

1 [Public Works Code - Mobile Food Truck Facilities Locational Requirements]

2
3 **Ordinance amending Public Works Code, Article 5.8, to address various locational and**
4 **noticing requirements concerning mobile food facilities; and making environmental**
5 **findings.**

6 NOTE: Additions are *single-underline italics Times New Roman*;
7 deletions are ~~*strike-through italics Times New Roman*~~.
8 Board amendment additions are double-underlined;
9 Board amendment deletions are ~~strikethrough-normal~~.

10 Be it ordained by the People of the City and County of San Francisco:

11 Section 1. Findings.

12 (a) The Planning Department has determined that the actions contemplated in this
13 ordinance comply with the California Environmental Quality Act (California Public Resources
14 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
15 Supervisors in File No. 120193 and is incorporated herein by reference.

16 (b) As one of the densest cities in the nation, San Francisco experiences significant
17 pedestrian congestion on its sidewalks, limited on-street parking and loading, and impeded
18 traffic flow from different travel modes and vehicles, particularly in its commercial zones and
19 areas with a concentration of restaurants and food service uses. Restaurants also can create
20 a crowded pedestrian area given waiting patrons that cannot be accommodated inside and
21 smoking prohibitions, which require patrons to stand outside, as well as the usage of outdoor
22 seating. These factors can contribute to the shortage of space on adjacent sidewalks.

23 Pedestrian congestion and path of travel difficulties are compounded by limited sidewalk
24 width, door swing from parked vehicles, accommodation for path of travel and disability
25 access along the sidewalk and between the sidewalk and vehicles parked in disabled parking

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1 zones, the number of private and public utility infrastructure elements, abundance of street
2 furniture, and other encroachments, such as cafe tables and chairs, display merchandise,
3 kiosks, and newsracks.

4 (c) This legislation attempts to provide and expand the range of convenient and
5 interesting food consumption opportunities for mobile food facilities in underserved and less
6 congested areas of the City at different times of the day and evening. Also, by limiting a
7 single facility's days to use a particular location during the course of a week, this Ordinance
8 will encourage and provide for greater opportunities for diversity of mobile food facilities in the
9 locations where different vendors will appear on a rotating basis. In addition, it attempts to
10 preserve safe pedestrian movement, protect on-street parking and loading in such a way that
11 allows regular turnover and use of this limited resource, and provide for less constrained
12 vehicular flow and bicycle access.

13 (d) The City must exercise care and consider public safety in addressing appropriate
14 locations for mobile food facilities in order to: (1) minimize conflicts between pedestrian
15 movement and customers frequenting mobile food facilities at high pedestrian use times in
16 congested areas of the City, particularly near existing restaurants with standard hours of
17 operation; (2) maintain availability of limited on-street parking in light of such facilities use of
18 one or more parking spaces for multiple hours in a single location at times of high on-street
19 parking usage; (3) discourage infringement on loading and drop-off zones by such facilities, so
20 that these limited spaces are available for regular service and delivery demands of existing
21 businesses and uses; and (4) avoid double parking and associated vehicular congestion that
22 occurs with reduced on-street parking that is more scarce when occupied by such facilities.
23 Consequently, the locational restrictions included in this legislation are intended to address
24 these public concerns.
25

1 Section 2. The San Francisco Public Works Code is hereby amended by amending
2 Sections 184.80, 184.83, 184.84, 184.85, 184.88, 184.89, 184.93, 184.96, 184.97, and
3 184.98, and adding Section 184.86.1, to read as follows:

4 **SEC. 184.80. DEFINITIONS.**

5 For the purpose of this Article the following words and phrases mean and include:

6 (a) **BART.** San Francisco Bay Area Rapid Transit District.

7 (b) **Department.** The Department of Public Works.

8 (c) **Director.** The Director of the Department of Public Works or his or her designated
9 representative.

10 (d) **Director of Health.** The Director of the Public Health Department of the City and
11 County of San Francisco or a designated representative of the Director of Health.

12 (e) **Location.** A Mobile Food Facility location is a fixed point or defined route including
13 an approximate duration at specific fixed points and approximate time of day at specific fixed
14 points along the route.

15 (f) **Mobile Caterer.** Any motorized vehicle wherein or wherefrom wrapped food,
16 foodstuffs, products, liquids or material intended or food or drink for human consumption are
17 sold, served, distributed, or offered for sale at retail or given away to the public.

18 (g) **Mobile Food Facility.** Any vehicle or pushcart used in conjunction with a
19 commissary or other permanent food facility upon which food is sold or distributed at retail.
20 Mobile Food Facility does not include a "Transporter" used to transport packaged food from a
21 food facility or other approved source to the consumer. A Mobile Food Facility does not include
22 any use that sells goods, wares, or merchandise other than food or drink intended for human
23 consumption. For purposes of this Article, a pushcart or a mobile caterer are both referred to
24 as a Mobile Food Facility unless specifically stated otherwise.
25

1 ~~(h)~~ **Mobile Food Facility Vendor.** Any person or entity engaged in the business of
2 operating a Mobile Food Facility within the City and County of San Francisco.

3 ~~(i)~~ **Person.** An individual or natural person.

4 ~~(j)~~ **Pushcart.** Any wagon, cart, or any other food-serving device, whether stationary or
5 movable, wherein or wherefrom any food or foodstuffs are sold, served, distributed, offered for
6 sale at retail, or given away to the public, whether consumed at said pushcart or elsewhere.

7 ~~(k)~~ **Pushcart Peddler.** Any person or entity engaged in the business of operating a
8 pushcart within the City and County of San Francisco.

9 **SEC. 184.83. MOBILE FOOD FACILITY APPLICATION AND FEE PROVISIONS.**

10 (a) Every person desiring a Mobile Food Facility permit pursuant to this Article shall file
11 an application with the Director upon a form provided by the Director and shall pay a filing fee
12 of \$125.00, a notification fee of \$200.00, and an inspection fee of \$383.00 for a single
13 Location for the Mobile Food Facility. Each additional Location shall require payment to the
14 Department of a notification fee of \$200.00 per Location, an inspection fee of \$383.00 for the
15 first additional Location and an inspection fee of \$191.50 per each additional Location.
16 Separate fees shall be paid to the Department of Health and the Fire Marshal for the annual
17 approvals required by each department for a valid permit under this Article. The fees for the
18 Department of Public Health are set forth in the Business and Taxation Code.

19 (b) Half of the required fees for a single Location and half of the fees for any additional
20 Location(s) shall be paid at the time of application submission and the remainder of the total
21 fee amount shall be paid at the time of the Director's decision on the permit. No refunds are
22 available if the Department disapproves a permit or a Permit Location.

23 (c) Every Permittee desiring to change the Location of the Mobile Food Facility, modify
24 the hours of operation to allow service after 8 p.m., or add a new Location(s) during the term
25 of the annual permit, shall file an application with the Director upon a form provided by the

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1 Director and shall pay a filing fee of \$85.00 for each Location change or addition of a new
2 Location(s), a notification fee of \$200.00 per Location, and an inspection fee of \$191.50 per
3 Location. Such requests shall be processed in the same manner as a new permit.

4 (d) **Permit Renewal, ~~and Annual Renewal Fee, Permit Expiration.~~**

5 (1) Every Mobile Food Facility permit is subject to an annual renewal filing fee of
6 \$125.00 per permit. In addition, if during the course of the preceding year the Department
7 received one or more substantiated complaints against the permit Location(s) or filed one or
8 more notices of violation against the Permit, the Department shall assess an additional
9 processing fee of \$159.50 per permit. The Department also shall charge inspection fees as
10 follows: \$576.00 the first two (2) Locations where substantiated complaints were received or
11 notices of violation filed and \$288.00 per each additional Location where substantiated
12 complaints were received or notices of violation filed. Said fees are payable to the
13 Department. Separate annual fees shall be paid to the Department of Health and the Fire
14 Marshal for the approvals required by each department for a valid renewal permit under this
15 Article. The annual renewal fees for the Department of Public Health are set forth in the
16 Business and Taxation Code.

17 (2) Any Mobile Food Facility permit that the Director renews is not ~~final and effective~~
18 operative unless and until the Mobile Food Facility Vendor has obtained an annual renewal of
19 his or her Certificate of Sanitation for the Department of Public Health and approval from the
20 Fire Marshal.

21 (3) The permit ~~issuance~~ renewal date shall be ~~when the permit is final and effective~~ the date
22 that the Director issues his or her decision to renew the permit or conditionally renew the permit.

23 (4) Permits are ~~automatically~~ renewed ~~each year~~ annually so long as the Mobile Food
24 Facility remains in compliance with this Article, including payment of all fees due to the City.
25 Annual renewal of a permit does not constitute issuance of a new permit and Renewal of the permit

1 does not require notice under Section 184.88. Notwithstanding the above, if, as part of a permit
2 renewal, unless the permittee is changing the Location that the Mobile Food Facility serves,
3 adding a new Location(s), changing the hours of operation to serve a Location later than 8
4 pm; or making other changes to the Mobile Food Facility that the Director determines requires
5 public notice, the Department shall treat such changes as the equivalent of a new permit and require
6 the applicant to satisfy the requirements associated with applying for and obtaining a new permit.

7 (5) Permit Expiration. A permit shall be deemed to expire seven (7) years from the anniversary
8 of the original permit issuance date as long as the permittee remains in compliance with this Article
9 during that term. If the permittee elects to pursue a new permit six (6) months prior to such expiration,
10 the existing permittee may apply for a new permit under the same terms as the existing permit and shall
11 be given priority over any other applicants. The only required notice under this Subsection shall be an
12 electronic notice issued by the Department to any individual(s) or organization(s) that have requested
13 such notification by the Department, except that any permittees who have received three (3) or more
14 Notice of Violations by the Department in a period of 24 months prior to their permit expiration shall
15 be required to satisfy all noticing requirements of Section 184.88 of this Article. Any new permit issued
16 in accordance with the terms of this Subsection shall be subject to all applicable provisions of this
17 Article. Subject to Section 184.88, if a protest is filed to request a Departmental administrative hearing
18 on the new permit, the permittee may continue to operate under the provisions of the old permit until a
19 decision is rendered by the Director of Public Works on the new permit.

20 (6) If an existing permittee seeks a new permit for the same Location in accordance with the
21 terms of Subsection (d)(5), but that Location no longer satisfies the requirements of Section 184.85, the
22 Director, under such circumstances, shall strive to authorize a temporary or permanent relocation of
23 the Mobile Food Facility to a comparable Location that meets the requirements of Section 184.85. Any
24 such authorization shall be in writing and available at the Mobile Food Facility prior to issuance of a
25

1 new permit. Notice related to the proposed temporary or permanent relocation of the Mobile Food
2 Facility shall be subject to all applicable noticing requirements set forth in Subsection (d)(5).

3 (7) If a permittee for a Mobile Food Facility has a valid permit for a specific Location dated on
4 or before July 1, 2013, said permittee is exempt from Subsection (d)(5) as long as the such permittee
5 complies with all other applicable terms of this Article. As part of any permit issuance, renewal, or
6 transfer pursuant to this Article, the Department shall include reference to the original granting date of
7 the Mobile Food Facility permit.

8 (e) The fees set forth in this Section are subject to the fee review and adjustment
9 procedures of Section 2.1.2.

10 (f) Each Mobile Food Facility shall require a separate permit pursuant to this Article.
11 Each permit issued pursuant to this Article shall be valid for only those Locations and hours of
12 operation that the Department approves as set forth in this Article.

13 (g) Notwithstanding Subsection (f), the Director may issue a single permit or permits to
14 an assigned Location(s) for multiple Mobile Food Facilities. The fees for such permit shall be
15 the filing, notification, and inspection fees for a single Location. Under such circumstances,
16 Director also may charge additional permit fees as set forth in Section 2.1.3. All Mobile Food
17 Facilities operating under a single Location permit shall comply with all other provisions of this
18 Article.

19 (h) The Board of Supervisors reserves the right to charge a public right-of-way
20 assessment fee for occupation of the right-of-way by a Mobile Food Facility.

21 **SEC. 184.84. MOBILE FOOD FACILITY APPLICATION FORM.**

22 Except as otherwise provided herein, an application for a Mobile Food Facility permit
23 pursuant to the provisions of this Article shall specify or include:

24 (a) The name, business and residence address of the applicant and the address where
25 the mobile catering vehicle is stored during nonoperating hours. If the applicant is a

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1 corporation, the name of the corporation shall be set forth exactly as shown in its articles of
2 incorporation; the names and residence addresses of each of the officers, directors and each
3 stockholder owning more than 10 percent of the stock of the corporation. If the applicant is a
4 partnership, the application shall set forth the name and residence address of each of the
5 partners, including limited partners. If one or more of the partners is a corporation, the
6 provisions of this Section pertaining to a corporate applicant apply. A natural person shall not
7 acquire a stock interest in more than one corporate permittee.

8 (b) A description of the Mobile Catering Vehicle, including the following data: The
9 make, model and type of body; the number of cylinders; the vehicle identification number or
10 any other identifying number as may be required by the Director.

11 (1) If this information is not known at the time of permit application, this requirement
12 can be satisfied as a condition of obtaining a final and effective permit.

13 (c) Whether or not the applicant intends to operate a Mobile Food Facility under a
14 fictitious name.

15 (d) Such information pertinent to the operation of the proposed activity, including
16 information as to management and authority control, as the Director, Director of Health, or
17 Fire Marshal may require of an applicant in addition to the other requirements of this Section.

18 (e) The address to which notice, when required, is to be sent or mailed, and the name
19 and address of a person authorized to accept service or process, if not otherwise set forth
20 herein.

21 (f) A photograph of the permit applicant.

22 (g) Whether the application is for a new permit, renewal of an existing permit, a change
23 to the Location that the Mobile Food Facility serves, a change in hours of operation, or the
24 addition of a Location(s).

1 (h) A description of the food product, products, ~~services~~ and/or drink the applicant
2 intends to sell though no permittee shall be bound by or limited to this description.

3 (i) The specific Location(s) of the activity, including a detailed description of where the
4 applicant intends to place his or her Mobile Food Facility.

5 (j) The proposed hours of operation and days of operation for each Location that the
6 Mobile Food Facility proposes to serve. The application should specify no more than three (3) 24-
7 hour cycles (or portions thereof) and associated days for each Location over the course of one (1) week
8 as part of the application in accordance with the requirements of Section 184.85(b)(6). The applicant
9 also may propose alternate cycles and/or days if the preferred time periods are denied or not otherwise
10 available. The specified time(s) and Location(s) shall repeat each week during the term of the permit.

11 **SEC. 184.85. REGULATING MOBILE FOOD FACILITY LOCATIONS.**

12 (a) Every person desiring a permit pursuant to this Article shall conform to the
13 requirements set forth in this Section 184.85 and any regulations and rules that the Director
14 adopts pursuant to this Article.

15 (b) The Director may issue a Mobile Food Facility permit only when the Director finds
16 that the following location and time requirements are met:

17 (1) The Location shall:

18 (A) Leave unobstructed path for pedestrian passage on any sidewalk a space not less
19 than 6 feet wide.

20 (B) Satisfy all other locational requirements of the Department.

21 (2) No Mobile Food Facility or Mobile Food Facility Vendor shall peddle food or drink
22 ~~goods, wares or merchandise~~ between the hours of 3:00 a.m. (~~midnight~~) and 6:00 a.m., unless
23 the Director has approved such sales after consulting with the Planning Department and the
24 Chief of Police.

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1 (3) Notwithstanding any other provision of this Code, no Mobile Food Facility or Mobile
2 Food Facility Vendor shall peddle food or drink~~goods, wares or merchandise~~:

3 (A) In any residential ("R") district other than a residential-commercial combined ("RC")
4 district as defined in the Planning Code.

5 (B) In the "P" districts, as defined in Section 234 of the Planning Code, that are located
6 on Twin Peaks or in any areas in or adjacent to Open Space Districts located on Twin Peaks.

7 (C) On the sidewalk or street immediately adjacent to property under the jurisdiction of the
8 Recreation and Park Commission other than the areas specified above in Subsection (B) unless written
9 consent is obtained from the General Manager of the Recreation and Park Department.

10 (D) On the north side of Jefferson Street between Jones and Taylor.

11 ~~(D)~~ (E) Within ~~±~~500 feet of the property line of any public middle school; or junior high
12 school, ~~or high school~~ between the hours of 7:00 a.m. and 5:00 p.m. Monday through Friday.

13 (F) Within 1,000 feet of the property line of any public high school between the hours of 7:00
14 a.m. and 5:00 p.m. Monday through Friday except that this distance shall be within 750 feet for the
15 following public schools:

16 (i) John O'Connell (Assessor's Block 3593, Lot 04)

17 (ii) Mission High School (Assessor's Block 3579, Lot 006)

18 (iii) Hilltop High School (Assessor's Block 4273, Lot 008)

19 (iv) Galileo High School (Assessor's Block 0475, Lot 001)

20 (v) International Studies Academy (Assessor's Block 4032, Lot 001)

21 (vi) Principal's Center (Assessor's Block 1761, Lot 040)

22 (vii) Civic Center High School (Assessor's Block 0768, Lot 015).

23 (4) Notwithstanding any other provision of this Code, no Mobile Caterer, shall peddle food or
24 drink within a 75-foot radius of any restaurant as measured from the centerline of the primary entrance
25 to the restaurant subject to the following:

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1 (A) The restaurant shall be operational at the time the Mobile Food Facility applies for a
2 permit for the particular Location.

3 (B) For purposes of this Subsection, restaurant is defined under Health Code Section 451 and
4 includes only the following food preparation and service establishment permit types: (i) fast food
5 establishment, (ii) restaurant less than 1,000 square feet, (iii) restaurant between 1,000 and 2,000
6 square feet, and (iv) restaurant greater than 2,000 square feet. Restaurant also includes a take-out
7 establishment as defined in Health Code Section 451.

8 (C) Notwithstanding Subsection (B) above, if the restaurant provides any food product and
9 marketing uses as defined in Health Code Section 440, then it shall not constitute a restaurant for
10 purposes of this Subsection.

11 (D) Notwithstanding this Subsection (4), its terms shall not apply to any Mobile Caterer that
12 would be located in the prohibited area at any time between the hours of 10 p.m. and 6 a.m. the
13 following day.

14 (5) The prohibition set forth in Subsection (4) above shall apply only if a restaurant has direct
15 street access to its primary entrance.

16 (6) Notwithstanding this Subsection (4), if the active street-facing façade of a restaurant
17 extends beyond 75 feet from its primary entrance, no Mobile Caterer shall operate along the curb
18 directly fronting any active street-facing façade. Under no circumstances shall a Mobile Caterer be
19 parked within 50 feet of the active street-facing façade of such a restaurant.

20 (7) Mobile Food Facilities shall be limited to serving one Location no more than three (3) days
21 per week. Such days shall be measured in 24-hour cycles so that they could begin on one day and
22 extend to the following day so long as the subject cycle does not constitute more than 24 consecutive
23 hours at a single Location.

24 (8) The Mobile Food Facility shall comply with all color curb controls.

1 (9) The Mobile Food Facility shall occupy no more than the equivalent of two (2) parking
2 spaces.

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

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

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

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

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

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1 (a) If a Mobile Food Facility is operated by or otherwise an affiliate of a formula retail use as
2 defined in Planning Code Section 303(i) that is a eating and drinking use, restaurant, or limited-
3 restaurant, as such terms are defined in Planning Code Articles 7 and 8, the following restrictions shall
4 apply:

5 (1) The Mobile Food Facility is prohibited within the boundaries of those zoning districts
6 where formula retail is prohibited or subject to conditional use authorization as set forth in Planning
7 Code Section 303(i)(4) and (5).

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

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

15 **SEC. 184.88. NOTICE OF INTENT; APPEAL OF PROTEST OR DENIAL OF**
16 **PERMIT.**

17 **(a) Notice of Intent; Contents of Notice.** Following the filing of an application for a
18 new Mobile Food Facility permit under this Article, change of Location of an existing permit,
19 change in hours of operation so that service occurs after 8 p.m., or addition of a Location(s),
20 the Department shall mail Notice of Intent to operate the proposed Mobile Food Facility
21 business at the Location(s) identified in the application. The form for the Notice of Intent shall
22 be provided to each applicant by the Department. Said notice shall include the Location(s) the
23 Mobile Food Facility intends to serve, the days of the week and times for service at each
24 Location, a description of the goods to be sold under the permit, the procedure for obtaining
25 any additional information, and the procedure for filing any protest or opposition to the

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1 proposed permit. The applicant also shall provide the Department with a list of all required
2 recipients of the mailed notice and stamped envelopes with the addresses of all such
3 individuals for the purpose of providing mailed notice. Notice shall be provided as follows:

4 (1) If the Mobile Food Facility will operate between the hours of 6 a.m. and 8 p.m.,
5 mailed notice shall be sent to all ~~businesses~~ ground floor commercial tenants and any neighborhood
6 organization on the Planning Department list developed pursuant to Planning Code Section
7 311(c)(2)(C) within the area set forth in Subsection ~~(3)~~(4) below.

8 (2) If the Mobile Food Facility will operate at any Location between the hours of 8 p.m.
9 and 3 a.m. the following day, mailed notice shall be provided to all property owners, ~~businesses,~~
10 ~~and residential tenants,~~ ground floor commercial tenants, and any neighborhood organization on the
11 Planning Department list developed pursuant to Planning Code Section 311(c)(2)(C) within the area
12 set forth in Subsection ~~(3)~~(4) below.

13 (3) For each physical building address within the area set forth in Subsection (4) below, notice
14 also shall be mailed to the attention of "Building Owner/Manager" at that address and to the address
15 of record for the property owner, if different.

16 ~~(3)~~(4) (A) If the Mobile Food Facility is a Mobile Caterer, notice shall be given within a
17 Noticed Area. For purposes of this Subsection, "Noticed Area" shall be defined as all buildings within
18 a ~~300~~ 75-foot radius from the ~~mid-point~~ outer perimeter of the block face for the proposed
19 Location(s) to be served. For purposes of measuring this distance, a Mobile Caterer shall be
20 assumed to occupy 20 linear feet of curbside area. The 75-foot radius shall be measured from the outer
21 boundaries of this assumed curbside area. Notice also shall be provided to all properties across the
22 street that directly front, in whole or in part, the Noticed Area, or all of the block face of the
23 Location(s) to be served and the block face on the opposing side of the street, whichever area is larger.
24 Notice also shall be posted on a City-owned utility pole or other City facility closest to the proposed
25 Mobile Caterer's proposed Location for at least 10 calendar days prior to the close of the period to

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1 request a Departmental hearing. The applicant shall photograph the posted notice, including a date
2 stamp, and submit such photograph to the Department. Such photograph shall satisfy this posting
3 requirement.

4 (B) If the Mobile Food Facility is a Pushcart, notice shall be given within a 300
5 foot radius of the boundaries of the street address(s) in front of which the Pushcart will be
6 located. If there is no street address, the notice shall be given within a 300 foot radius of the
7 boundaries of the Assessor's Block(s) and Lot(s) in front of which the Pushcart will be located.

8 (b) Appeal of Protest and Appeal of Proposed Issuance or Denial of Permit. (1) Any
9 person or persons who deem their interests or property or that of the general public will be
10 adversely affected by the issuance of the Mobile Food Facility permit at its intended Location
11 may protest the issuance of said permit by writing to the Director within 30 calendar days from
12 the date listed on the Notice of Intent. Upon receipt of any such written protest during the term
13 of the protest period, the Director will schedule a public hearing to hear all protests or
14 opposition to the issuance of the permit. If there are multiple protests for a single Location or
15 protests for multiple Locations, then the Director shall strive to consolidate all protests at a
16 single hearing. The Director's decision to approve, approve with conditions, or disapprove a
17 permit is appealable to the Board of Appeals within 15 days of the Director's decision.

18 (c) **Notice of Hearing.** Not less than 10 days before the date of a Departmental
19 hearing scheduled under subsection (b) above, the Director shall cause to be published a
20 notice of such hearing in the official newspaper of the City and County of San Francisco. The
21 Director shall maintain a file of the names and addresses of all persons wishing to receive
22 notice by mail of any application filed pursuant to this Article and of all persons previously
23 notified of the proposed application: Not less than 10 days before the date of such hearing,
24 the Director shall cause to be mailed notice of such hearing to all persons requesting to be so
25 notified. The cost of publishing said notice and any additional mailed notice shall be borne by

1 the Mobile Food Facility permit applicant if the cost exceeds the notification fee set forth in
2 Section 184.83. Such notices published or mailed pursuant to this Section shall contain the
3 following: the name and business address of the applicant, the product or products to be sold,
4 the Location(s) of the proposed sales activity, the days and hours of operation, and whether
5 the application is for a new permit, for a change of an existing permit, or for addition of a new
6 Location(s).

7 (d) At the hearing, the Director may consider the following:

8 (1) Whether the applicant's proposed ~~operation is located~~ Location is within 300 feet a 75-
9 foot radius of an established business which sells the same type of food product or other merchandise
10 or similar service as intended by said applicant, a restaurant as set forth in Section 184.85(b)(4) or of
11 any Location previously established and currently being operated by a Mobile Food Facility
12 ~~selling the same type of food product or other merchandise or similar service as intended by said~~
13 ~~applicant.~~

14 (2) ~~The number of~~ Whether three (3) or more Mobile Food Facilities are currently permitted
15 for overlapping times on either side of the street of the same block or adjacent blocks.

16 (3) Other information deemed relevant to the determination of whether the proposed
17 Location ~~is appropriate~~ would generate a public safety concern.

18 (4) Whether the sidewalk width at the proposed Location is less than ten (10) feet wide.

19 (5) Whether substantiated evidence exists to refute assertions in the application for the Mobile
20 Food Facility.

21 (e) If an administrative hearing officer conducts the hearing, such officer shall make a
22 recommendation concerning the proposed permit to the Director, who, in his or her discretion,
23 may disapprove, approve, or conditionally approve the proposed permit.

24 **SEC. 184.89. ISSUANCE OF MOBILE FOOD FACILITY PERMIT.**

1 (a) The Director may issue a Mobile Food Facility permit within 14 days if no hearing is
2 requested pursuant to this Article, if he or she finds:

3 (1) That the operation, as proposed by the applicant, would comply with all applicable
4 laws, including but not limited to, the provisions of this Article and the San Francisco Municipal
5 Code.

6 (2) That the applicant has not made any false, misleading or fraudulent statements of
7 facts in the permit application or any other document required by the Director or the Director
8 of Health in conjunction therewith.

9 (b) The Director may issue a Mobile Food Facility permit within 14 days following a
10 Departmental hearing as provided herein, based on his investigation and the investigation of
11 the Director of Health, if he or she makes the findings specified above in Subsection (a).

12 (c) Any Mobile Food Facility permit that the Director issues ~~is not final and effective unless~~
13 ~~and until~~ shall be conditioned on the Mobile Food Facility Vendor ~~has obtained~~ obtaining a
14 Certificate of Sanitation for the Department of Public Health and approval from the Fire
15 Marshal. If the Certificate of Sanitation and Fire Marshal approval are not obtained within 3
16 months of the date the Director issues his or her permit decision, the permit shall be
17 automatically ~~deemed disapproved~~ revoked.

18 (d) Notwithstanding the issuance of a Permit for a specific Location(s), such Permit
19 shall be temporarily suspended if any City Department issues a permit for occupancy of the
20 subject Location for street fairs, farmers market, temporary use, street or building
21 construction, or other permitted activities. At the request of the Permittee, the Director may,
22 but is not required, to, authorize a temporary relocation of the Mobile Food Facility under such
23 circumstances. Any such authorization shall be in writing and available at the Mobile Food
24 Facility for review by City officials.

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1 (e) No permit shall be required under this Article if any City Department issues a permit
2 for occupancy of the subject Location for street fairs, farmers market, temporary use, or other
3 permitted activities as long as the Mobile Food Facility has a Certificate of Sanitation and Fire
4 Marshal approval.

5 **SEC. 184.93. EXHIBITION OF MOBILE FOOD FACILITY PERMIT AND OTHER**
6 **IDENTIFYING INFORMATION.**

7 (a) Upon demand by any Police Officer, the Director, the Director of Health, or the Fire
8 Marshal, each Mobile Food Facility Vendor or Mobile Food Facility employee shall produce
9 the Mobile Food Facility permit, a valid San Francisco Business Registration Certificate from
10 the Office of the Treasurer and Tax Collector, a valid Certificate of Sanitation, an identification
11 card, a description of the approved Location(s) and hours of operation for a Mobile Food
12 Facility, and all other documents required under this Article so that the Location of the Mobile
13 Food Facility may be checked and verified.

14 (b) The permit, business license, decal confirming a valid Certificate of Sanitation,
15 identification card, and a description of the approved Location(s) and hours of operation for a
16 Mobile Food Facility shall be displayed in a manner where it is in plain view of the public at all
17 times or as otherwise prescribed by the Department.

18 (c) If the Municipal Transportation Agency authorizes use of a no parking sign for Mobile
19 Food Facilities, a Mobile Food Facility Vendor may display such sign(s) at the Location of the Mobile
20 Food Facility pursuant to any Municipal Transportation Agency rules and regulations for posting of
21 such signs.

22 (d) A Mobile Food Facility Vendor is prohibited from placing any freestanding A-frame,
23 display, sign, or other obstruction on the public right-of-way with the exception of refuse collection
24 receptacle.

25 **SEC. 184.96. TRANSFER OF PERMIT.**

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1 No permit shall be transferable except with the written consent of the Director with the
2 approval of the Director of Health, such consent and approval shall not be unreasonably
3 withheld. The application for such transfer shall contain the same information as requested
4 herein for an initial application for such a permit and shall be accompanied by the same filing
5 and inspection fees as for an initial application and, with the exception of any Mobile Food Facility
6 permit issued on or before July 1, 2013, shall comply with all applicable provisions of this Article;
7 provided, however, that no notice is required for a transfer. Upon approval of said transfer, the
8 transferee shall retain the original permit granting date and all of the transferor's rights under
9 this Article.

10 **SEC. 184.97. SUSPENSION AND REVOCATION OF PERMITS.**

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

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

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

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

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

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

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1 (6) ~~The Mobile Food Facility Vendor substantially modifies the food product, products, or~~
2 ~~services the applicant intends to sell so that it duplicates the same type of food product or other~~
3 ~~merchandise or similar service of a previously established business or Mobile Food Facility located~~
4 ~~within 200 feet of the Mobile Food Facility.~~

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

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

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

17 **SEC. 184.98. PENALTIES.**

18 (a) If the Director determines that the permittee has exceeded the scope of the permit,
19 either in terms of duration or area, or determines any other violation of the permit terms or
20 conditions has occurred, the Director shall order the permittee to correct the violation within a
21 specified time period. If any person has occupied public right-of-way without a permit, the
22 Director shall immediately order the violator to vacate the occupied area.

23 (b) Failure to pay any fee assessed under these provisions shall constitute good cause
24 for immediate revocation of the permit or removal of unpermitted obstructions.

25 (c) **Criminal Penalty.**

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1 (1) Any person who shall violate any of the provisions of this Section shall be guilty of
2 an infraction at each location where such violation occurs. Every violation determined to be an
3 infraction is punishable by (A) a fine not exceeding \$100 for the first violation within one year;
4 (B) a fine not exceeding \$200 for a second violation within one year from the date of the first
5 violation; (C) a fine not exceeding \$500 for the third and each additional violation within one
6 year from the date of the first violation.

7 (2) When a government official authorized to enforce this Section has reasonable
8 cause to believe that any person has committed an infraction in the official's presence that is a
9 violation of this Section, the official may issue a citation to that person pursuant to California
10 Penal Code, Part II, Title 3, Chapters 5, 5C, and 5D.

11 (d) **Civil Penalties.**

12 (1) The Director may call upon the City Attorney to maintain an action for injunction to
13 restrain or summary abatement to cause the correction or abatement of the violation of this
14 Article, and for assessment and recovery of a civil penalty and reasonable attorney's fees for
15 such violation.

16 (2) Any person who violates this Article may be liable for a civil penalty, not to exceed
17 \$500 for each day such violation is committed or permitted to continue, which penalty shall be
18 assessed and recovered in a civil action brought in the name of the people of the City by the
19 City Attorney in any court of competent jurisdiction. In assessing the amount of the civil
20 penalty, the court may consider any one or more of the relevant circumstances presented by
21 any of the parties to the case, including, but not limited to, the following: the nature and
22 seriousness of the misconduct, the number of violations, the persistence of the misconduct,
23 the length of time over which the misconduct occurred, the willfulness of the defendant's
24 misconduct, and the defendant's assets, liabilities, and net worth. The City Attorney also may
25

1 seek recovery of the attorneys fees and costs incurred in bringing a civil action pursuant to
2 this Section.

3 (e) **Administrative Penalty.** In the alternative to the criminal or civil penalties
4 authorized by Subsections (c) and (d) of this Section, Department of Public Works officials
5 designated in Section 38 of the Police Code may issue administrative citations for such
6 violations. The administrative penalty shall not exceed ~~\$300~~ 1,000 per day for each violation.
7 Notwithstanding the above limitation, should a violation not be corrected as the Director has
8 ordered or in the case of occupation without a permit, the permittee or person shall pay a
9 penalty fee of up to ~~\$1,000~~ 5,000 per day for each day of violation. Such penalty shall be
10 assessed, enforced, and collected in accordance with Section 39-1 of the Police Code.

11 Section 3. This section is uncodified. In administering this program, if the Department
12 of Public Works were to determine that more than twenty-five percent (25%) of a block's total
13 street frontage is designated as a yellow (commercial delivery) zone, the Department shall
14 consult with the San Francisco Municipal Transportation Agency (MTA) to determine if MTA
15 can or would grant a variance from the time limit controls to allow one or more Mobile Food
16 Facilities to locate there on a time limited basis.

17 Section 4. Severability. If any subsection, clause, phrase, or portion of Section 184.85
18 as proposed for amendment in this legislation is for any reason suspended or held invalid or
19 unconstitutional by any court or federal or State agency of competent jurisdiction, such portion
20 shall be deemed a separate, distinct, and independent provision and such holding shall not
21 affect the validity of the remaining portions thereof; provided, however, that during the time of
22 any such suspension or holding of invalidity or unconstitutionality, the Noticed Area set forth in
23 Section 184.88 shall be expanded to a 300-foot radius.

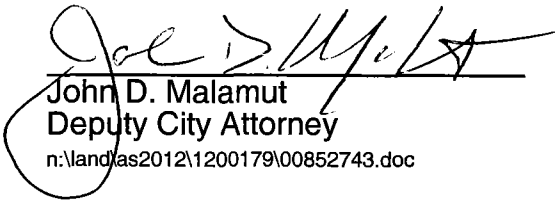
24 Section 5. Effective Date. This ordinance shall become effective 30 days from the
25 date of passage.

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1 Section 6. This section is uncodified. In enacting this Ordinance, the Board intends to
2 amend only those words, phrases, paragraphs, subsections, sections, articles, numbers,
3 punctuation, charts, diagrams, or any other constituent part of the Public Works Code that are
4 explicitly shown in this legislation as additions, deletions, Board amendment additions, and
5 Board amendment deletions in accordance with the "Note" that appears under the official title
6 of the legislation.

7
8 APPROVED AS TO FORM:
9 DENNIS J. HERRERA, City Attorney

10 By:


11 John D. Malamut
12 Deputy City Attorney
13 n:\land\as2012\1200179\00852743.doc

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Supervisor Wiener
BOARD OF SUPERVISORS



City and County of San Francisco
Tails
Ordinance

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 120193

Date Passed: June 25, 2013

Ordinance amending the Public Works Code, Article 5.8, to address various locational and noticing requirements concerning mobile food facilities; and making environmental findings.

June 10, 2013 Land Use and Economic Development Committee - AMENDED

June 10, 2013 Land Use and Economic Development Committee - RECOMMENDED AS AMENDED

June 18, 2013 Board of Supervisors - PASSED, ON FIRST READING

Ayes: 11 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

June 25, 2013 Board of Supervisors - FINALLY PASSED

Ayes: 11 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

File No. 120193

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 6/25/2013 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Mayor

Date Approved