently declared invalid or unconstitutional.

(Added by Ord. [44-22](#), File No. 211292, App. 3/22/2022, Eff. 4/22/2022)

EXHIBIT 2

Mobile Food Facility Permit No. 22MFF-00039

(See Appellant's Brief, Exhibit 6-1)



City and County of San Francisco

San Francisco Public Works - Bureau of Street Use and Mapping
49 South Van Ness Ave, Suite 300 - San Francisco, CA 94103
sfpublicworks.org - tel (628) 271-2000



EXHIBIT 6-1

22MFF-00039 (Original: 11MFF-0161)
Renewed

Mobile Food Facility Permit

Address : 100 GEARY ST

Cost: \$182.00

Block:0309 **Lot:** 003 **Zip:** 94108

This permit is non-transferable without approval from DPW and shall comply with DPW, DPH and SFFD regulations and this permit is subject to revocation.

Permittee

Name: San Francisco Carts & Concessions, Inc. DBA Stanley's Steamers Hot Dogs

Address: 9 Magee Court Moraga, CA 94553

Contact: Stanley Roth

Phone: (925) 376-1124

Conditions

Original Grant Date: 3/1/1981
SFPD Permit #: 51105
SFFD Permit interchangeable with: #14036, #14037, & #14038
DPH Permit interchangeable with : #009, #008, #003, #007

Permittee understands that in lieu of required documentation from the Fire Marshal being provided as part of their renewal application, as is required by Section 184.83(d)(2) of the Public Works Code, the permittee shall not engage in operational activity regulated by Fire Code unless applicable San Francisco Fire Department permits are later granted to the permittee for such activity. The permittee may only vend under this permit operating under activity not regulated by Fire Code until applicable approvals from the Fire Marshal are later obtained subject to Section 184.81 of the Public Works Code and applicable sections of San Francisco Fire Code.

| | |
|---|--|
| Facility Type | Push Cart |
| No. of Locations (See Exhibit A) | 1 |
| Start Date | 11/03/2022 |
| End Date | 11/15/2023 |
| To Be Sold | Hot dogs, condiments, soft pretzels, soft drinks, coffee, cold beverages, pastries, bakery goods, cookies, ice cream, candy, soups, churros, chestnuts, nuts, fresh fruit, fruit juices, desserts, potato chips and popcorn. |
| Certificate of Sanitation | #009 |
| SFFD Permit | N/A |
| SF Business Certificate | 392127 |

The undersigned Permittee hereby agrees to comply with all requirements and conditions noted on this permit

EXHIBIT 3

San Francisco Department of Public Health,

Order of the Health Officer No. C19-07

(March 16, 2020)



ORDER OF THE HEALTH OFFICER No. C19-07

**ORDER OF THE HEALTH OFFICER
OF THE CITY AND COUNTY OF SAN FRANCISCO DIRECTING
ALL INDIVIDUALS LIVING IN THE COUNTY TO SHELTER AT THEIR
PLACE OF RESIDENCE EXCEPT THAT THEY MAY LEAVE TO
PROVIDE OR RECEIVE CERTAIN ESSENTIAL SERVICES OR
ENGAGE IN CERTAIN ESSENTIAL ACTIVITIES AND WORK FOR
ESSENTIAL BUSINESS AND GOVERNMENT SERVICES; EXEMPTING
INDIVIDUALS EXPERIENCING HOMELESSNESS FROM THE
SHELTER IN PLACE ORDER BUT URGING THEM TO FIND SHELTER
AND GOVERNMENT AGENCIES TO PROVIDE IT; DIRECTING ALL
BUSINESSES AND GOVERNMENTAL AGENCIES TO CEASE NON-
ESSENTIAL OPERATIONS AT PHYSICAL LOCATIONS IN THE
COUNTY; PROHIBITING ALL NON-ESSENTIAL GATHERINGS OF
ANY NUMBER OF INDIVIDUALS; AND ORDERING CESSATION OF
ALL NON-ESSENTIAL TRAVEL**

(SHELTER IN PLACE)

DATE OF ORDER: March 16, 2020

Please read this Order carefully. Violation of or failure to comply with this Order is a misdemeanor punishable by fine, imprisonment, or both. (California Health and Safety Code § 120295, *et seq.*; California Penal Code §§ 69, 148(a)(1); San Francisco Administrative Code section 7.17(b).)

Summary: The virus that causes Coronavirus 2019 Disease (“COVID-19”) is easily transmitted, especially in group settings, and it is essential that the spread of the virus be slowed to protect the ability of public and private health care providers to handle the influx of new patients and safeguard public health and safety. Because of the risk of the rapid spread of the virus, and the need to protect all members of the community and the Bay Area region, especially including our members most vulnerable to the virus and also health care providers, this Order requires all individuals anywhere in San Francisco to shelter in place—that is, stay at home—except for certain essential activities and work to provide essential business and government services or perform essential public infrastructure construction, including housing. This order begins at 12:01 a.m. on March 17, 2020 and will continue for three weeks through April 7, 2020, subject to the limited exceptions and under the terms and conditions more particularly set forth below.

Gatherings of individuals outside the home are generally prohibited, with certain exceptions for essential activities or essential travel or to perform work for essential businesses and government agencies or perform essential infrastructure work. Consistent



ORDER OF THE HEALTH OFFICER No. C19-07

with the directive issued by Governor Gavin Newsom on March 15, 2020, all bars and nightclubs are ordered closed. Restaurants and cafes—regardless of their seating capacity—that serve food are ordered closed except solely for takeout and delivery service. Additionally, all gyms and recreation facilities are ordered closed. Homeless individuals are not subject to the shelter in place order but are strongly urged to find shelter and government agencies are urged to take steps needed to provide shelter for those individuals.

Under any of the limited circumstances in which individuals are allowed to interact in person outside their residence, the Health Officer orders individuals to abide by the following requirements: (i) maintain at least six feet from other individuals, wash hands with soap and water for at least 20 seconds as frequently as possible or using hand sanitizer, cover coughs or sneezes, and not shake hands; (ii) for people with medical conditions, regardless of age, that put them at higher risk of serious complications should they get COVID-19, and other than health care workers and other essential providers, avoid leaving their homes to the extent possible; and (iii) for employers in San Francisco that do not provide essential businesses or government services, take all steps necessary for employees to work remotely from home to the extent possible. These requirements build on the California Department of Public Health and United States Centers for Disease Control and Prevention guidelines issued March 11, 2020, extended as necessary to address the health emergency affecting the Bay Area region. No individual who is sick may go to the workplace or be outside the home except as necessary to seek or receive medical care in accordance with guidance from public health officials. The Health Officer may revise this Order as the situation evolves, and facilities must stay updated by checking the City Administrator’s website (sfgsa.org) regularly.

This Order revokes and replaces Order Number C19-05b, issued March 13, 2020, and C19-02, issued March 7, 2020. Those orders are no longer in effect as of the effective date and time of this Order. This Order does not revoke Order Numbers C19-01b, C19-03, C19-04, or C19-06.

**UNDER THE AUTHORITY OF CALIFORNIA HEALTH AND SAFETY CODE
SECTIONS 101040, 101085, AND 120175, THE HEALTH OFFICER OF THE CITY AND
COUNTY OF SAN FRANCISCO (“HEALTH OFFICER”) ORDERS:**

- 1. The intent of this Order is to ensure that the maximum number of people self-isolate in their places of residence to the maximum extent feasible, while enabling essential services to continue, to slow the spread of COVID-19 to the maximum extent possible. When people need to leave their places of residence, whether to obtain or perform vital services, or to otherwise facilitate authorized activities necessary for continuity of social and commercial life, they should at all times reasonably possible comply with Social Distancing Requirements as defined in Section 10 below. All provisions of this Order should be interpreted to effectuate this intent. Failure to**



ORDER OF THE HEALTH OFFICER No. C19-07

comply with any of the provisions of this Order constitutes an imminent threat and creates an immediate menace to public health.

2. **All individuals currently living within the City and County of San Francisco (the “County”) are ordered to shelter at their place of residence. To the extent individuals are using shared or outdoor spaces, they must at all times as reasonably possible maintain social distancing of at least six feet from any other person when they are outside their residence. All persons may leave their residences only for Essential Activities, Essential Governmental Functions, or to operate Essential Businesses, all as defined in Section 10. Individuals experiencing homelessness are exempt from this Section, but are strongly urged to obtain shelter, and governmental and other entities are strongly urged to make such shelter available as soon as possible and to the maximum extent practicable (and to use COVID-19 risk mitigation practices in their operation).**
3. **All businesses with a facility in the County, except Essential Businesses as defined below in Section 10, are required to cease all activities at facilities located within the County except Minimum Basic Operations, as defined in Section 10. For clarity, businesses may also continue operations consisting exclusively of employees or contractors performing activities at their own residences (i.e., working from home). All Essential Businesses are strongly encouraged to remain open. To the greatest extent feasible, Essential Businesses shall comply with Social Distancing Requirements as defined in Section 10 below, including by maintaining six-foot social distancing for both employees and members of the public, including, but not limited to, when any customers are standing in line.**
4. **All public and private gatherings of any number of people occurring outside a single household or living unit are prohibited, except for the limited purposes as expressly permitted in Section 10. Nothing in this Order prohibits the gathering of members of a household or living unit.**
5. **All travel, including, but not limited to, travel on foot, bicycle, scooter, motorcycle, automobile, or public transit, except Essential Travel and Essential Activities as defined below in Section 10, is prohibited. People must use public transit only for purposes of performing Essential Activities or to travel to and from work to operate Essential Businesses or maintain Essential Governmental Functions. People riding on public transit must comply with Social Distancing Requirements as defined in Section 10 below, to the greatest extent feasible. This Order allows travel into or out of the County to perform Essential Activities, operate Essential Businesses, or maintain Essential Governmental Functions.**
6. **This Order is issued based on evidence of increasing occurrence of COVID-19 within the County and throughout the Bay Area, scientific evidence and best practices regarding the most effective approaches to slow the transmission of communicable diseases generally and COVID-19 specifically, and evidence that the**



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age, condition, and health of a significant portion of the population of the County places it at risk for serious health complications, including death, from COVID-19. Due to the outbreak of the COVID-19 virus in the general public, which is now a pandemic according to the World Health Organization, there is a public health emergency throughout the County. Making the problem worse, some individuals who contract the COVID-19 virus have no symptoms or have mild symptoms, which means they may not be aware they carry the virus. Because even people without symptoms can transmit the disease, and because evidence shows the disease is easily spread, gatherings can result in preventable transmission of the virus. The scientific evidence shows that at this stage of the emergency, it is essential to slow virus transmission as much as possible to protect the most vulnerable and to prevent the health care system from being overwhelmed. One proven way to slow the transmission is to limit interactions among people to the greatest extent practicable. By reducing the spread of the COVID-19 virus, this Order helps preserve critical and limited healthcare capacity in the County.

7. This Order also is issued in light of the existence of 37 cases of COVID-19 in the County, as well as at least 258 confirmed cases and at least three deaths in neighboring Bay Area counties, as of 10:00 a.m. on Sunday, March 16, 2020, including a significant and increasing number of suspected cases of community transmission and likely further significant increases in transmission. Widespread testing for COVID-19 is not yet available but is expected to increase in the coming days. This Order is necessary to slow the rate of spread and the Health Officer will re-evaluate it as further data becomes available.
8. This Order is issued in accordance with, and incorporates by reference, the March 4, 2020 Proclamation of a State of Emergency issued by Governor Gavin Newsom, the February 25, 2020 Proclamation by the Mayor Declaring the Existence of a Local Emergency issued by Mayor London Breed, as supplemented on March 11, 2020, the March 6, 2020 Declaration of Local Health Emergency Regarding Novel Coronavirus 2019 (COVID-19) issued by the Health Officer, and guidance issued by the California Department of Public Health, as each of them have been and may be supplemented.
9. This Order is also issued in accordance with, and incorporates by reference the March 12, 2020 Executive Order (Executive Order N-25-20) issued by Governor Gavin Newsom. Executive Order N-25-20 expressly orders that “[a]ll residents are to heed any orders and guidance of state and local public health officials, including but not limited to the imposition of social distancing measures, to control the spread of COVID-19.” This Order is also based on statements by Governor Newsom during a press conference on March 15, 2020, indicating the guidance of the State of California that all nightclubs, bars, wineries, and brewpubs close and that persons 65 years old and older isolate at home.



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10. Definitions and Exemptions.

- a. For purposes of this Order, individuals may leave their residence only to perform any of the following “Essential Activities.” But people at high risk of severe illness from COVID-19 and people who are sick are urged to stay in their residence to the extent possible except as necessary to seek medical care.
 - i. To engage in activities or perform tasks essential to their health and safety, or to the health and safety of their family or household members (including, but not limited to, pets), such as, by way of example only and without limitation, obtaining medical supplies or medication, visiting a health care professional, or obtaining supplies they need to work from home.
 - ii. To obtain necessary services or supplies for themselves and their family or household members, or to deliver those services or supplies to others, such as, by way of example only and without limitation, canned food, dry goods, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, and any other household consumer products, and products necessary to maintain the safety, sanitation, and essential operation of residences.
 - iii. To engage in outdoor activity, provided the individuals comply with Social Distancing Requirements as defined in this Section, such as, by way of example and without limitation, walking, hiking, or running.
 - iv. To perform work providing essential products and services at an Essential Business or to otherwise carry out activities specifically permitted in this Order, including Minimum Basic Operations.
 - v. To care for a family member or pet in another household.
- b. For purposes of this Order, individuals may leave their residence to work for or obtain services at any “Healthcare Operations” including hospitals, clinics, dentists, pharmacies, pharmaceutical and biotechnology companies, other healthcare facilities, healthcare suppliers, home healthcare services providers, mental health providers, or any related and/or ancillary healthcare services. “Healthcare Operations” also includes veterinary care and all healthcare services provided to animals. This exemption shall be construed broadly to avoid any impacts to the delivery of healthcare, broadly defined. “Healthcare Operations” does not include fitness and exercise gyms and similar facilities.



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- c. For purposes of this Order, individuals may leave their residence to provide any services or perform any work necessary to the operations and maintenance of “Essential Infrastructure,” including, but not limited to, public works construction, construction of housing (in particular affordable housing or housing for individuals experiencing homelessness), airport operations, water, sewer, gas, electrical, oil refining, roads and highways, public transportation, solid waste collection and removal, internet, and telecommunications systems (including the provision of essential global, national, and local infrastructure for computing services, business infrastructure, communications, and web-based services), provided that they carry out those services or that work in compliance with Social Distancing Requirements as defined this Section, to the extent possible.**
- d. For purposes of this Order, all first responders, emergency management personnel, emergency dispatchers, court personnel, and law enforcement personnel, and others working for or to support Essential Businesses are categorically exempt from this Order. Further, nothing in this Order shall prohibit any individual from performing or accessing “Essential Governmental Functions.” Essential Governmental Functions means all services needed to ensure the continuing operation of the government agencies and provide for the health, safety and welfare of the public. All Essential Governmental Functions shall be performed in compliance with Social Distancing Requirements as defined this Section, to the extent possible.**
- e. For the purposes of this Order, covered businesses include any for-profit, non-profit, or educational entities, regardless of the nature of the service, the function they perform, or its corporate or entity structure.**
- f. For the purposes of this Order, “Essential Businesses” means:**

 - i. Healthcare Operations and Essential Infrastructure;**
 - ii. Grocery stores, certified farmers’ markets, farm and produce stands, supermarkets, food banks, convenience stores, and other establishments engaged in the retail sale of canned food, dry goods, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, and any other household consumer products (such as cleaning and personal care products). This includes stores that sell groceries and also sell other non-grocery products, and products necessary to maintaining the safety, sanitation, and essential operation of residences;**
 - iii. Food cultivation, including farming, livestock, and fishing;**



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- iv. Businesses that provide food, shelter, and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals;**
- v. Newspapers, television, radio, and other media services;**
- vi. Gas stations and auto-supply, auto-repair, and related facilities;**
- vii. Banks and related financial institutions;**
- viii. Hardware stores;**
- ix. Plumbers, electricians, exterminators, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences, Essential Activities, and Essential Businesses;**
- x. Businesses providing mailing and shipping services, including post office boxes;**
- xi. Educational institutions—including public and private K-12 schools, colleges, and universities—for purposes of facilitating distance learning or performing essential functions, provided that social distancing of six-feet per person is maintained to the greatest extent possible;**
- xii. Laundromats, dry cleaners, and laundry service providers;**
- xiii. Restaurants and other facilities that prepare and serve food, but only for delivery or carry out. Schools and other entities that typically provide free food services to students or members of the public may continue to do so under this Order on the condition that the food is provided to students or members of the public on a pick-up and take-away basis only. Schools and other entities that provide food services under this exemption shall not permit the food to be eaten at the site where it is provided, or at any other gathering site;**
- xiv. Businesses that supply products needed for people to work from home;**
- xv. Businesses that supply other essential businesses with the support or supplies necessary to operate;**



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- xvi. **Businesses that ship or deliver groceries, food, goods or services directly to residences;**
 - xvii. **Airlines, taxis, and other private transportation providers providing transportation services necessary for Essential Activities and other purposes expressly authorized in this Order;**
 - xviii. **Home-based care for seniors, adults, or children;**
 - xix. **Residential facilities and shelters for seniors, adults, and children;**
 - xx. **Professional services, such as legal or accounting services, when necessary to assist in compliance with legally mandated activities;**
 - xxi. **Childcare facilities providing services that enable employees exempted in this Order to work as permitted. To the extent possible, childcare facilities must operate under the following mandatory conditions:**
 - 1. **Childcare must be carried out in stable groups of 12 or fewer (“stable” means that the same 12 or fewer children are in the same group each day).**
 - 2. **Children shall not change from one group to another.**
 - 3. **If more than one group of children is cared for at one facility, each group shall be in a separate room. Groups shall not mix with each other.**
 - 4. **Childcare providers shall remain solely with one group of children.**
- g. For the purposes of this Order, “Minimum Basic Operations” include the following, provided that employees comply with Social Distancing Requirements as defined this Section, to the extent possible, while carrying out such operations:**
- i. **The minimum necessary activities to maintain the value of the business’s inventory, ensure security, process payroll and employee benefits, or for related functions.**
 - ii. **The minimum necessary activities to facilitate employees of the business being able to continue to work remotely from their residences.**



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- h. For the purposes of this Order, “Essential Travel” includes travel for any of the following purposes. Individuals engaged in any Essential Travel must comply with all Social Distancing Requirements as defined in this Section.**

 - i. Any travel related to the provision of or access to Essential Activities, Essential Governmental Functions, Essential Businesses, or Minimum Basic Operations.**
 - ii. Travel to care for elderly, minors, dependents, persons with disabilities, or other vulnerable persons.**
 - iii. Travel to or from educational institutions for purposes of receiving materials for distance learning, for receiving meals, and any other related services.**
 - iv. Travel to return to a place of residence from outside the jurisdiction.**
 - v. Travel required by law enforcement or court order.**
 - vi. Travel required for non-residents to return to their place of residence outside the County. Individuals are strongly encouraged to verify that their transportation out of the County remains available and functional prior to commencing such travel.**
 - i. For purposes of this order, residences include hotels, motels, shared rental units, and similar facilities.**
 - j. For purposes of this order Social Distancing Requirements includes maintaining at least six-foot social distancing from other individuals, washing hands with soap and water for at least twenty seconds as frequently as possible or using hand sanitizer, covering coughs or sneezes (into the sleeve or elbow, not hands), regularly cleaning high-touch surfaces, and not shaking hands.**
- 11. Pursuant to Government Code sections 26602 and 41601 and Health and Safety Code section 101029, the Health Officer requests that the Sheriff and the Chief of Police in the County ensure compliance with and enforce this Order. The violation of any provision of this Order constitutes an imminent threat and creates an immediate menace to public health.**
- 12. This Order shall become effective at 12:01 a.m. on March 17, 2020 and will continue to be in effect until 11:59 p.m. on April 7, 2020, or until it is extended, rescinded, superseded, or amended in writing by the Health Officer.**



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- 13. The City must promptly provide copies of this Order as follows: (1) by posting on the City Administrator's website (sfgsa.org) and the Department of Public Health website (sfdph.org); (2) by posting at City Hall, located at 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102; and (3) by providing to any member of the public requesting a copy. In addition, the owner, manager, or operator of any facility that is likely to be impacted by this Order is strongly encouraged to post a copy of this Order onsite and to provide a copy to any member of the public asking for a copy.**
- 14. If any provision of this Order or its application to any person or circumstance is held to be invalid, then the remainder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Order are severable.**

IT IS SO ORDERED:

A handwritten signature in blue ink that reads "Tomás Aragón".

Tomás J. Aragón, MD, DrPH,
Health Officer of the
City and County of San Francisco

Dated: March 16, 2020

EXHIBIT 4

SF CARTS AND CONCESSIONS WEBSITE

(August 20, 2022)

The Wayback Machine - <https://web.archive.org/web/20220820044922/https://sfcarts.com/>

San Francisco Carts and Concessions



Dear Customers. We are temporarily closed and working on reopening soon.

CONTACT US

Drop us a line!

Name

Email*

Message

SEND

This site is protected by reCAPTCHA and the Google [Privacy Policy](#) and [Terms of Service](#) apply.

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POWERED BY [GODADDY](#)

EXHIBIT 5

SF CARTS AND CONCESSIONS WEBSITE

(February 23, 2023)

The Wayback Machine - <https://web.archive.org/web/20230223153919/https://sf carts.com/>

SF CARTS AND CONCESSIONS, INC.



**SF CARTS AND CONCESSIONS HAS DISCONTINUED ITS
SAN FRANCISCO
CART OPERATIONS**

**THANK YOU FOR SUPPORTING OUR
LEGACY BUSINESS SINCE 1974.**

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POWERED BY GODADDY

EXHIBIT 6

S.F. Public Works Code Section 184.97

SEC. 184.97. SUSPENSION AND REVOCATION OF PERMITS.

(a) The Director may suspend or revoke for good cause any permit or any permit Location, which has been issued pursuant to this Article, if he finds, after a noticed public hearing, that such permit holder has engaged in or been found guilty of any of the following acts:

(1) Fraud, misrepresentation, or false statement contained in the application for permit.

(2) Violation of provisions of State law regarding Mobile Food Facilities, the State Vehicle Code, this Article or any of the regulations or rules adopted pursuant to this Article, the San Francisco Municipal Code, or a determination of violation by the Director of Public Health under Subsection (b).

(3) Any violations occur as specified herein for another Mobile Food Facility permit issued to the same permittee.

(4) The Mobile Food Facility Vendor is operating in a manner that negatively impacts the public health, safety, convenience, or welfare.

(5) The Mobile Food Facility Vendor habitually violates the Good Neighbor Policies set forth in Section 184.94.

(6) The Mobile Food Facility has not operated in the permitted Location for a period of six (6) months or more.

(b) The Director also may suspend or revoke a permit if he or she determines that the public interest necessitates use of the Mobile Food Facility Location for a different public purpose, such as a bicycle lane, traffic reconfiguration, bulb-out, bus-stop, or other pedestrian, bicycle, vehicular safety measure consistent with City policies. If a permit is revoked or suspended for this purpose, the Director, under such circumstances, shall strive to authorize a temporary or permanent relocation of the Mobile Food Facility to a comparable Location. Any such authorization shall be in writing and available at the Mobile Food Facility for review by City officials.

(c) The Director of Health also is authorized to revoke a Certificate of Sanitation if he or she finds violations of the Health Code or State law regarding Mobile Food Facility uses. This revocation may be in addition to or separate from any action that the Director takes.

(Added by Ord. 298-10, File No. 101352, App. 12/3/2010; amended by Ord. [119-13](#), File No. 120193, App. 6/28/2013, Eff. 7/28/2013)

EXHIBIT 7

February 2023 Health Order



ORDER OF THE HEALTH OFFICER No. 2023-02

**ORDER OF THE HEALTH OFFICER
OF THE CITY AND COUNTY OF SAN FRANCISCO**

**MANDATORY COVID-19 VACCINATION OF HEALTHCARE
PERSONNEL**

DATE OF ORDER: February 28, 2023, updated June 22, 2023 and November 14, 2023

Please read this Order carefully. Violation of or failure to comply with this Order is a misdemeanor punishable by fine, imprisonment, or both. (California Health and Safety Code § 120295, *et seq.*; California Penal Code §§ 69, 148(a)(1).)

Summary: As of November 14, 2023, this Order replaces the prior version of this health order, Health Officer Order No. 2023-02 (updated June 22, 2023), in its entirety. The update to this Order issued on November 14, 2023, removes references to the bivalent formulation of the COVID-19 vaccine since the current formulation is monovalent and otherwise updates or removes defined terms related to older concepts of being vaccinated with a “complete initial series” and referring to receipt of a “booster” once a person was “booster-eligible.” The revisions just listed are not substantive changes but rather bring the Order’s language into alignment with current vaccine concepts for personnel in healthcare settings. The November 2023 update, based on the current state of COVID-19, also makes a substantive change by removing outpatient behavioral health offices and clinics from the list of facilities where Personnel must be vaccinated in compliance with this Order.

On February 28, 2023, the Health Officer terminated the local COVID-19 public health emergency declaration and rescinded most remaining Health Officer orders and directives relating to the COVID-19 pandemic. Those changes were based on current scientific knowledge about COVID-19 and due in large part to the high rate of immunity in the community from both vaccination and prior infection, greater availability of effective treatments for those who are vulnerable to severe disease, and effective use of mitigation strategies, such as testing and masking.

While the SARS-CoV-2 virus, including other future variants or subvariants, remains a consideration for all San Francisco residents, the virus poses a particular risk to the health of medically-vulnerable residents and people who might be exposed through necessity based on their circumstances. Patients, clients, and residents in healthcare settings may continue to have concerns about their potential exposure to COVID-19 when they seek care, and some may be at greater risk for COVID-19-related complications.

Current vaccine formulations that target SARS-CoV-2 continue to provide good protection against severe disease, although vaccination does not prevent all infection or transmission. And when Personnel in healthcare settings are vaccinated, there is a reduced risk to those who interact with them, especially when such Personnel are also



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wearing a Well-Fitted Mask (the subject of a separate Health Officer order). Accordingly, this Order requires Personnel working in designated Healthcare Facilities—meaning general acute care hospitals, skilled nursing facilities, intermediate care facilities, other types of ambulatory care settings, and congregate and jail health facilities, all as further defined below—to either 1) receive a single dose of the most recent vaccine formulation or 2) receive the full original monovalent course of vaccination plus any additional dose. Personnel who are already compliant with the vaccine requirement of this Order by receiving an original monovalent series plus any additional dose are recommended but not required to receive the most recent formulation once they are eligible.

The Order provides limited exceptions and does not apply to people who only visit the Healthcare Facility on an intermittent or occasional basis or for short periods of time, such as firefighters, emergency medical technicians (EMTs), paramedics, police, and other law enforcement (unless they are stationed or routinely assigned to work at the Healthcare Facility). And such people must wear a Well-Fitted Mask whenever they are onsite at a Healthcare Facility and interacting with patients, clients, or residents as required by Health Officer Order No. 2023-01b. This Order also does not apply to patients, clients, residents, or their visitors, although the Health Officer strongly recommends they be vaccinated consistent with CDC guidance and wear a Well-Fitted Mask in those healthcare settings as further outlined in the companion order regarding masking.

Aside from the requirements of this Order, the Health Officer still strongly recommends that everyone continue appropriate protections based on their situation, including the following five measures: 1) following the CDC's most current COVID-19 vaccination guidance; 2) wearing a Well-Fitted Mask in appropriate settings based on personal risk factors, especially if you or someone you live with is vulnerable to the worst outcomes of COVID-19; 3) staying home whenever you feel sick in order to protect others around you and following the CDC's and the State's isolation and quarantine guidance; 4) staying aware of medications that you can use when you get sick with COVID-19, including drugs like Paxlovid that can decrease the severity of infection, especially for anyone over 50 years old or who has other risk factors; and 5) remaining aware of emerging information about COVID-19 and other respiratory illnesses.

**UNDER THE AUTHORITY OF CALIFORNIA HEALTH AND SAFETY CODE
SECTION 120175, THE HEALTH OFFICER OF THE CITY AND COUNTY OF SAN
FRANCISCO ORDERS:**

1. Definitions.

For purposes of this Order, the following initially capitalized terms have the meanings given below.

- a. *CDC*. "CDC" means the United States Centers for Disease Control and Prevention.



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- b. *CDPH*. “CDPH” means the California Department of Public Health.
- c. *County*. The “County” means the City and County of San Francisco.
- d. *COVID-19*. “COVID-19” means coronavirus disease 2019, the disease caused by the SARS-CoV-2 virus.
- e. *DPH*. “DPH” means the San Francisco Department of Public Health.
- f. *FDA*. “FDA” means the United States Food and Drug Administration.
- g. *Healthcare Facility*. “Healthcare Facility” means certain healthcare settings and facilities where vulnerable populations come to the facility, often out of necessity, and where some of those people have a higher risk of negative health outcomes due to COVID-19. The full list of each type of included facility is listed in subsection 3(a) below, including details about what parts of buildings are included in the definition of this term.
- h. *Health Officer*. “Health Officer” means the Health Officer of the City and County of San Francisco.
- i. *Personnel*. “Personnel” means all paid and unpaid people who work in indoor Healthcare Facilities in the County where (1) care is provided to patients, or (2) patients or clients, including residents or people who are incarcerated, have access for any purpose. This includes workers serving in healthcare or other settings who have the potential for direct or indirect exposure to patients. Personnel include, but are not limited to, nurses, nursing assistants, physicians, technicians, therapists, phlebotomists, pharmacists, students and trainees, contractual staff not employed by the Healthcare Facility, and persons not directly involved in patient care who work in clinical spaces where transmission of infectious agents could occur (*e.g.*, clerical, dietary, environmental services, laundry, security, engineering and facilities management, administrative, billing, and volunteer personnel). People who in the course of their duties may enter or work in a Healthcare Facility on an intermittent or occasional basis or for short periods of time, including, but not limited to, firefighters, paramedics, emergency medical technicians (EMTs), police, other law enforcement, and attorneys, are not included in the term Personnel unless they are permanently stationed or regularly assigned to work in a Healthcare Facility.
- j. *Qualifying Medical Reason*. “Qualifying Medical Reason” means a medical condition or disability recognized by the FDA or CDC as a contra-indication to COVID-19 vaccination.
- k. *Religious Beliefs*. “Religious Beliefs” means a sincerely held religious belief, practice, or observance protected by state or federal law.
- l. *Vaccinated with an Original Monovalent Series*. “Vaccinated with an Original Monovalent Series” means having completed the entire recommended initial series of



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- vaccination (usually one or two doses) prior to September 1, 2022, with a vaccine authorized by the FDA to prevent COVID-19, including by way of an emergency use authorization, or by the World Health Organization (WHO). This term includes the original monovalent formulations first available in 2021. Starting in the fall of 2022, the concept of having a vaccine series was replaced (for adults) with the concept of having any single dose of the newest formulation.
- m. *Vaccinated with Any Additional Dose.* “Vaccinated with Any Additional Dose” means having received any additional dose of a vaccine authorized to prevent COVID-19 by the FDA, including by way of an emergency use authorization, or by the World Health Organization (WHO), for which a person is or was eligible after that person was Vaccinated with an Original Monovalent Series. Consistent with CDC and CDPH guidance, either the Pfizer-BioNTech (Comirnaty) or Moderna (Spikevax) COVID-19 vaccine meets the requirements for being Vaccinated with Any Additional Dose after a person was Vaccinated with an Original Monovalent Series. This term includes any such additional dose authorized by the FDA or WHO, including formulations that are different than the original COVID-19 vaccines (such as an additional ‘booster’ dose of any of the original monovalent vaccine, a bivalent vaccine dose that became available in September 2022, the monovalent dose that became available in September 2023, or other future formulations). A person is considered “Vaccinated with Any Additional Dose” as soon as they receive any such additional dose.
- n. *Vaccinated with a Recent Dose.* “Vaccinated with a Recent Dose” means having received any single dose of a vaccine available on or after September 1, 2022 authorized to prevent COVID-19 by the FDA, including by way of an emergency use authorization, or by the World Health Organization (WHO). For clarity, this includes the bivalent vaccine formulation that was approved for use in the United States by the FDA in the fall of 2022 (which targeted the BA.4 and BA.5 Omicron subvariants and the original SARS-CoV-2 virus), as well as the updated monovalent vaccine formulation that was approved for use in the United States by the FDA in the late summer of 2023 (which targets the Omicron XBB.1.5 subvariant) and any future vaccine formulations authorized for use after September 1, 2022. A list of FDA-authorized vaccines is available at www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/covid-19-vaccines. A list of WHO-authorized vaccines is available at <https://extranet.who.int/prequal/vaccines/covid-19-vaccines-who-emergency-use-listing>. A person is considered “Vaccinated with a Recent Dose” as soon as they receive any such dose.
- o. *Well-Fitted Mask.* A “Well-Fitted Mask” means a face covering that is well-fitted to an individual and covers the nose and mouth especially while talking. CDC guidance regarding Well-Fitted Masks may be found at www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/types-of-masks.html, and CDPH guidance may be found at www.cdph.ca.gov/Programs/CID/DCDC/Pages/Respiratory-Viruses/When-and-Why-to-Wear-a-Mask.aspx. A Well-Fitted non-vented N95, KN95, or KF94 respirator is strongly recommended as a Well-Fitted Mask, even if not fit-tested, to provide



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maximum protection. Health Officer Order No. 2023-01b addresses the mandatory use of Well-Fitted Masks in Healthcare Facilities, including jail health settings, in more detail.

2. Purpose and Intent.

- a. Purpose. The public health threat of serious illness or death from COVID-19 has decreased in the County and the Bay Area due to the high rate of vaccination of the community and immunity through infection. Although the state-wide emergency declaration and the local health emergency have ended, COVID-19 continues to remain a consideration for patients, clients, and residents at Healthcare Facilities and poses a serious concern for medically vulnerable people. Vaccination remains the most effective method to prevent severe outcomes due to COVID-19, such as hospitalizations and deaths.

This Order is based on evidence of continued community transmission of SARS-CoV-2 within the County as well as scientific evidence and best practices to prevent severe negative health outcomes due to COVID-19. The Health Officer will continue to monitor data regarding the evolving scientific understanding of the risks posed by COVID-19, including the impact of vaccination, and may amend or rescind this Order based on analysis of that data and knowledge.

- b. Intent. The primary intent of this Order is to protect patients, clients, residents, and people who are incarcerated who receive care at Healthcare Facilities from infection, and to reduce the risk of severe health outcomes, such as hospitalization or death, due to COVID-19, by ensuring that Personnel who work with such people are either: 1) Vaccinated with a Recent Dose or 2) Vaccinated with an Original Monovalent Series AND then later Vaccinated with Any Additional Dose. For clarity, the first option, being Vaccinated with a Recent Dose, is preferred given that it can boost immunity against current strains of COVID-19.
- c. Interpretation. All provisions of this Order must be interpreted to effectuate the purpose and intent of this Order as described above. The summary at the beginning of this Order as well as the headings and subheadings of sections contained in this Order are for convenience only and may not be used to interpret this Order. In the event of any inconsistency between the summary, headings, or subheadings and the text of this Order, the text will control. Certain initially capitalized terms used in this Order have the meanings given them in Section 1 above.
- d. Effect of Failure to Comply. Failure to comply with any of the provisions of this Order constitutes an imminent threat and menace to public health, constitutes a public nuisance, and is punishable by fine, imprisonment, or both, as further provided in Section 6 below.

3. Facilities Subject to this Order. This Order applies to Healthcare Facilities in the County and Personnel who routinely work in Healthcare Facilities, as defined above and in more



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detail in this Section.

- a. Healthcare Facilities. Healthcare Facilities subject to this Order include the following facilities or settings:
 - i. General Acute Care Hospitals;
 - ii. Skilled Nursing Facilities;
 - iii. Intermediate Care Facilities;
 - iv. Acute Psychiatric Hospitals;
 - v. Adult Day Health Care Centers;
 - vi. Program of All-Inclusive Care for the Elderly (PACE) and PACE Centers;
 - vii. Ambulatory Surgery Centers;
 - viii. Chemical Dependency Recovery Hospitals;
 - ix. Clinics & Doctor Offices (including surgical centers, but excluding outpatient behavioral health offices and clinics);
 - x. Congregate Living Health Facilities;
 - xi. Jail Health Facilities;
 - xii. Dialysis Centers;
 - xiii. Hospice Facilities;
 - xiv. Pediatric Day Health and Respite Care Facilities; and
 - xv. Residential Substance Use Treatment and Mental Health Treatment Facilities.

The term Healthcare Facility applies to the entirety of buildings that are primarily devoted to providing healthcare (such as the entirety of hospitals, stand-alone skilled nursing facilities, professional offices that mostly have primarily doctor offices or clinics, etc.). The term does not apply to the parts of mixed-use buildings or structures where the building or structure is not primarily devoted to the provision of healthcare, in which case the term Healthcare Facility applies to those parts of such buildings or facilities where healthcare is provided (such as suites of doctors offices or clinics in a commercial office building that has more tenants not providing healthcare, or the parts of correctional facilities designated for the full-time provision of healthcare).

- b. Campus Buildings Included. For clarity, this Order applies to Personnel in other buildings in a site containing a Healthcare Facility, such as a campus or other similar grouping of related buildings, where such Personnel do any of the following: (i) access the acute care areas or areas where patients, clients, residents, or people who are incarcerated have access in the Healthcare Facility; or (ii) work in-person with patients, clients, or residents who are present in those areas.
- c. Minimum Requirements; Ability to Adopt More-Restrictive Measures. This Order establishes the minimum requirements related to COVID-19 vaccinations in Healthcare Facilities. Nothing in this Order is intended to reduce any other federal, state, or local legal requirements or otherwise modify them in a way that is less protective of public health, or to limit a Healthcare Facility's choices to take more health protective measures. Healthcare Facilities may impose further restrictions that



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are more protective of public health than the minimum requirements or recommendations under this Order.

4. Vaccination Requirements for Healthcare Facilities and Personnel in Healthcare Facilities.
 - a. Healthcare Facilities. Each and every Healthcare Facility must implement a program requiring its Personnel, consistent with this Order, to be either: (i) Vaccinated with a Recent Dose (without the need to be Vaccinated with an Original Monovalent Series); or (ii) Vaccinated with an Original Monovalent Series AND then later Vaccinated with Any Additional Dose. For clarity, the first option, being Vaccinated with a Recent Dose, is preferred given that it can boost immunity against current strains of COVID-19.
 - b. Personnel in Healthcare Facilities. Except as provided in subsection (d) below, by the Effective Date of this Order, Personnel who routinely work onsite in Healthcare Facilities must either: (i) be Vaccinated with a Recent Dose (without the need to be Vaccinated with an Original Monovalent Series); or (ii) be Vaccinated with an Original Monovalent Series AND Vaccinated with Any Additional Dose. Personnel who are already compliant with this subsection (b) by receiving a monovalent full initial course and any single subsequent vaccine dose are recommended but not required to also be Vaccinated with a Recent Dose given the additional boost in immunity against current strains of COVID-19.
 - c. Transition Period for Personnel Who Have Not Received Vaccination Doses Required by This Order. Some Personnel may not meet the vaccination requirements listed in the previous subsection because, for example, they are recently hired and did not meet vaccination requirements before then or they are not yet eligible to receive a vaccine dose due to a recent positive COVID-19 test or clinical diagnosis. Personnel who do not meet vaccination criteria listed in the previous subsection must be Vaccinated with a Recent Dose within 15 days of starting work at the Healthcare Facility or, if they are not yet eligible to receive a vaccine dose due to a recent positive COVID-19 test or clinical diagnosis, within 15 days of becoming eligible to be Vaccinated with a Recent Dose. And for the period before such Personnel came into compliance with the vaccination requirements listed in the prior subsection of this Order, the Healthcare Facility must ensure that each such person complies with the face covering requirements in subsection (e).
 - d. Limited Exceptions.
 - i. Personnel may be exempt from the vaccination requirements under this Section only upon providing the requesting Healthcare Facility a declination form stating either of the following: (1) the individual is declining vaccination based on Religious Beliefs or (2) the individual is excused from receiving any COVID-19 vaccine due to Qualifying Medical Reasons.



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- As to declinations for Qualifying Medical Reasons, to be eligible for this exemption Personnel must also provide to their employer a written statement signed by a physician, nurse practitioner, or other licensed medical professional practicing under the license of a physician stating that the individual qualifies for the exemption (but the statement should not describe the underlying medical condition or disability) and indicating the probable duration of the individual's inability to receive the vaccine (or if the duration is unknown or permanent, so indicate).
 - As to declinations based on Religious Beliefs, a Healthcare Facility may seek additional information as allowed or required by applicable law to determine whether Personnel have a qualifying Religious Belief.
- ii. Personnel who qualify for and are granted by their employer an exemption due to Religious Beliefs or Qualifying Medical Reasons, as provided above, must still follow the face covering requirements in subsection (e). Nothing in this Order is intended to limit any Healthcare Facility's ability under applicable law to determine whether they are able to offer a reasonable accommodation to Personnel with an approved exemption.
 - iii. Personnel who provide proof of recent COVID-19 infection as the basis for not being fully in compliance with the vaccination requirements listed in subsection (c) above may defer becoming Vaccinated with a Recent Dose for up to 90 days from the date of their first positive COVID-19 test or clinical diagnosis, which in some situations may extend the deadline for receipt of a vaccine dose. Personnel with a deferral due to a proven COVID-19 infection must be in compliance no later than 15 days after the expiration of their deferral.
- e. Face Covering Requirements. All Healthcare Facilities must require any Personnel who routinely work onsite and are exempt or who are otherwise have not received vaccine doses required by this Order to wear a Well-Fitted Mask when interacting with patients, clients, residents, or people who are incarcerated consistent with Health Officer Order No. 2023-01b, including as that order is amended in the future. Healthcare Facilities must provide such Personnel, on request, with a Well-Fitted Mask.
 - f. Recordkeeping and Audit Requirements. All Healthcare Facilities must, consistent with applicable privacy laws and regulations, maintain records of employee vaccination or exemption status and the facility's program for requiring vaccination. All Healthcare Facilities must provide these records, documents, or other information to the Health Officer, DPH, or other public health authorities promptly upon request, and in any event no later than the next business day after receiving the request.
5. Obligation to Follow Health Officer Orders and Directives and Mandatory State and Federal Rules. In addition to complying with all provisions of this Order, all Personnel



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and Healthcare Facilities must also follow any applicable orders and directives issued by the Health Officer (available online at <https://sf.gov/healthrules>) and any applicable rules issued by state or federal authorities, including but not limited to Cal/OSHA's regulations. Based on local health conditions, this Order may include a limited number of health and safety restrictions that are more stringent or more detailed than those contained under other rules. Businesses and other entities must adhere to applicable Cal/OSHA regulations relating to COVID-19 health and safety measures in the workplace. In the event of a conflict between provisions of any Health Officer order and any other order or rule, the provision that is more protective of health controls over the conflicting provisions of the other order or rule.

6. Enforcement. Under Sections 26602 and 41601 of the California Government Code and Section 101029 of the California Health and Safety Code, the Health Officer requests that the Sheriff and the Chief of Police in the County ensure compliance with and enforce this Order. The violation of any provision of this Order constitutes an imminent threat and immediate menace to public health, constitutes a public nuisance, and is punishable by fine, imprisonment, or both.
7. Effective Date. This Order is effective at 11:59 p.m. on February 28, 2023, and will continue, as updated, to be in effect until the Health Officer rescinds, supersedes, or amends it in writing. The changes made in the November 14, 2023 update are effective immediately.
8. Copies. The County must promptly provide copies of this Order as follows: (1) by posting on the County's website (<https://sf.gov/healthrules>); (2) by providing to any member of the public requesting a copy; and (3) by providing the opportunity for any member of the public to sign up for an email distribution list relative to changes to Health Officer orders and guidance (available at <https://sf.gov/healthrules>).
9. Severability. If a court holds any provision of this Order or its application to any person or circumstance to be invalid, then the remainder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Order are severable.

IT IS SO ORDERED:

Susan Philip, MD, MPH,
Health Officer of the
City and County of San Francisco

Dated: November 14, 2023