File No. 120193 Committee Item No. 4
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

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Completed by: Alisa Miller **Date** June 7, 2013
Completed by: _____ **Date** _____

[Public Works Code - Mobile Food Facilities Locational Requirements]

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

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

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

Section 1. Findings.

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

(b) As one of the densest cities in the nation, San Francisco experiences significant pedestrian congestion on its sidewalks, limited on-street parking and loading, and impeded traffic flow from different travel modes and vehicles, particularly in its commercial zones and areas with a concentration of restaurants and food service uses. Pedestrian congestion and path of travel difficulties are compounded by limited sidewalk width, door swing from parked vehicles, accommodation for path of travel and disability access along the sidewalk and between the sidewalk and vehicles parked in disabled parking zones, the number of private and public utility infrastructure elements, abundance of street furniture, and other encroachments, such as cafe tables and chairs, display merchandise, kiosks, and newsracks.

(c) This legislation attempts to provide and expand the range of convenient and interesting food consumption opportunities for mobile food facilities in underserved areas of the City at different times of the day and evening. In addition, it attempts to preserve safe pedestrian movement, protect on-street parking and loading in such a way that allows regular turnover and use of this limited resource, and provide for less constrained vehicular flow and bicycle access.

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

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

SEC. 184.80. DEFINITIONS.

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

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

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

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

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

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

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

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

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

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

(j) **Pushcart.** Any 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.

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

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

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

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

(c) Every Permittee desiring to change the Location of the Mobile Food Facility, modify the hours of operation to allow service after 8 p.m., or add a new Location(s) during the term of the annual permit, shall file an application with the Director upon a form provided by the Director and shall pay a filing fee of $85.00 for each Location change or addition of a new Location(s), a notification fee of $200.00 per Location, and an inspection fee of $191.50 per Location. Such requests shall be processed in the same manner as a new permit.

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

(1) Every Mobile Food Facility permit is subject to an annual renewal filing fee of $125.00 per permit. In addition, if during the course of the preceding year the Department received one or more substantiated complaints against the permit Location(s) or filed one or more notices of violation against the Permit, the Department shall assess an additional

processing fee of $159.50 per permit. The Department also shall charge inspection fees as follows: $576.00 the first two (2) Locations where substantiated complaints were received or notices of violation filed and $288.00 per each additional Location where substantiated complaints were received or notices of violation filed. Said fees are payable to the Department. Separate annual fees shall be paid to the Department of Health and the Fire Marshal for the approvals required by each department for a valid renewal permit under this Article. The annual renewal fees for the Department of Public Health are set forth in the Business and Taxation Code.

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

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

(4) Permits are ~~*automatically*~~ renewed ~~*each year*~~ *annually* so long as the Mobile Food Facility remains in compliance with this Article, *including payment of all fees due to the City*. *Annual renewal of a permit does not constitute issuance of a new permit and* ~~*Renewal of the permit*~~ does not require notice under Section 184.88. *Notwithstanding the above, if, as part of a permit renewal,* ~~*unless*~~ the permittee is changing the Location that the Mobile Food Facility serves, adding a new Location(s), changing the hours of operation to serve a Location later than 8 pm; or making other changes to the Mobile Food Facility that the Director determines requires public notice, *the Department shall treat such changes as the equivalent of a new permit and require the applicant to satisfy the requirements associated with applying for and obtaining a new permit*.

(5) Permit Expiration. A permit shall be deemed to expire seven (7) years from the anniversary of the original permit issuance date as long as the permittee remains in compliance with this Article

during that term. If the permitee elects to pursue a new permit six (6) months prior to such expiration, the existing permittee may apply for a new permit under the same terms as the existing permit and shall be given priority over any other applicants. The only required notice under this Subsection shall be an electronic notice issued by the Department to any individual(s) or organization(s) that have requested such notification by the Department, except that any permittees who have received three (3) or more Notice of Violations by the Department in a period of 24 months prior to their permit expiration shall be required to satisfy all noticing requirements of Section 184.88 of this Article. Any new permit issued in accordance with the terms of this Subsection shall be subject to all applicable provisions of this Article. Subject to Section 184.88, if a protest is filed to request a Departmental administrative hearing on the new permit, the permittee may continue to operate under the provisions of the old permit until a decision is rendered by the Director of Public Works on the new permit.

(6) If an existing permittee seeks a new permit for the same Location in accordance with the terms of Subsection (d)(5), but that Location no longer satisfies the requirements of Section 184.85, the Director, under such circumstances, shall strive to authorize a temporary or permanent relocation of the Mobile Food Facility to a comparable Location that meets the requirements of Section 184.85. Any such authorization shall be in writing and available at the Mobile Food Facility prior to issuance of a new permit. Notice related to the proposed temporary or permanent relocation of the Mobile Food Facility shall be subject to all applicable noticing requirements set forth in Subsection (d)(5).

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

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

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

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

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

SEC. 184.84. MOBILE FOOD FACILITY APPLICATION FORM.

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

(a) The name, business and residence address of the applicant and the address where the mobile catering vehicle is stored during nonoperating hours. If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation; the names and residence addresses of each of the officers, directors and each stockholder owning more than 10 percent of the stock of the corporation. If the applicant is a partnership, the application shall set forth the name and residence address of each of the partners, including limited partners. If one or more of the partners is a corporation, the provisions of this Section pertaining to a corporate applicant apply. A natural person shall not acquire a stock interest in more than one corporate permittee.

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

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

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

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

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

(f) A photograph of the permit applicant.

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

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

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

(j) The proposed hours of operation and days of operation for each Location that the Mobile Food Facility proposes to serve. *The application should specify no more than three (3) 24-hour cycles (or portions thereof) and associated days for each Location over the course of one (1) week as part of the application in accordance with the requirements of Section 184.85(b)(6). The applicant*

also may propose alternate cycles and/or days if the preferred time periods are denied or not otherwise available. The specified time(s) and Location(s) shall repeat each week during the term of the permit.

SEC. 184.85. REGULATING MOBILE FOOD FACILITY LOCATIONS.

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

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

(1) The Location shall:

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

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

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

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

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

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

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

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

~~*(D)*~~ *(E)* Within ~~*1,*~~500 feet of the property line of any public middle school~~*,*~~ *or* junior high school~~*, or high school*~~ between the hours of 7:00 a.m. and 5:00 p.m. Monday through Friday.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(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 ~~*Authority*~~*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.

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(i) 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(i)(4) and (5).

(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.

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

(a) **Notice of Intent; Contents of Notice.** Following the filing of an application for a new Mobile Food Facility permit under this Article, change of Location of an existing permit, change in hours of operation so that service occurs after 8 p.m., or addition of a Location(s), the Department shall mail Notice of Intent to operate the proposed Mobile Food Facility business at the Location(s) identified in the application. The form for the Notice of Intent shall be provided to each applicant by the Department. Said notice shall include the Location(s) the Mobile Food Facility intends to serve, the days of the week and times for service at each Location, a description of the goods to be sold under the permit, the procedure for obtaining any additional information, and the procedure for filing any protest or opposition to the proposed permit. The applicant also shall provide the Department with a list of all required recipients of the mailed notice and stamped envelopes with the addresses of all such individuals for the purpose of providing mailed notice. Notice shall be provided as follows:

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

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

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

~~*(3)*~~*(4)* (A) If the Mobile Food Facility is a Mobile Caterer, notice shall be given within a *Noticed Area. For purposes of this Subsection, "Noticed Area" shall be defined as all buildings within a* ~~*300*~~ *75*-foot radius from the ~~*mid-point*~~ *outer perimeter* of the ~~*block face for the*~~ *proposed* Location(s) to be served. *For purposes of measuring this distance, a Mobile Caterer shall be assumed to occupy 20 linear feet of curbside area. The 75-foot radius shall be measured from the outer boundaries of this assumed curbside area. Notice also shall be provided to all properties across the street that directly front, in whole or in part, the Noticed Area*~~*, or all of the block face of the Location(s) to be served and the block face on the opposing side of the street, whichever area is larger*~~. *Notice also shall be posted on a City-owned utility pole or other City facility closest to the proposed Mobile Caterer's proposed Location for at least 10 calendar days prior to the close of the period to request a Departmental hearing. The applicant shall photograph the posted notice, including a date stamp, and submit such photograph to the Department. Such photograph shall satisfy this posting requirement.*

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

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

(c) **Notice of Hearing.** Not less than 10 days before the date of a Departmental hearing scheduled under subsection (b) above, the Director shall cause to be published a notice of such hearing in the official newspaper of the City and County of San Francisco. The Director shall maintain a file of the names and addresses of all persons wishing to receive notice by mail of any application filed pursuant to this Article and of all persons previously notified of the proposed application: Not less than 10 days before the date of such hearing, the Director shall cause to be mailed notice of such hearing to all persons requesting to be so notified. The cost of publishing said notice and any additional mailed notice shall be borne by the Mobile Food Facility permit applicant if the cost exceeds the notification fee set forth in Section 184.83. Such notices published or mailed pursuant to this Section shall contain the following: the name and business address of the applicant, the product or products to be sold, the Location(s) of the proposed sales activity, the days and hours of operation, and whether the application is for a new permit, for a change of an existing permit, or for addition of a new Location(s).

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

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

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

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

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

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

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

SEC. 184.89. ISSUANCE OF MOBILE FOOD FACILITY PERMIT.

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

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

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

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

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

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

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

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

(a) Upon demand by any Police Officer, the Director, the Director of Health, or the Fire Marshal, each Mobile Food Facility Vendor or Mobile Food Facility employee shall produce the Mobile Food Facility permit, a valid San Francisco Business Registration Certificate from

the Office of the Treasurer and Tax Collector, a valid Certificate of Sanitation, an identification card, a description of the approved Location(s) and hours of operation for a Mobile Food Facility, and all other documents required under this Article so that the Location of the Mobile Food Facility may be checked and verified.

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

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

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

SEC. 184.96. TRANSFER OF PERMIT.

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

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

~~(7)~~ 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.

SEC. 184.98. PENALT~~Y~~*IES*.

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

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

(c) **Criminal Penalty.**

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

(2) When a government official authorized to enforce this Section has reasonable cause to believe that any person has committed an infraction in the official's presence that is a

violation of this Section, the official may issue a citation to that person pursuant to California Penal Code, Part II, Title 3, Chapters 5, 5C, and 5D.

(d) **Civil Penalties.**

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

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

(e) **Administrative Penalty.** In the alternative to the criminal or civil penalties authorized by Subsections (c) and (d) of this Section, Department of Public Works officials designated in Section 38 of the Police Code may issue administrative citations for such violations. The administrative penalty shall not exceed ~~$300~~ *1,000 per day* for each violation. Notwithstanding the above limitation, should a violation not be corrected as the Director has ordered or in the case of occupation without a permit, the permittee or person shall pay a

penalty fee of up to $~~1,000~~*5,000* per day for each day of violation. Such penalty shall be assessed, enforced, and collected in accordance with Section 39-1 of the Police Code.

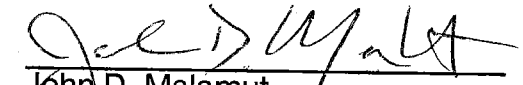
Section 3. This section is uncodified. In administering this program, if the Department of Public Works were to determine that more than twenty-five percent (25%) of a block's total street frontage is designated as a yellow (commercial delivery) zone, the Department shall consult with the San Francisco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

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

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

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

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

By: 

John D. Malamut
Deputy City Attorney
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FILE NO. 120193

LEGISLATIVE DIGEST

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

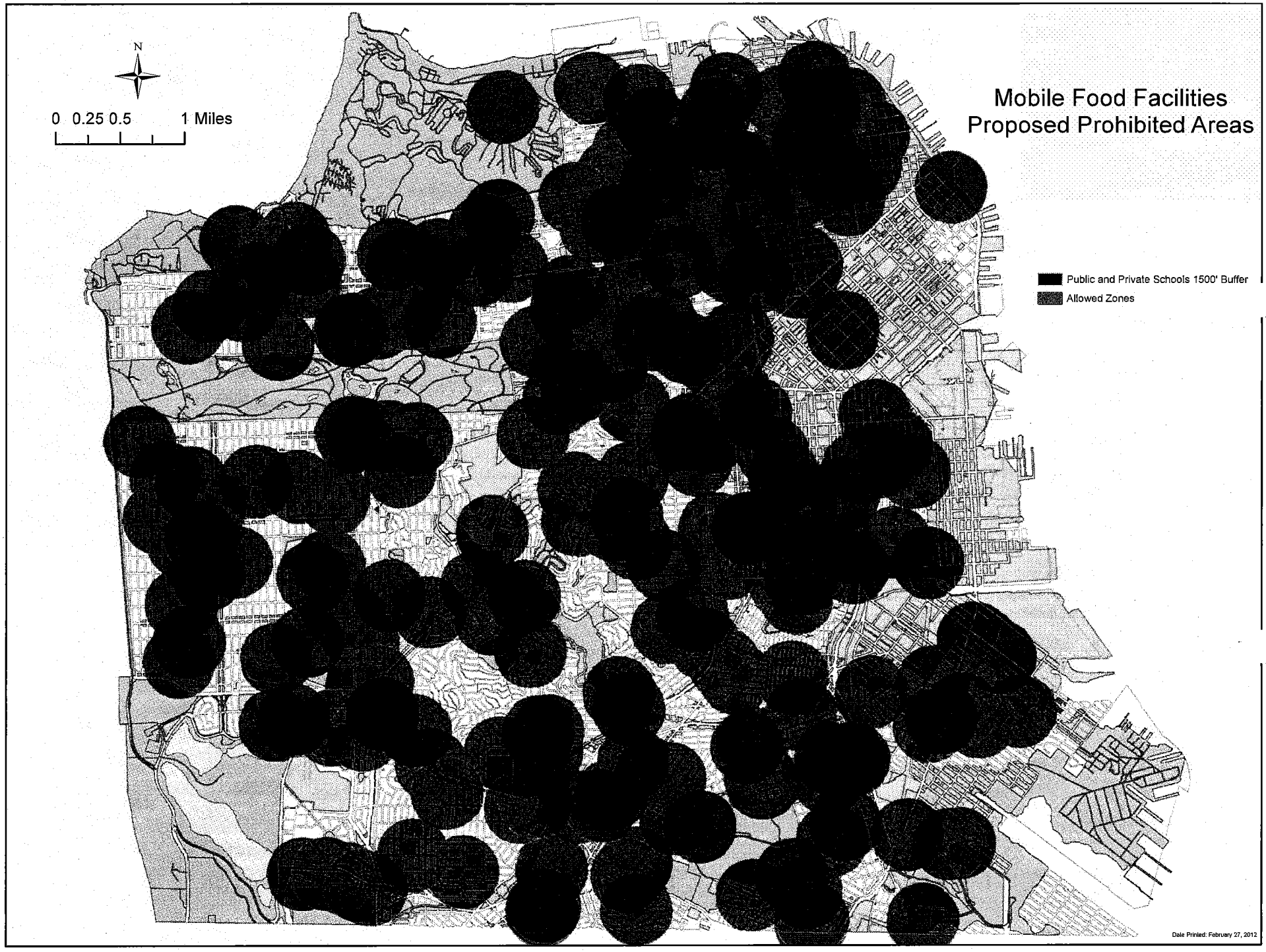
Ordinance amending Public Works Code, Article 5.8, to address various locational and noticing requirements concerning mobile food facilities; and making environmental findings.

Existing Law

Public Works Code Article 5.8 (Sections 184.80 et seq.) establishes the Department of Public Works' regulatory program for mobile food facilities, which covers both food trucks and pushcarts. This regulatory scheme involves fees, permit processing, public notice for new permits, public hearings to protest an application, locational requirements, penalties for violations, and other elements.

Amendments to Current Law

The Ordinance would clarify that a mobile food facility shall sell only food and drink related items. This legislation would limit the term of new permits to 7 years at a particular location, require certain noticing for renewal, and address renewal when there is a need to relocate the facility. The Ordinance also adopts new restrictions on: 1) the time periods that a mobile food facility can serve a particular location, 2) proximity to restaurants, property under the jurisdiction of the Recreation and Park Department, and certain public schools, 3) facilities that are affiliated with certain formula retail uses in certain zoning districts, and 4) signage associated with the facility. Existing permittees would be grandfathered from the permit renewal and new locational requirements so long as they are permittees in good standing. The legislation would modify noticing requirements and the factors that an administrative hearing officer would consider as part of a protest of an applicant's proposed location. The Ordinance would explicitly recognize the Public Works Department's ability to suspend or revoke permits based on identified public purposes and would urge the Director to find a comparable location for the facility to operate. The legislation also would increase administrative penalties for violations of Article 5.8. The Ordinance would adopt environmental findings.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0 0.25 0.5 1 Miles
Mobile Food Facilities
Proposed Prohibited Areas
Public and Private Schools 1500' Buffer
Allowed Zones
Date Printed: February 27, 2012

BOARD of SUPERVISORS

City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

March 6, 2012

File No. 120193

Bill Wycko
Environmental Review Officer
Planning Department
1650 Mission Street, 4th Floor
San Francisco, CA 94103

Dear Mr. Wycko:

On February 28, 2012, Supervisor Wiener introduced the following proposed legislation:

File No. 120193

Ordinance: 1) amending Public Works Code Section 184.85 to modify the permissible distance between mobile food facilities and school; and 2) adopting environmental findings.

This legislation is being transmitted to you for environmental review, pursuant to Planning Code Section 306.7(c).

Angela Calvillo, Clerk of the Board
Alisa Miller
By: Alisa Miller, Committee Clerk
Land Use & Economic Development Committee

Attachment

c: Nannie Turrell, Major Environmental Analysis
Brett Bollinger, Major Environmental Analysis

Exempt from CEQA per CEQA Guidelines Sections 15060(c)(3) and 15378. Not a project.
Nannie L. Turrell
March 9, 2012
2012.0270E

SMALL BUSINESS COMMISSION
OFFICE OF SMALL BUSINESS

CITY AND COUNTY OF SAN FRANCISCO
EDWIN M. LEE, MAYOR

January 16, 2013

Ms. Angela Calvillo, Clerk of the Board
Board of Supervisors
City Hall room 244
1 Carlton B. Goodlett Place
San Francisco, CA 94102-4694

File No. 120193 [Public Works Code - Mobile Food Truck Locations

Small Business Commission Recommendation: **Approval with modification**

Dear Ms. Calvillo:

On November 26, 2012 the Small Business Commission (SBC) voted 6-0 to recommend approval of BOS File No. 120193 with one modification.

This is a broad based ordinance that makes several key changes to the Public Works Code as it relates to Mobile Food Facilities (MFF's). The Commission recognizes that inherently there are tensions between the MFF industry and brick and mortar business advocates. The Commission finds that this ordinance fairly balances both interests. The Commission recognizes that Supervisor Wiener has met with stakeholders for over a year and the Commission commends Supervisor Wiener for introducing this important and long considered legislation.

Most significantly, this ordinance will create an automatic denial of MFF permits when the location is proposed to be within 50 feet of the edge of a restaurant that is in operation at the time of application. While offering protections to brick and mortar businesses, this amendment will result in a significant reduction in locations currently permissible for MFF's. The SBC carefully considered testimony from both the MFF industry and advocates for brick and mortar establishments. The MFF industry argued for a lesser buffer distance and conversely, brick and mortar advocates lobbied for an increased buffer distance. After reviewing testimony, the SBC determined that Supervisor Wieners proposed 50 foot buffer is an appropriate and balanced compromise.

An additional change that the ordinance makes is restricting each MFF to three 24 hour cycles (or portion thereof) at each location. Current MFF permit applications often list hours of operation for one location between 5-7 days per week, up to 8 hours per day. MFF vendors are casting their nets too wide, which understandably causes alarm with restaurants and property owners and was not the intent of the 2010 MFF legislation. The above amendments will now require MFF operators to be more specific and considered in their proposed hours and days of operation. This will improve the permit notification to businesses in the 300 foot noticing area with the proposed days and hours of operation that are representative the MFF intend use. The Commission does note that upon this change, there will be no opportunity for DPW to approve a permit for an MFF that wants to operate more than three days a week in a food desert area.

The Commission understands the need to make the school district feel comfortable with the MFF

program and therefore supports the reduction of the buffer surrounding middle and junior high schools from 1500 feet to 500 feet and for *public* high schools from 1500 feet to 1000 feet (except for specified schools which have a 750 foot buffer.) The Commission finds that this reduction in buffer will enhance opportunities for food trucks to locate outside of the downtown C-3area, but for the record does call into question the absolute need for the buffer.

One of the goals of the MFF program is to promote and enhance the business opportunities for low to moderate income entrepreneurs. Formula retail fast food chains businesses are establishing their own mobile food trucks to capitalize on the popularity of food trucks. Formula retail fast food chains food trucks are not in line with the policy goals of the MFF program and is one of the concerns of the school district in allowing MFF's close to school grounds. Without any controls, formula retail MFFs can operate in areas where formula retail is banned or is a conditional use. The SBC has logistical concerns with the Planning Commission regulating businesses that are located on the public right of way; as this jurisdiction is typically under the Department of Public Works, SFPD, and MTA. Additionally, the Planning Commission calendar already causes delays in the scheduling of brick and mortar businesses hearings and an additional workload will only exasperate this problem.

The Commission strongly supports the implementation of formula retail controls, but at this time the SBC recommends amending the ordinance to prohibit formula retail MFF's outright until such time a process can be developed that establishes conditional use type of controls in the public right of way. The Commission understands that this policy may have an effect on San Francisco based businesses, which is not ideal, however until such time that a policy for the public right of way is developed a citywide prohibition is the most prudent action to take and will allow the other key provision of the ordinance to move forward.

The proposed legislation does allow for formula retail MFF to obtain Single Day of Operation permit and the Commission support this policy.

Currently a MFF applicant is required to notify all businesses within 300 feet of a proposed location. It was not the intent of the 2010 legislation to require notification of all businesses in high rise buildings, but as currently written, the legal interpretation requires that all tenants of an office building be notified of the proposed MFF. This has added to the cost of mailings and increased the burden on staff resources at the Department of Public Works. Additionally, the original legislation did not require noticing to the property owner, this change in the ordinance will now require that the applicant notify ground floor tenants and the building owner/manager for permits between 6am and 8pm and extend the notification requirement to residential property owners and managers for permits between 8:00pm and 3:00am. The Commission supports these changes.

Lastly, the Commission recognizes that MFF's may wish to operate in conjunction with nightlife establishments, particularly in situations where brick and mortar businesses are closed for the evening. The Commission requests that Supervisor Wiener work with the Entertainment Commission and nightlife industry to adapt proposed regulations to recognize and accommodate this scenario.

The Commission supports additional aspects of the ordinance, including clarifications and technical

amendments that are being proposed. With amendments to the formula retail control provisions of this ordinance, the Commission urges that the Board of Supervisors approve this ordinance and the Mayor sign it into law.

Sincerely,

Regina Dick-Endrizzi
Director, Office of Small Business

Cc: Jason Elliott, Mayor's Office
Supervisor Wiener

Youth Commission
City Hall ~ Room 345
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4532

(415) 554-6446
(415) 554-6140 FAX
www.sfgov.org/youth_commission

YOUTH COMMISSION

MEMORANDUM

TO: Honorable Mayor Edwin M. Lee
Honorable Members, Board of Supervisors

CC: Angela Calvillo, Clerk of the Board
Carlos Garcia, Superintendent, San Francisco Unified School District
Barbara Garcia, Director, Department of Public Health
Maria Su, Director, Department of Children, Youth, and Their Families
Jason Elliott, Mayor's Liaison to the Board of Supervisors
Nicole Wheaton, Commissions and Appointments, Mayor's Office

FROM: Youth Commission

DATE: April 23, 2012

RE: Youth Commission position on Board of Supervisors file no. 120193 Ordinance: 1) amending Public Works Code Section 184.85 to modify the permissible distance between mobile food facilities and school; and 2) adopting environmental findings

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At our regularly scheduled meeting of April 16, the Youth Commission considered this ordinance, which amends the current Mobile Food Facility requirements in the Public Works Code that stipulate mobile food trucks must keep a distance of at least 1,500 feet from all middle and high schools in the San Francisco Unified District (SFUSD) to 500 feet (with likely amendments to be made based on schools' off-campus policies and locations with respect to commercial corridors).

With a vote of 11 in favor and 1 opposed, the Youth Commission adopted a motion to support this legislation.

***

We would like to give you some context for the position expressed above.

The Youth Commission heard from a number of sources as we considered this item. Primary sponsor Supervisor Scott Wiener gave a presentation, a representative from the SFUSD answered questions and shared the school district's position, and eleven people (ten food truck entrepreneurs and one Lowell High School student) spoke in public comment.

Supervisor Wiener explained the genesis of the legislation by speaking about the importance of local government supporting small businesses in general and San Francisco's vibrant "food scene" in particular, of which food trucks are a key part. The Supervisor talked

about how food trucks activate public spaces and thereby increase public safety, and he remarked on how often food trucks employ immigrants, women, young people and others who don't necessarily have the capital to start a brick-and-mortar restaurant.

At root, the Supervisor wants this legislation to help strike a "balance" between the need to protect SFUSD's school lunch program and food truck vendors' desire to have more places to set up shop. About five years ago, in an effort to increase student use of the free/reduced lunch program (and thereby federal reimbursements) and decrease childhood obesity, the City adopted legislation that requires there be distance of at least 1,500 feet between SFUSD middle and high schools and food trucks. The legislation currently before the Board of Supervisors would reduce that distance in an effort to provide food trucks with more places to set up. Supervisor Wiener related that as a result of conversations with SFUSD staff, he would likely amend the proposed ordinance based on individual schools' off-campus policies and locations vis-à-vis commercial corridors. In particular, amendments would likely include: reducing the required distance to 500 feet between food trucks and middle schools (not a single SFUSD middle school allows students to go off campus for lunch); reducing the required distance to 500 feet between food trucks and some 75% of SFUSD high schools (most high schools also do not have off-campus privileges for students); reducing the distance to 1,000 feet between food trucks and Lincoln, Lowell, School of the Arts, and Washington (these schools have off-campus privileges of various sorts); and reducing the distance to 500 feet between food trucks and Hilltop and Galileo high school (these schools are situated heart of the Mission and very close to Ghirardelli Square, respectively).

School district representative Mr. Chris Armentrout made clear that the district and the legislation's sponsors share a commitment to keeping the SFUSD's school lunch program healthy and supporting local small businesses like food trucks, and that the district is happy to be working with the Supervisor to address the district's concerns about the legislation. However, Mr. Armentrout made clear that the district has two fundamental and serious concerns regarding this law: an "economic" concern that allowing food trucks closer to schools will decrease student use of the free/reduced lunch program and thereby hurt SFUSD's bottom line,[1] and a "social justice" concern about the stigma endured by students who cannot afford food trucks when their peers go off-campus to buy lunch.

The ten food truck vendors who spoke in public comment in support of the legislation shared a number of perspectives, including an argument that the price-point of their gourmet food was too high for SFUSD students, that SFUSD students were fundamentally not their target demographic, and that, if in fact SFUSD students did want to eat their food, it was nutritious, locally grown and sustainably produced—a far cry from the obesity-producing "roach coaches."

A student from Lowell High School who spoke in public comment as well as a Lowell-attending Youth Commissioner related that everyday many students at their school walk well more than 1,500 feet off campus to buy lunch. Another Youth Commissioner argued that the SFUSD's concerns about the legislation are weakened by the fact that the same 1,500 foot controls do not exist between schools and brick-and-mortar restaurants, while another suggested that the SFUSD's concerns seem to arise from the fact of off-campus privileges as such (and not food trucks in particular).

[1] 61% of SFUSD students qualify for free reduced lunch, according to the most recently available figures from the 2010-2011 school year (http://www.sfusd.edu/en/assets/sfusd-staff/about-SFUSD/files/sfusd-facts-at-a-glance-2012.pdf).

INSTITUTE FOR JUSTICE

December 5, 2012

Sent via UPS
Alisa Miller
Clerk of the Land Use and Economic Development Committee
San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, Ca. 94102-4689

Re: Proposal to Amend City Ordinances Regarding Mobile Food Vendor Locations

Dear Ms. Miller:

I have included five copies of the Institute for Justice's statement regarding the proposed amendments to the city's mobile food facility ordinances. My understanding is that the Land Use and Economic Development Committee will consider these amendments this Monday, December 10. I kindly request that the statement is distributed and the meeting and entered into the record.

Thank you for your time,

Erica Smith*
Attorney at the Institute for Justice

**This attorney is only a member of the NY Bar.*

901 N. Glebe Road, Suite 900 Arlington, VA 22203 (703) 682-9320 (703) 682-9321 Fax
general@ij.org www.ij.org

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INSTITUTE FOR JUSTICE

December 5, 2012

Mayor Edwin Lee and Board of Supervisors
1 Dr. Carlton B. Goodlett Place
City Hall, Room 200 & 244
San Francisco, Ca. 94102-4689

Re: Proposal to Amend City Ordinances Regarding Mobile Food Vendor Locations

Dear Mayor Lee and Board of Supervisors,

The Institute for Justice ("IJ") is a public-interest law firm that for more than 20 years has advocated in the courts of law and public opinion for the right to earn an honest living. In 2010, IJ launched its National Street Vending Initiative to combat arbitrary and unconstitutional laws that stifle the rights of mobile food vendors. As part of the initiative, IJ has sued cities such as El Paso, Texas;[1] Hialeah, Florida; and Chicago, Illinois, to challenge laws that restrict vendors from operating within a certain distance of their brick-and-mortar competitors. IJ has also published extensively on the benefits that street vendors provide, the barriers that too often stand in their way, and how cities can cultivate vibrant food-truck scenes.[2]

The Board of Supervisors Land Use and Economic Development Committee is currently considering a proposal that would amend three separate ordinances that together govern how mobile food facilities operate in the City. This is a wonderful opportunity for San Francisco to seriously review its vending laws. The food-truck revolution is sweeping the country; mobile food vendors are no longer just selling hot dogs and burritos, but are developing stellar gourmet enterprises that are lauded by food connoisseurs across the country. Los Angeles currently holds the distinction as the best food-truck city in the country, but San Francisco could easily compete for this title.

Indeed, some of the amendments the Committee is considering would bring it closer to that goal. IJ heartily approves of allowing mobile food vendors to operate closer to public schools and medical facilities, and allowing vendors on university and college campuses that are located in residential districts.

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[1] The city of El Paso quickly rescinded its anti-competitive vending laws in response to IJ's lawsuit. See Victory for El Paso Mobile Food Vendors, April 26, 2011, http://www.ij.org/el-paso-vending-release-4-26-11.

[2] *See, e.g.*, Robert Frommer & Bert Gall, *Food Truck Freedom: How to Build Better Food Truck Laws in Your City* (Institute for Justice Nov. 2012), *available at* http://www.ij.org/food-truck-freedom; Bert Gall and Lancee Kurab, *Seven Myths and Realities About Food Trucks: Why the Facts Support Food Truck Freedom* (Institute for Justice Nov. 2012), *available at* http://www.ij.org/7-myths-and-realities; Erin Norman, et al., *Streets of Dreams: How Cities Can Create Economic Opportunity by Knocking Down Protectionist Barriers to Street Vending* (Institute for Justice July 2011), *available at* http://www.ij.org/streets-of-dreams.

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general@ij.org www.ij.org

It is disappointing, however, to see that the proposal would also strengthen restrictions on vending near restaurants. One proposed amendment would give the Department of Public Works ("DPW") discretion to deny permits for mobile food vendors selling within 300 feet of *any* restaurant[3], not just those selling "the same type of food," as the law currently states.[4] Another amendment would flat out ban mobile food facilities from operating within 50 feet of all restaurants.[5] A third amendment would prevent mobile food vendors from selling more than three days per week at any single location.[6] These proposed amendments, as well as the City's existing 300-foot proximity restriction, are not just bad policy; they're unconstitutional.

Protecting established businesses from competition is an illegitimate use of government power under the U.S. and California Constitutions. The Ninth Circuit Court of Appeals, whose jurisdiction includes San Francisco, held as much in a lawsuit that challenged California's licensing of pest exterminators. In ruling that the government cannot impose protectionist regulations that restrict individuals' right to earn an honest living, the Ninth Circuit ruled "that mere economic protectionism for the sake of economic protectionism is irrational." *Merrifield v. Lockyer*, 547 F.3d 978, 992 n.15 (9th Cir. 2008). Indeed, California courts have invoked this principle in striking down a Los Angeles restriction that prohibited food trucks from operating within 100 feet of any restaurant. *People v. Ala Carte Catering Co.*, 98 Cal. App. 3d Supp. 1, 9 (Cal. App. Dep't Super. Ct. 1979). The proposed 50-foot proximity restriction that San Francisco is currently considering is similarly unconstitutional. The Committee should thus reject the proposed restriction, and set forth a new proposal that would repeal the existing 300-foot restriction.[7]

Repealing the existing 300-foot restriction would also help streamline San Francisco's vending application process. As multiple applicants have told the Institute for Justice, applying for a vending location is an expensive, complicated, and time consuming process. If an applicant wants to sell in a new location, she must notify all businesses and residents within a 300-foot radius of her requested spot.[8] Anyone, including restaurants, is free to oppose the application, which then automatically triggers a full-fledged hearing before the Department of Public Works.[9] Even when the City does approve a permit, restaurants can still contest this approval with the "Board of Appeals."[10] The whole process can take up to a year and requires thousands of dollars in fees.

So far, the City has limited dozens of vending permits and denied others altogether—often solely to protect restaurants from honest competition. Several mobile food vendors have lost years of savings after paying the application fees and then being denied all of their proposed

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[3] Proposed Ordinance to amend the San Francisco Pub. Works Code §184.88(d)(1).
[4] San Francisco Pub. Works. Code § 184.88(d).
[5] Proposed Ordinance to amend the San Francisco Pub. Works Code § 184.85(b)(4).
[6] Proposed Ordinance to amend the San Francisco Pub. Works Code §§ 184.84(j), 184.85(b)(6).
[7] To the extent the existing and proposed restrictions concerning the distance that mobile food vendors must keep from each other are based on an anti-competitive rationale, the Committee should remove these restrictions as well. San Francisco Pub. Works. Code § 184.88(d)(2); Proposed Ordinance to amend the San Francisco Pub. Works Code §184.88(d)(1).
[8] San Francisco Pub. Works. Code § 184.88.
[9] *Id.* § 184.88(b).
[10] *Id.*

locations. Because of the risky application process, many are reluctant to apply for a vending license or expand their existing businesses.

This complex application process is undoubtedly burdensome on the City as well. The application laws even recently emboldened a restaurant association to sue the City along with a newly permitted coffee cart vendor.[11] In the association's view, the City erred in granting the vendor a permit because she would be competing within 300 feet of nearby restaurants. This suit is ongoing. Repealing the existing 300-foot proximity restriction would not only free vendors' businesses, but it would also ease the burden on DPW staff and discourage further suits against the City.

Additionally, loosening these restrictions would benefit consumers and the local economy. Vending puts people to work, provides a way out of poverty, and creates opportunities for self-sufficiency.[12] As the *Los Angeles Times* recently reported, mobile food vendors provide entry-level opportunities, allowing entrepreneurs to test ideas and accumulate capital needed to climb the economic ladder and move on to bigger projects, including opening brick-and-mortar restaurants.[13] Vendors also contribute to the City's coffers by paying sales taxes, payroll taxes, and property taxes through their commissary rent.

Moreover, as the Institute for Justice notes in *Seven Myths and Realities About Food Trucks,* the presence of vendors actually boosts local businesses. Their creatively decorated vehicles and delicious recipes encourage people to come out onto the streets, increasing foot traffic for everyone—including restaurants. George Harris, the owner of an award-winning Las Vegas restaurant called Mundo, recently stated that food trucks help his business for this very reason.[14]

The Board of Supervisors should remove the 50-foot proximity restriction from the current proposal and repeal the existing 300-feet restriction. It should also remove the proposed amendment that would limit mobile food vendors to three days at each of their locations. By rejecting protectionist and unconstitutional laws, the Board can allow San Francisco's vending industry to achieve its full potential, open economic opportunity to all its citizens, and make San Francisco a world-class destination for street food.

Please do not hesitate to contact me at (703) 682-9320 or esmith@ij.org if you have any questions or if I can provide more information. Thank you for your time.

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[11] *The Fisherman's Wharf Community Benefit District v. City of San Francisco and ShaSha Lewis*, No. CPF-12-512247, San Francisco Superior Court (2012).

[12] *See* Erin Norman, et al. *Streets of Dreams: How Cities Can Create Economic Opportunity by Knocking Down Protectionist Barriers to Street Vending* (Institute for Justice July 2011), *available at* http://www.ij.org/streets-of-dreams.

[13] Tiffany Hsu, *Food trucks as a vehicle to sit-down restaurant success*, Los Angeles Times, Oct. 6, 2011, *available at* http://articles.latimes.com/2011/oct/06/business/la-fi-food-truck-restaurants-20111006.

[14] Bert Gall and Lancee Kurab, *Seven Myths and Realities About Food Trucks: Why the Facts Support Food Truck Freedom* 1-2 (Institute for Justice Nov. 2012), *available at* http://www.ij.org/7-myths-and-realities.

Sincerely,

Erica Smith*
Attorney at the Institute for Justice

**This attorney is only a member of the NY Bar.*

BOARD of SUPERVISORS

City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Regina Dick-Endrizzi, Director
Chris Schulman, Commission Secretary
Small Business Commission, City Hall, Room 448

FROM: Alisa Miller, Clerk, Land Use and Economic Development Committee
Board of Supervisors

DATE: November 13, 2012

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Land Use & Economic Development Committee

The Board of Supervisors' Land Use and Economic Development Committee has received the following substitute legislation, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

File No. 120193-2

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

Please return this cover sheet with the Commission's response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

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RESPONSE FROM SMALL BUSINESS COMMISSION **Date:** _____

____ **No Comment**

____ **Recommendation Attached**

_____
Chairperson, Small Business Commission

BOARD of SUPERVISORS

City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Youth Commission

FROM: Alisa Miller, Clerk, Land Use and Economic Development Committee
Board of Supervisors

DATE: November 13, 2012

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Land Use & Economic Development Committee

The Board of Supervisors' Land Use and Economic Development Committee has received the following substitute legislation, which is being referred to the Youth Commission, per Charter Section 4.124, for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

File No. 120193-2

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

Please return this cover sheet with the Commission's response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

****

RESPONSE FROM YOUTH COMMISSION **Date:** _____

____ **No Comment**

____ **Recommendation Attached**

_____
Chairperson, Youth Commission

BOARD of SUPERVISORS

City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: John Rahaim, Director, Planning Department
Mohammed Nuru, Director, Department of Public Works
Barbara Garcia, Director, Department of Public Health
Ed Reiskin, Executive Director, Municipal Transportation Agency
Chief Joanne Hayes-White, Fire Department
Chief Greg Suhr, Police Department
Phil Ginsburg, General Manager, Recreation and Park Department

FROM: Alisa Miller, Clerk, Land Use and Economic Development Committee
Board of Supervisors

DATE: November 13, 2012

SUBJECT: SUBSTITUTE LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Economic Development Committee has received the following proposed substitute legislation, introduced by Supervisor Wiener on November 6, 2012. This matter is being referred to your department informational purposes only and no additional action is required.

File No. 120193-2

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

If you do wish to submit any reports or documentation to be included as part of the file, please send those to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c: Scott Sanchez, Zoning Administrator, Planning Department
Bill Wycko, Chief of Environmental Planning, Planning Department
AnMarie Rodgers, Legislative Affairs Manager, Planning Department
Monica Pereira, Environmental Planning, Planning Department
Joy Navarrete, Environmental Planning, Planning Department
Kate Breen, Municipal Transportation Agency
Janet Martinsen, Municipal Transportation Agency
Christine Fountain, Police Department

BOARD of SUPERVISORS

City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
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Fax No. 554-5163
TDD/TTY No. 554-5227

March 6, 2012

File No. 120193

Bill Wycko
Environmental Review Officer
Planning Department
1650 Mission Street, 4th Floor
San Francisco, CA 94103

Dear Mr. Wycko:

On February 28, 2012, Supervisor Wiener introduced the following proposed legislation:

File No. 120193

Ordinance: 1) amending Public Works Code Section 184.85 to modify the permissible distance between mobile food facilities and school; and 2) adopting environmental findings.

This legislation is being transmitted to you for environmental review, pursuant to Planning Code Section 306.7(c).

Angela Calvillo, Clerk of the Board
By: Alisa Miller, Committee Clerk
Land Use & Economic Development Committee

Attachment

c: Nannie Turrell, Major Environmental Analysis
Brett Bollinger, Major Environmental Analysis

BOARD of SUPERVISORS

City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
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MEMORANDUM

TO: Regina Dick-Endrizzi, Director
Chris Schulman, Commission Secretary
Small Business Commission, City Hall, Room 448

FROM: Alisa Miller, Clerk, Land Use and Economic Development Committee
Board of Supervisors

DATE: March 6, 2012

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Land Use & Economic Development Committee

The Board of Supervisors' Land Use and Economic Development Committee has received the following, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

File No. 120193

Ordinance: 1) amending Public Works Code Section 184.85 to modify the permissible distance between mobile food facilities and school; and 2) adopting environmental findings.

Please return this cover sheet with the Commission's response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

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RESPONSE FROM SMALL BUSINESS COMMISSION - Date: _____

____ No Comment

____ Recommendation Attached

_____
Chairperson, Small Business Commission

BOARD of SUPERVISORS

City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Youth Commission

FROM: Alisa Miller, Clerk, Land Use and Economic Development Committee
Board of Supervisors

DATE: March 6, 2012

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS

The Board of Supervisors has received the following proposed legislation, which is being referred to the Youth Commission, per Charter Section 4.124, for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

File No. 120193

Ordinance: 1) amending Public Works Code Section 184.85 to modify the permissible distance between mobile food facilities and school; and 2) adopting environmental findings.

Please return this cover sheet with the Commission's response to me at the Office of the Clerk of the Board, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

****

RESPONSE FROM YOUTH COMMISSION **Date:** _____

____ **No Comment**

____ **Recommendation Attached**

_____
Chairperson, Youth Commission

BOARD of SUPERVISORS

City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Mohammed Nuru, Director, Department of Public Works
Barbara Garcia, Director, Department of Public Health
Ed Reiskin, Executive Director, Municipal Transportation Agency
Chief Joanne Hayes-White, Fire Department

FROM: Alisa Miller, Clerk, Land Use and Economic Development Committee
Board of Supervisors

DATE: March 6, 2012

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Economic Development Committee has received the following proposed legislation introduced by Supervisor Wiener on February 28, 2012.

File No. 120193

Ordinance: 1) amending Public Works Code Section 184.85 to modify the permissible distance between mobile food facilities and school; and 2) adopting environmental findings.

This matter is being referred to your department for informational purposes only. If you wish to submit any comments or reports, please forward those to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c: Janet Martinsen, Municipal Transportation Agency
Kate Breen, Municipal Transportation Agency

Print Form

Introduction Form

By a Member of the Board of Supervisors or the Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

☐ 1. For reference to Committee.
An ordinance, resolution, motion, or charter amendment.

☐ 2. Request for next printed agenda without reference to Committee.

☐ 3. Request for hearing on a subject matter at Committee.

☐ 4. Request for letter beginning "Supervisor [ ] inquires"

☐ 5. City Attorney request.

☐ 6. Call File No. [ ] from Committee.

☐ 7. Budget Analyst request (attach written motion).

☒ 8. Substitute Legislation File No. 120193

☐ 9. Request for Closed Session (attach written motion).

☐ 10. Board to Sit as A Committee of the Whole.

☐ 11. Question(s) submitted for Mayoral Appearance before the BOS on [ ]

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

☐ Small Business Commission ☐ Youth Commission ☐ Ethics Commission

☐ Planning Commission ☐ Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative

Sponsor(s):

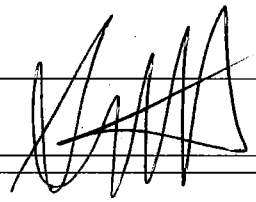
Supervisor Wiener

Subject:

Mobile Food Facilities – Locational Requirements

The text is listed below or attached:

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

Signature of Sponsoring Supervisor: 

For Clerk's Use Only: