

City of Santa Fe, New Mexico

LEGISLATIVE SUMMARY

Bill No. 2014-36

Pushcart Vendors - 2015

SPONSOR(S): Councilor Lindell, Councilor Dominguez, Mayor Gonzales and Councilor Ives

SUMMARY: The proposed bill relates to the plaza pushcart vendor ordinance. The bill amends Subsection 23-5.5 SFCC 1987 to change the number of licenses issued and the term of each license and making such other changes as are necessary to clarify the ordinance.

PREPARED BY: Rebecca Seligman, Legislative Liaison Assistant

FISCAL IMPACT: Yes

DATE: December 3, 2014

ATTACHMENTS: Amendment Sheets
Bill
FIR
Action Sheets and Minutes

CITY OF SANTA FE, NEW MEXICO
PROPOSED AMENDMENT(S) TO BILL NO. 2014-36
Plaza Pushcart Vendors

Mayor and Members of the City Council:

We propose the following amendment(s) to Bill No. 2014-36:

1. On page 7, lines 6-8, *restore* the following text:
“An applicant who had a license the previous license period who receives a license for the upcoming license period may retain the space he or she used previously. Otherwise, spaces”

2. On page 7, line 8, *delete* “Spaces”

Respectfully submitted,

Signe I. Lindell, Councilor

ADOPTED: _____

NOT ADOPTED: _____

DATE: _____

Yolanda Y. Vigil, City Clerk

CITY OF SANTA FE, NEW MEXICO
PROPOSED AMENDMENT(S) TO BILL NO. 2014-36
Plaza Pushcart Vendors

Mayor and Members of the City Council:

We propose the following amendment(s) to Bill No. 2014-36:

1. On page 2, line 22, *insert* the following provision:

“(d) Except for new businesses, provide a letter of good standing from the New Mexico taxation and revenue department and the New Mexico environment department;”

Editor’s Note: Re-letter subsections accordingly

Respectfully submitted,

Joseph Maestas, Councilor

ADOPTED: _____

NOT ADOPTED: _____

DATE: _____

Yolanda Y. Vigil, City Clerk

**CITY OF SANTA FE, NEW MEXICO
PROPOSED AMENDMENT(S) TO BILL NO. 2014-36
Plaza Pushcart Vendors**

Mayor and Members of the City Council:

We propose the following amendment(s) to Bill No. 2014-36:

1. On page 9, line 9 after “family” *insert* “or designee”
2. On page 11, line 8, after “family” *insert* “or designee”
3. On page 11, line 9, after “family member” *insert* “or designee”

Respectfully submitted,

City Business and Quality of Life Committee

ADOPTED: _____
NOT ADOPTED: _____
DATE: _____

Yolanda Y. Vigil, City Clerk

CITY OF SANTA FE, NEW MEXICO
PROPOSED AMENDMENT(S) TO BILL NO. 2014-36
Plaza Pushcart Vendors

Mayor and Members of the City Council:

We propose the following amendment(s) to Bill No. 2014-36:

1. On page 2, line 5, *delete* "two (2)" and *insert* "three (3)" in lieu thereof
2. On page 2, line 14, *delete* "two (2)" and *insert* "three (3)" in lieu thereof

Respectfully submitted,

Public Works Committee

ADOPTED: _____

NOT ADOPTED: _____

DATE: _____

Yolanda Y. Vigil, City Clerk

1 CITY OF SANTA FE NEW MEXICO

2 BILL NO. 2014-36

3 INTRODUCED BY:

4
5 Councilor Signe Lindell

6 Councilor Carmichael Dominguez

7 Mayor Javier M. Gonzales

8 Councilor Peter Ives

9
10 AN ORDINANCE

11 RELATING TO THE PLAZA PUSH CART VENDOR ORDINANCE; AMENDING
12 SUBSECTION 23-5.5 SFCC 1987 TO CHANGE THE NUMBER OF LICENSES ISSUED AND
13 THE TERM OF EACH LICENSE AND MAKING SUCH OTHER CHANGES AS ARE
14 NECESSARY TO CLARIFY THE ORDINANCE.

15
16 Section 1. Subsection 23-5.5 SFCC 1987 (being Ord. #2009-49, §5) is amended to
17 read:

18 23-5.5 Plaza Pushcart Vendors; Licenses; Requirements; Selection Process; Conditions
19 of Operations.

20 A. *Short Title.* This section may be cited as the "Plaza Pushcart Ordinance."

21 B. *Plaza Pushcart Vendor Licenses.* Plaza pushcart vendor licenses may be granted at
22 the discretion of the city manager. Such licenses shall be privileges of the holders of a license, subject
23 to the provisions of this chapter. Such licenses are not and shall not be construed as rights in property
24 or otherwise; and may be revoked by the city at any time, subject to the provisions of this chapter.

25 C. *Number of Plaza Pushcart Vendor Licenses.* [~~A total of four (4) Plaza pushcart~~

1 ~~vendor licenses may be issued by the city manager]~~ The city manager may issue up to six (6) Plaza
2 pushcart vendor licenses per term.

3 D. *Location.* At the discretion of the city, the locations of the plaza pushcart vendors
4 may be designated in the Plaza Park; the Plaza; or the Plaza periphery.

5 E. *Term.* A vendor license shall be valid for a period of ~~[five (5)]~~ two (2) years from
6 January 1 or the date issued, whichever is later, of the first year to December 31 of the ~~[fifth]~~ second
7 year, subject to the provisions of this chapter.

8 F. *Requirements for Plaza Pushcart Vendor License Applications.*

9 (1) The city shall give public notice of the application period by whatever no-fee
10 notice or announcement channels are available through local print, audio or video media.
11 ~~[Application shall be made during the month of November beginning in 2009 and every five~~
12 ~~(5) years after that, during the month of October.]~~ For the 2015-2017 license term, application
13 shall be made during the month of April 2015. For the 2018-2020 license term, application
14 shall be made during the month of September 2017. Every two years thereafter, application
15 shall be made during the month of September.

16 (2) Each applicant shall be required to:

17 (a) Pay an application fee. ~~[Such]~~ The application fee shall be
18 established by a resolution adopted by the governing body;

19 (b) Allow disclosure of the applicant's name and address as a matter of
20 public record;

21 (c) Provide a state taxpayer identification number;

22 (d) Be a resident[s] of Santa Fe county;

23 (e) Describe on the application the type of food product the applicant
24 will offer for sale, including prices[-]; and

25 (f) Designate on the application the proposed hours of operation of the

1 Plaza pushcart.

2 (3) Only one (1) Plaza pushcart vendor license shall be allowed per immediate
3 family.

4 (4) The applicant shall affirm, in the presence of a notary public, that if the
5 applicant is granted a Plaza pushcart vendor license:

6 (a) ~~[The applicant understands that no refund or any portion of the~~
7 ~~license fee shall be made to him if the license is relinquished or revoked]~~ The license
8 fee, or any portion thereof, is nonrefundable.

9 (b) ~~[The]~~ During the term of the license, the applicant shall maintain
10 adequate insurance in at least the amounts stated in the New Mexico Tort Claims Act
11 and shall provide proof of such insurance coverage to the city on an annual basis
12 during the term of the license. ~~[Such]~~ The insurance policy shall ~~[provide that]:~~

13 (1) Name the city of Santa Fe ~~[is named]~~ as an additional
14 insured on the policy; and

15 (2) State that the city ~~[is]~~ shall be notified no less than thirty
16 (30) days in advance of cancellation of such insurance policy for any reason.

17 ~~[As a condition prior]~~ Prior to operation as a Plaza pushcart vendor, the Plaza
18 pushcart vendor shall furnish the city with a copy of a certificate of insurance.

19 (c) The applicant shall comply with all provisions of the Plaza Pushcart
20 Ordinance, subsection 23-5.5 SFCC 1987, and any other applicable laws; and
21 acknowledges that violation of this section or any other applicable law constitutes
22 grounds for permanent revocation of the license.

23 (5) ~~[Applications]~~ An application may not be submitted by any person who
24 previously was issued a Plaza pushcart vendor license whose license was revoked according
25 to the procedures for revocation of the license set forth in subsection 23-5.5(J).

1 (6) Each application shall include:

2 (a) four (4) photographs of the ~~[front, back and each side of the]~~ Plaza
3 pushcart vendor's cart, with views of the front, back and each side of the cart,
4 ~~[including]~~ and the specifications of the cart; or

5 (b) ~~[if the cart is not yet built,]~~ a set of blueprints and specifications of
6 each elevation of the proposed cart, if the cart has not been built.

7 ~~[A certificate of concept approval from the food services section of the state~~
8 ~~environmental improvement division.]~~ If a Plaza pushcart license is awarded, the vendor
9 shall be required to obtain a ~~[food purveyor's]~~ permit to operate as a food establishment from
10 the ~~[state environmental health division]~~ New Mexico environment department.

11 (8) Each applicant shall submit six (6) copies of the application, with original
12 ~~[photos]~~ photographs or blueprints and specifications attached. Photographs shall have been
13 taken no more than one (1) year before the date the application is submitted. Photographs
14 shall be ~~[of a size that allows the person to be easily recognized, and]~~ no larger than eight and
15 one-half inches by eleven (8 1/2" x 11") inches.

16 (9) Each application shall be reviewed by city staff for completeness. Incomplete
17 applications shall not be considered.

18 (10) The pushcart vendor license fee, as established by resolution of the
19 governing body, shall be paid to the city. No refund of any portion of the fee shall be made
20 when a license is relinquished or revoked. If fees are not paid accordingly, the license shall be
21 revoked.

22 G. *Procedures for License Selection.*

23 (1) ~~[For the purpose of issuance of licenses in 2010, the city manager shall~~
24 ~~designate, no later than December 31, 2009 and for subsequent years, no later than November~~
25 ~~1 beginning in 2014 and every five (5) years after that, a jury panel comprised of a minimum~~

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~~of five (5) members from established city committees or other residents of the city of Santa Fe. The names of the jury panel shall be disclosed to the applicants. Prior to the designation of a jury panel, the city shall provide to the proposed jury panel members with the names of the applicants for the Plaza pushcart vendor licenses.]~~ When necessary, the city manager shall designate a jury panel comprised of five (5) members who are residents of the city of Santa Fe to select the Plaza pushcart vendors. Prior to the designation of the panel, the city shall disclose the names of the pushcart applicants to potential panel members and the names of the potential panel members to the applicants.

(a) A jury panel member shall ~~[not be allowed to serve]~~ be prohibited from serving on the panel if he is related to an applicant for a Plaza pushcart license by consanguinity or affinity to the third degree. For purposes of this section consanguinity means related by blood; affinity means one's spouse or related through one's spouse; and third degree means aunts, uncles, nieces and nephews.

(b) A jury panel member shall not be allowed to serve on the panel if he has a conflict of interest with any applicant in accordance with the city of Santa Fe Code of Ethics Ordinance, Section ~~[1-3]~~ 1-7 SFCC 1987.

~~[Jury panel members]~~ Each jury panel member shall affirm that they shall be fair and impartial during the selection process.

(2) The jury panel shall review and score each application separately. Scoring shall be based on the following number of points and criteria:

(a) Up to fifty (50) points for quality, freshness, taste and cost of food.

(b) Up to thirty (30) points for a personal interview with the applicant, at which time the applicant shall be required to explain how each food item that the applicant is proposing to sell is prepared and demonstrate how at least one food item is prepared.

1 (c) Up to ten (10) points for the design of the pushcart.

2 (d) Up to ten (10) points for compatibility and diversity of the pushcart
3 and food items with Plaza activities.

4 ~~[Scoring of each criteria shall be based on one (1) through five (5) points, with one (1) being~~
5 ~~poor; two (2) being needs improvement; three (3) being satisfactory; four (4) being good and~~
6 ~~five (5) being excellent. All scores shall be calculated by city staff and thereafter applications~~
7 ~~shall be ranked accordingly.~~

8 (3) ~~The jury panel shall evaluate applicants according to the following selection~~
9 ~~criteria:~~

10 (a) ~~Design of the pusheart;~~

11 (b) ~~Compatibility and diversity with Plaza activities;~~

12 (d) ~~Experience of the applicant as shown on the resume;~~

13 (e) ~~An interview with the applicant, at which the applicant will be asked~~
14 ~~to explain and/or demonstrate how the food item is prepared;~~

15 (f) ~~Quality, taste and cost of food; and~~

16 (g) ~~Beginning in 2014, evaluations that have been performed by city~~
17 ~~staff in accordance with subsection 23-5.3J SFCC 1987, shall be included as part of~~
18 ~~the selection criteria.]~~

19 ([4]3) Scores shall be calculated by city staff. The results [Applications] shall be
20 ranked numerically [on the above basis] and licenses shall be awarded in order of rank, from
21 highest score to lowest. In the event there is a tie in the ranking of applicants, the jury panel
22 shall determine the appropriate means by which the tie shall be broken. The city shall provide
23 written notice of the jury panel's ranking. ~~[A vendor]~~ An applicant may appeal to the city
24 manager the decision of the jury panel within fifteen (15) days of the date of the city's notice
25 of ranking. The city manager or his designee has sole discretion to grant or deny the appeal.

1 The ranking of applications ~~[shall]~~ may be adjusted ~~[pending]~~ based on the outcome of the
2 appeal process.

3 (~~[5]~~4) After the appeal period has ended and any adjustments have been made to the
4 ranking, the city shall mail notification of approval of licenses to the successful applicants.

5 (~~[6]~~5) Prior to issuance of any license, the city shall assign pushcart spaces on the
6 Plaza Park, the Plaza or the Plaza periphery. ~~[An applicant who had a license the previous
7 license period who receives a license for the upcoming license period may retain the space he
8 or she used previously. Otherwise, spaces]~~ Spaces shall be assigned by means of a lottery.

9 (~~[7]~~6) Each successful applicant shall obtain a city business registration as set forth
10 in Section 18-2 SFCC 1987 for use only on the ~~[Plan]~~ Plaza, in the Plaza park or on the Plaza
11 periphery.

12 (~~[8]~~7) The annual Plaza pushcart vendor license fee may be paid in full or in two
13 (2) increments. The full or initial increment shall be paid within thirty (30) days of the date of
14 the written notification of approval; the second increment shall be paid no later than six (6)
15 months from the date of issuance of the license. If the license fee is not paid within thirty (30)
16 days of the date of the written notification, the license shall be issued to the applicant with the
17 next-highest score.

18 (~~[9]~~8) In the event that ~~[during the five (5) year license period]~~ a Plaza pushcart
19 vendor space is available but no qualified applicant remains from the selection process, the
20 city may repeat the selection process and issue licenses for the remaining time.

21 H. *Conditions of Operation.*

22 (1) Plaza pushcart license holders are prohibited from receiving money, goods or
23 services for use of their designated space.

24 (2) Plaza pushcart vendors shall not hinder or impede pedestrian flow on any
25 sidewalk within the Plaza Park or traffic flow on any street surrounding the Plaza Park.

1 (3) Plaza pushcarts shall occupy no more than [~~fifty-four (54) square feet (nine~~
2 ~~feet by six feet (9' x 6'))~~] ninety-six (96) square feet (twelve feet by eight feet (12' x 8')).
3 Such space shall include a cart no larger than four feet by eight feet by eight feet (4'x 8' x 8'),
4 an umbrella if desired, a thirty-two (32) gallon trash can and a fire extinguisher (class
5 2A1OBC) as required by the city fire code.

6 (4) Plaza pushcarts shall pass a city mandated fire inspection.

7 (5) During the term of the license, push cart vendors may offer for sale only the
8 products that were indicated on the license application and accepted by the jury panel.

9 (6) Loud speakers, for voice transmission and amplification of music, banging,
10 hawking or yelling are prohibited.

11 (7) Signs of all types are prohibited except the following:

12 (a) Standard size business cards;

13 (b) A sign that provides method of payment, not to exceed eight and
14 one-half by five and one-half (8 1/2" x 5 1/2") inches; and

15 (c) A total of three (3) square feet for a sign or signs, attached to the
16 cart, which may include the name of the business and the menu.

17 (8) The pushcart vendor's current business registration shall be available on site
18 for inspection at all times of operation.

19 [~~(9) ————— Pusheart vendors shall only operate between the hours of 8:00 a.m.~~
20 ~~to 10:00 p.m. each day, including weekends, except as set forth in this paragraph. Pusheart~~
21 ~~vendors shall not be set up after 12:00 noon, unless authorized by the city to extend the time,~~
22 ~~on the day prior to the major commercial events specified in subsection 23-5.2A SFCC 1987~~
23 ~~or at any time on the days said major commercial events are held on the Plaza. A pusheart~~
24 ~~vendor may apply to the sponsors of those events for inclusion as one of the vendors at that~~
25 ~~event. The city may also request pusheart vendors to cease operation due to construction, for~~

1 security reasons or in the event of an emergency.

2 ~~(10) — Only the pushcart vendor or a member of the pushcart vendor's immediate~~
3 ~~family or the one (1) person who has been designated on the application as the non-~~
4 ~~immediate family member may sell the products. The license holder may list additional~~
5 ~~immediate family members not included in the application or change the person designated as~~
6 ~~a non-family member to sell, up to twice each year.]~~

7 (9) The pushcart vendor shall identify on the application the names of the
8 individuals who are authorized to sell from the pushcart, along with the vendor. Such
9 individuals may include one (1) member of the pushcart vendor's immediate family, one (1)
10 non-immediate family member and one (1) employee of the vendor. Up to two times during
11 the license term, the license holder may change the names of the designated individuals.

12 ~~(11)10~~ The pushcart vendors shall operate their licenses as follows:

13 (a) For the months of March through October, pushcart vendors shall be
14 set up a minimum of twenty (20) days per month, for eight (8) hours per day,
15 between the hours of 8:00 a.m. to 10:00 p.m, during the term of the license. This
16 requirement may be modified by the city because of inclement weather.

17 (b) During the months of November through February, pushcart vendors
18 may be set up as the weather permits.

19 (c) Pushcart vendors shall not be set up after twelve o'clock noon
20 (12:00) on a day prior to a major commercial event specified in subsection 23-5.2(A)
21 SFCC 1987 or at any time on the days a major commercial event is held on the Plaza.
22 A pushcart vendor may apply to the sponsors of the major commercial events for
23 inclusion as one of the vendors at that event.

24 (d) The city may request that pushcart vendors cease operation due to
25 construction, for security reasons or in the event of an emergency.

1 ~~[(a) The Plaza pusheart vendor shall be in operation no later than May 1~~
2 ~~of each year the permit is issued, unless otherwise approved by the city. If the Plaza~~
3 ~~pusheart vendor does not operate by May 1 of any year of the license period, then the~~
4 ~~license shall be revoked, in accordance with section 23-5.5J SFCC 1987.]~~

5 ~~_____ (b) The city retains the right to modify this requirement for pusheart~~
6 ~~vendors because of inclement weather.]~~

7 ((12)11) The city shall designate temporary vehicle parking for the setup or
8 tear down of pushcarts provided that Plaza pushcart vendors shall obtain a loading zone
9 permit from the city parking division and comply with the requirements for such permit.

10 ((13)12) Plaza pushcart vendors shall pay municipal gross receipts tax and
11 submit copies of combined reporting systems (CRS) tax returns to the city manager or
12 designee in a sealed envelope, ~~[on an annual basis]~~ CRS returns shall be submitted on a bi-
13 annual basis for the reporting periods ending June 30 and December 31 and the submittal
14 shall include all reporting periods (whether the vendor files monthly, quarterly or bi-
15 annually), with the dates of the returns corresponding with the term of the license. A pushcart
16 vendor license is subject to revocation if [Any] any pushcart vendor [who] fails to deliver the
17 CRS tax returns to the city manager or designee ~~[shall be terminated from the Plaza pusheart~~
18 ~~vendor program]~~. It is unlawful for any employee of the city of Santa Fe to reveal to any
19 individual other than another employee of the city of Santa Fe any information contained in a
20 pushcart vendor CRS return except in such manner, for statistical purposes, that the
21 information revealed is not identified as applicable to any individual taxpayer.

22 (14) The city manager may adopt a code of conduct that shall apply to all pushcart
23 vendors.

24 I. *Transfer of License.* A license is not transferable except as follows:

25 (1) If at any time after issuance of a license, a pushcart vendor is not going to use

1 a license, the vendor shall notify the city and relinquish the license.

2 (2) The city may revoke a license if the city determines that the license has not
3 been used for more than [~~thirty (30)~~] twenty (20) [~~consecutive~~] days within a calendar month,
4 for the months of March through October. The city may offer the remaining time on the
5 license to the next qualified applicant from the selection process set forth in this section.

6 ([~~2~~]3) If a pushcart vendor dies or becomes incapacitated, the city manager may
7 offer the remaining time on the license to a member of the Plaza pushcart vendor's immediate
8 family [~~listed~~] who has been identified on the application. However, at the expiration of the
9 license period, that immediate family member shall be considered a new applicant in the
10 selection process should he decide to apply.

11 J. *Enforcement.*

12 (1) The city shall inspect all pushcarts at least monthly to confirm compliance
13 with this section and any applicable laws. Upon determining that the pushcart vendor is in
14 violation of any provision of this section, the city may suspend or revoke the license subject
15 to the provisions of Section 23-5 SFCC 1987.

16 [~~(2) — On an annual basis, the city shall meet with the pushcart vendors and conduct~~
17 ~~a written evaluation of the pushcart vendor's compliance with the Santa Fe Plaza Pushcart~~
18 ~~Vendor Ordinance. The city shall retain a copy of the written evaluation.]~~

19 ([~~3~~]2) The city shall investigate complaints alleging violation of this section
20 provided that the complaint is [~~filed on a form provided by the city,~~] signed by the
21 complainant and includes the complainant's telephone number and address.

22 ([~~4~~]3) Any vendor found to be [~~not in~~] out of compliance with this section shall be
23 notified in writing, by certified mail or personal service, of the violation and shall have [~~thirty~~
24 ~~(30)~~] ten (10) calendar days from the date of the notice to come into compliance. If the
25 violation is not corrected, the vendor shall be notified in writing, by certified mail or personal

1 service, that the license is suspended for fifteen (15) days. If the vendor is found to not be in
2 compliance a second time within a license period, the vendor shall be notified in writing, by
3 certified mail or personal service, that the license is suspended for thirty (30) days. If the
4 vendor is found to not be in compliance a third time within a license period, the vendor shall
5 be notified in writing, by certified mail or personal service, that the license is revoked. [~~For~~
6 ~~the time period a license is suspended, the fifteen (15) day requirement set forth in subsection~~
7 ~~23-5.3H(11) shall be adjusted accordingly.~~]

8 ([~~5~~4) Within [~~fifteen (15)~~ five (5)] calendar days of receiving a notice of violation,
9 a vendor may request a hearing before the city manager or his designee.

10 K. *Termination of Pushcart Vendor License.* The city of Santa Fe reserves the right to
11 terminate any or all Plaza pushcart vendor licenses, with or without cause, if such termination is
12 found to be in the best interest of the city of Santa Fe. In the event of termination, the city shall
13 provide a thirty (30) day written notice to each pushcart vendor whose license is being terminated.

14 L. *Amendments.* The city of Santa Fe reserves the right to amend the Plaza Pushcart
15 Vendor Ordinance prior to the expiration of any Plaza pushcart vendor license.

16 M. *Continuation of Plaza Pushcart Vendor License.* In the event that a [~~selection~~] jury
17 panel has not been established or the applications have not been issued, the city manager may
18 administratively extend the term of a license, not more than two (2) times, for no more than a six (6)
19 month period each time.

20 N. *Review.* This subsection shall be reviewed by the governing body within one (1) year
21 of adoption.

22 O. *Effective Date.* This subsection shall become effective immediately upon adoption by
23 the governing body.

1 APPROVED AS TO FORM:

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4 KELLEY A. BRENNAN, CITY ATTORNEY

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M/Melissa/2014 Bills/Pusheart Vendors_2014

City of Santa Fe, New Mexico

LEGISLATIVE SUMMARY

Resolution No. 2015-__

Pushcart Fees

SPONSOR(S): Councilor Lindell, Councilor Dominguez, Mayor Gonzales and Councilor Ives

SUMMARY: The proposed resolution amends Resolution No. 2002-79 to change the annual license fees for plaza pushcart vendors.

PREPARED BY: Rebecca Seligman, Legislative Liaison Assistant

FISCAL IMPACT: Yes

DATE: December 3, 2014

ATTACHMENTS: Amendment Sheet
Resolution
FIR

CITY OF SANTA FE, NEW MEXICO
PROPOSED AMENDMENT(S) TO RESOLUTION NO. 2015-____
Pushcart Fees

Mayor and Members of the City Council:

We propose the following amendment(s) to Resolution No. 2015-____:

1. On page 2, line 6 *delete* “two” and *insert* “three” in lieu thereof.
2. On page 2, *delete* lines 8 – 10 and insert the following in lieu thereof:

“2015-2017 Term	\$3,000.00 per year
2018-2020 Term	\$3,060.00 per year
2021-2023 Term	\$3,121.20 per year”
3. On page 2, line 11, *delete* “2019-2020” and *insert* “2021-2023” in lieu thereof

Respectfully submitted,

Finance Committee

ADOPTED: _____
NOT ADOPTED: _____
DATE: _____

Yolanda Y. Vigil, City Clerk

1 need to increase the annual license fee for Plaza pushcart vendors.

2 **NOW, THEREFORE BE IT RESOLVED BY THE GOVERNING BODY OF THE**
3 **CITY OF SANTA FE THAT** the Governing Body hereby amends Resolution No. 2002-79 to
4 increase the annual license fee for Plaza pushcart vendors from the current annual fee of \$1,500.00 to
5 an annual license fee of \$3,000.00. The annual fee shall be increased by 2% per term of a pushcart
6 vendor license. Pursuant to Subsection 23-5.5 SFCC 1987, the term of a license is two years. The
7 following table reflects the cost of the annual license, per vendor, over the next three terms:

8	2015-2016 Term	\$3,000.00 per year
9	2017-2018 Term	\$3,060.00 per year
10	2019-2020 Term	\$3,121.20 per year

11 After the 2019-2020, the annual license fee shall be increased by 2% per term.

12 **BE IT FURTHER RESOLVED** that in addition to the annual license fee, pushcart vendors
13 are required to pay the annual business registration fee of \$35.00 pursuant to Subsection 18-2.3 SFCC
14 1987.

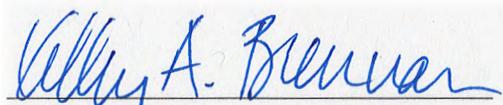
15 PASSED, APPROVED, and ADOPTED this ___ day of _____, 2015.

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18 ATTEST:

JAVIER M. GONZALES, MAYOR

19
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21 _____
YOLANDA Y. VIGIL, CITY CLERK

22 APPROVED AS TO FORM:

23 
24 _____
25 KELLEY A. BRENNAN, CITY ATTORNEY

M/Melissa/Resolutions/Pushcart Fees

City of Santa Fe Fiscal Impact Report (FIR)

This Fiscal Impact Report (FIR) shall be completed for each proposed bill or resolution as to its direct impact upon the City's operating budget and is intended for use by any of the standing committees of and the Governing Body of the City of Santa Fe. Bills or resolutions with no fiscal impact still require a completed FIR. Bills or resolutions with a fiscal impact must be reviewed by the Finance Committee. Bills or resolutions without a fiscal impact generally do not require review by the Finance Committee unless the subject of the bill or resolution is financial in nature.

Section A. General Information

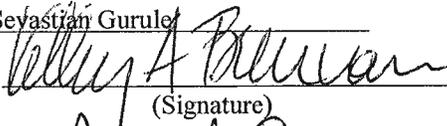
(Check) Bill: X Resolution: X
(A single FIR may be used for related bills and/or resolutions)

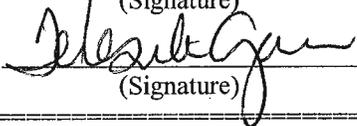
Short Title(s): An ordinance relating to the plaza pushcart vendor ordinance; amending subsection 23-5.5 SFCC 1987 to change the number of licenses issued and the term of each license and making such other changes as are necessary to clarify the ordinance. A resolution amending resolution No 2002-79 to change the annual license fees for Plaza Pushcart vendors.

Sponsor(s): Councilor Signe Lindell, Councilor Dominguez, Mayor Gonzales, Councilor Peter Ives

Reviewing Department(s): City Manager Office/Constituent Services

Persons Completing FIR: Sebastian Gurule Date: 11/14/14 Phone: ex: 6611

Reviewed by City Attorney:  Date: 11/14/14
(Signature)

Reviewed by Finance Director:  Date: 11/14/14
(Signature)

Section B. Summary

Briefly explain the purpose and major provisions of the bill/resolution:

The major provisions of this bill are to: change the number of licenses issued from four (4) to six (6); change the license term from five (5) years to three (3) years; improve the selection criterion; increase the operational space from fifty-four (54) square feet to ninety-six (96) square feet; establish an annual minimum operational number of months, days and hours required to be on the plaza; redefine how the combined reporting system (CRS) tax returns are to be submitted to the City of Santa Fe; and to increase the current annual license fee from one thousand five hundred dollars (\$1,500) to three thousand dollars (3,000); and to establish a subsequent increase to the annual license fee of two percent (2%) per license term.

Section C. Fiscal Impact

Note: Financial information on this FIR does not directly translate into a City of Santa Fe budget increase. For a budget increase, the following are required:

- a. The item must be on the agenda at the Finance Committee and City Council as a "Request for Approval of a City of Santa Fe Budget Increase" with a definitive funding source (could be same item and same time as bill/resolution)
- b. Detailed budget information must be attached as to fund, business units, and line item, amounts, and explanations (similar to annual requests for budget)
- c. Detailed personnel forms must be attached as to range, salary, and benefit allocation and signed by Human Resource Department for each new position(s) requested (prorated for period to be employed by fiscal year)*

1. Projected Expenditures:

- a. Indicate Fiscal Year(s) affected – usually current fiscal year and following fiscal year (i.e., FY 03/04 and FY 04/05)
- b. Indicate: "A" if current budget and level of staffing will absorb the costs
"N" if new, additional, or increased budget or staffing will be required
- c. Indicate: "R" – if recurring annual costs
"NR" if one-time, non-recurring costs, such as start-up, contract or equipment costs
- d. Attach additional projection schedules if two years does not adequately project revenue and cost patterns
- e. Costs may be netted or shown as an offset if some cost savings are projected (explain in Section 3 Narrative)

Finance Director: _____

_____ Check here if no fiscal impact

Column #:	1	2	3	4	5	6	7	8
	Expenditure Classification	FY 14/15	"A" Costs Absorbed or "N" New Budget Required	"R" Costs Recurring or "NR" Non-recurring	FY 15/16	"A" Costs Absorbed or "N" New Budget Required	"R" Costs – Recurring or "NR" Non-recurring	Fund Affected

Personnel*	\$6,268	A	R	\$3,836	A	R	1001.12004
Fringe**	\$			\$			
Capital Outlay	\$			\$			
Land/ Building	\$			\$			
Professional Services	\$			\$			
All Other Operating Costs	\$			\$			
Total:	\$6,268			\$3,836			

* Any indication that additional staffing would be required must be reviewed and approved in advance by the City Manager by attached memo before release of FIR to committees. **For fringe benefits contact the Finance Dept.

2. Revenue Sources:

- a. To indicate new revenues and/or
- b. Required for costs for which new expenditure budget is proposed above in item 1.

Column #:	1	2	3	4	5	6
	Type of Revenue	FY 14/15	"R" Costs Recurring or "NR" Non-recurring	FY 15/16	"R" Costs – Recurring or "NR" Non-recurring	Fund Affected

License Fees	\$9,000	R	\$18,000	R	11001.421600
Business Registration	\$210	R	\$420	R	11001.420800
Total:	\$9,210		\$18,420		

3. Expenditure/Revenue Narrative:

Explain revenue source(s). Include revenue calculations, grant(s) available, anticipated date of receipt of revenues/grants, etc. Explain expenditures, grant match(s), justify personnel increase(s), detail capital and operating uses, etc. (Attach supplemental page, if necessary.)

The source of revenue for this program is generated by the annual license fee and business registration fee paid by the licensed plaza pushcart vendor. The expenditures associated with this program are: the jury selection process, daily program administration, complaint investigation and resolution and attending special event planning meetings.

Section D. General Narrative

1. Conflicts: Does this proposed bill/resolution duplicate/conflict with/companion to/relate to any City code, approved ordinance or resolution, other adopted policies or proposed legislation? Include details of city adopted laws/ordinance/resolutions and dates. Summarize the relationships, conflicts or overlaps.

No

2. Consequences of Not Enacting This Bill/Resolution:

Are there consequences of not enacting this bill/resolution? If so, describe.

The current license term is scheduled to end on December 31, 2014. The consequences of not enacting this bill are that the aforementioned changes will not be implemented until 2019 limiting the number of licenses issued and not recovering the program expenses.

3. Technical Issues:

Are there incorrect citations of law, drafting errors or other problems? Are there any amendments that should be considered? Are there any other alternatives which should be considered? If so, describe.

No

4. Community Impact:

Briefly describe the major positive or negative effects the Bill/Resolution might have on the community including, but not limited to, businesses, neighborhoods, families, children and youth, social service providers and other institutions such as schools, churches, etc.

By approving this bill, the number of licenses issued increases, allowing two (2) additional vendors to participate in this program, following the success of the People to the Plaza initiative. In addition, the proposed operational changes increases the overall quality of the program, furthermore, the increase to the license fee fully support the administration of this program.

Form adopted: 01/12/05; revised 8/24/05; revised 4/17/08

**ACTION SHEET
ITEM FROM THE
PUBLIC WORKS/CIP AND LAND USE COMMITTEE MEETING
OF
MONDAY, NOVEMBER 10, 2014**

ITEM 8b

REQUEST FOR APPROVAL OF A RESOLUTION AMENDING RESOLUTION NO. 2002-79 TO CHANGE THE ANNUAL LICENSE FEES FOR PLAZA PUSHCART VENDORS (COUNCILORS LINDELL AND DOMINGUEZ) (SEVASTIAN GURULE)

PUBLIC WORKS COMMITTEE ACTION: Approved

FUNDING SOURCE:

SPECIAL CONDITIONS / AMENDMENTS / STAFF FOLLOW UP:

VOTE	FOR	AGAINST	ABSTAIN
CHAIRPERSON TRUJILLO			
COUNCILOR BUSHEE		X	
COUNCILOR DIMAS	X		
COUNCILOR DOMINGUEZ	X		
COUNCILOR RIVERA	X		

Committee Review:

Finance Committee (Scheduled)

Council (Scheduled)

11/17/14

12/10/14

CONSENT AGENDA DISCUSSION

8. PUSH CART VENDORS

- **REQUEST FOR APPROVAL OF AN ORDINANCE RELATING TO THE PLAZA PUSH CART VENDOR ORDINANCE; AMENDING SUBSECTION 23-5.5 SFCC 1987 TO CHANGE THE NUMBER OF LICENSES ISSUED AND THE TERM OF EACH LICENSE AND MAKING SUCH OTHER CHANGES AS ARE NECESSARY TO CLARIFY THE ORDINANCE**
- **REQUEST FOR APPROVAL OF A RESOLUTION AMENDING RESOLUTION NO. 2002-79 TO CHANGE THE ANNUAL LICENSE FEES FOR PLAZA PUSH CART VENDORS (COUNCILORS LINDELL AND DOMINGUEZ) (SEVASTIAN GURULÉ)**

Committee Review:

City Business and Quality of Life Committee (Scheduled)

Finance Committee (Scheduled)

Council (Request to Publish)

Council (Public Hearing)

11/12/14

11/17/14

12/10/14

01/14/15

Councilor Bushee was trying to understand the reduction of 5-year permits to 2 years and the follow up with collecting or ensuring gross receipts were being paid.

Mr. Gurulé explained the intent is to add two additional push cart vendors.

Councilor Bushee asked what that had to do with reducing the license term.

Mr. Gurulé said it would identify additional spaces and allow others possible vendors who are interested in the program.

Councilor Bushee asked if they were changing locations on the Plaza proper, noting that some are messy.

Mr. Gurulé said they would stay in the same locations and then two additional spaces on the sidewalk that would still allow for pedestrians and ADA access.

Councilor Bushee asked why they wouldn't have some in the street.

Mr. Gurulé said they might when the street is closed.

Councilor Bushee said the City has not always had that many people apply. Two year terms are limited. She found that instead of having moving vehicles we now have parked vehicles including cops and it feels like encouraging vendors to be in the streets themselves.

Mr. Gurulé said there were 12 applicants who applied and only half would be able to obtain a license.

Councilor Bushee suggested increasing the term to 3 years with more stringent regulations about keeping the location clean and making sure we are enforcing collection of gross receipts tax. She asked how many of the vendors were from Santa Fé.

Mr. Gurulé said all of them are from Santa Fé.

Councilor Bushee asked if that was a requirement. Mr. Gurulé agreed.

Councilor Bushee asked if he had any comment on collections.

Mr. Gurulé said he would work with staff on that.

Councilor Bushee moved to approve the ordinance as amended with a 3-year license term and enforce collection of gross receipts tax. Councilor Dominguez seconded the motion.

Councilor Dominguez said they might be having a public hearing at Finance.

Councilor Maestas agreed with Councilor Bushee that this is a drastic change. The buskers had complained to him about the time to wait to get a permit and having to compete with others. He asked how the new terms would be phased in with the existing 5 year permits - whether it would begin at the end of the five-year permits or if those permits would be terminated early and then have to compete again.

Mr. Gurulé explained that the existing code grants the City Manager administrative authority to extend current licenses two times for up to six months each. The intent was to extend current licenses through June 2015 and allow this code amendment to get through the public notification process. Public notice would occur in February. Applications would be due in March with the selections made by April 17. The rankings would be published by April 24 and applicants not recommended for licenses would have 15 days to file an appeal. By May 22nd the City would send out notices and vendors would be up and operating by June 1st.

Councilor Maestas asked how many vendors would have licenses cut short.

Mr. Gurulé said there would be four. He explained that current licenses would end on December 31 and that was why they were extending them.

The motion to approve passed by unanimous voice vote.

Ms. Byers reminded the Committee that they still needed to act on the Resolution regarding Cart Fees.

Councilor Dimas moved to approve the resolution for Cart Fees. Commissioner Dominguez seconded the motion and it passed by majority voice vote with all voting in favor except Commissioner Bushee who dissented.

~~9. REQUEST FOR APPROVAL OF A RESOLUTION ESTABLISHING CITY OF SANTA FE LEGISLATIVE PRIORITIES FOR CONSIDERATION BY THE NEW MEXICO STATE LEGISLATURE DURING THE 52ND LEGISLATURE – STATE OF NEW MEXICO – FIRST SESSION, 2015 (MAYOR GONZALES) (BRIAN SNYDER)~~

~~B. Approval of Consent Agenda-There was none~~

~~II. CONSENT AGENDA – None~~

III. ACTION ITEMS

- A. Request for approval of an ordinance relating to the Plaza Pushcart Vendor Ordinance; Amending Subsection 23-5.5 SFCC 1987 to change the number of licenses issued and the term of each license and making such other changes as are necessary to clarify the purposes of the ordinance. (Councilors Lindell and Dominguez) (Sevastian Gurule)

Mr. Gurule described the key changes proposed to the ordinance:

- A request by Councilor Lindell to increase cart vendors from 4 to 6 vendors.
- A reduction in the license term from five to two years to allow for more diversity and opportunity and a more frequent selection process.
- Minimum requirements considered are the number of days that pushcart vendors must operate. Current code requires operation to begin by the first of May. The amendment begins operation March 1 through Balloon Fiesta in October; a minimum of 20 days per month and a minimum eight hours per day.
- Language was clarified for jury selection criteria.
- Consideration of the cost of the program and value of property resulted in a decision to increase the fee to \$3,000 (about \$8.12 per day/365 days) from the current \$1500 per year (about \$4.10 per day).
- Spaces are currently 54 square feet and will be increased to 96 square feet.

Mr. Shandler explained the Committee should vote on two different items-the ordinance change and the resolution with the dollar amount. The Public Works Committee unanimously approved the ordinance with the condition that the two-year licensing be changed to three years. The item will go to the Finance Committee with a possible public hearing. A Request to Publish will be made at the December City Council meeting, if approved another public hearing at the January Council meeting.

Ms. Kapin asked if the GRT (Gross Receipts Tax) reporting was used to determine how much the vendors make and what increase would be. She said it is important to make sure the fee is viable.

Mr. Gurule explained they are gathering information, but have not collected the GRT. The code requires the information be used for analytic purposes.

Mr. Roybal said to double the fees is excessive and fees should not be based on 365 days. He was concerned about the additional fees to participate for special events.

Mr. Gurule said the special events were not considered in calculation of the license fees; the fees were based on the administrative costs to manage the program. The existing code requires a vendor to apply to the event sponsor to participate in special events. The 365 days was used to give an annual cost breakdown by day.

The Committee discussed the requirements for the special events.

Chair Lindell opened the floor to comments from the public.

IV. PUBLIC HEARING

Michael Murphy owner of the Kettle Corn thanked Chair Lindell and the Committee. He said he calculates about 30 days that he is not allowed to be on the Plaza during the summer. Before a three day event, he can only participate until noon and he generally does not sell any popcorn in the morning.

He said additionally he is outside without a cover and deals with weather. He asked for those variables to be taken into consideration. He said doubling the fee is a lot; especially because the plan is to increase the fee every two years.

Mr. Murphy said he was not sure having more vendors would bring more people to the Plaza. He said if the city wants more variety an idea could be to allow existing vendors to add items within their product line. He said also the new Buskers' Ordinance just passed is also a concern.

He said during special events all of the vendors that pay the fee to participate do well, but the number of vendors and the food quality has decreased over the last five years. Some vendors did so poorly they did not return this year.

Mr. Murphy said he uses organic quality products and that costs more. Another concern is the two-year jury process. He took out a small business loan for five years and is not sure if possible to get a two-year business loan. He asked that his points be taken into consideration.

The Public Hearing portion of the agenda was closed at this time.

Mr. Roybal said Mr. Murphy's cart adds a lot of character to the Plaza and he offers an excellent product. He asked how many good days Mr. Murphy has on the Plaza. Mr. Murphy replied about 180-200 days.

Mr. Roybal said to base the cost on 365 days is unfair. He liked that there would be a three year option, but wondered if possible to have other options.

Chair Lindell said many people want to participate in the program and a license for five years closes them out and they do not come back. She said the city wants to encourage more participation. The ordinance would be taken from 4 to 6 vendors and the amendment change of two to three years was accepted. Mr. Gurule added that 12 applicants applied for 4 spaces this year.

Mr. Furry asked Mr. Murphy if the additional feet would be a benefit. Mr. Murphy replied for him the extra space will help him operate more safely.

Ms. Karp entered the meeting at this time.

Mr. Furry asked how the city put a price on the Plaza when determining the cost of the location.

Chair Lindell said there was a discussion regarding the Plaza as the most valuable piece of real estate in New Mexico; perhaps in the entire Southwest. She said \$250 a month is not an onerous amount of rent. She said the program benefits the city and the vendors are wonderful and add value. The city has great respect for the vendors, but thinks it fair that the program pay for itself.

Ms. Kelly asked if pushcart vendors would be allowed in the new pedestrian areas. Mr. Gurule replied current vendors could keep their existing spaces, but with the success of People to the Plaza would be worth looking into.

Ms. Kelly thought it would foster creativity and be a better business model if businesses could adapt their business plan so they could provide other products or be more creative. She said points are given for those who are juried. She asked if points are given for sustainable practices; organic, locally sourced, etc. Ms. Karp added or products that are recyclable/biodegradable, etc.

Chair Lindell said they did not go to that level. She said a lot of hours were put into this and the city feels the changes are for the better.

Mr. Roybal asked if preference would be given to the current vendors and was told there is no preference. He said for a small vendor with two and three dollar sales, it takes a lot to make \$250 dollars.

Mr. Murphy said for him, a family might buy one bag of popcorn for the entire family to share. He said he currently backs the taxes out and sells everything at the dollar point, which makes him less. He said with the increase he will have to charge tax added on top of the price.

Ms. Kapin asked the relevance of the language '*immediate family members*' working at the booth or taking over the license in the event of death/disability. She said that is a bias for those without an immediate family member.

Mr. Gurule explained that the intent of the program is to help family-owned businesses prosper and prohibit awarding an applicant who just hires an employee to manage the stand.

Ms. Kapin said if she put a pizza cart on the Plaza she would lose out, because she doesn't have an immediate family member and she would lose a person if she had a problem running the stand.

Mr. Gurule said there have been challenges to language in the code in what is considered owner/operated businesses. The language has evolved over the years to support the intent of the code and the definitions allow the city to stay within the intent of the code.

Ms. Karp said much of the "family" language was because there were artists/artisans with carts and the idea was that the artist would be on the Plaza. She said that is important for tourism and businesses to represent the cultural community of the city.

Ms. Kapin said a business owner should be able to designate their business partners. She agreed that vendors should have the ability to change products, because costs and markets do change. She asked if non-competing language with other food carts could be added.

Mr. Taggart said there is nothing wrong with competition if the competition improves the product.

Mr. Gurule said jurying is also done on the quality of the products sold and if not a part of the selection process, the quality could be diminished. That would not be fair to everyone else.

Ms. Kapin said Item J states that the city shall inspect carts monthly. She asked who would do inspections

and if keeping the quality was not part of the compliance. Ms. Kapin asked if there could be a way that helps development and reward opportunities for businesses to grow.

Mr. Gurule said that he or his staff would conduct the inspections. Mr. Shandler said a legal argument could be if an application is for selling popcorn and after a year the vendor decides to sell fajitas, he then has circumvented the jury process. The vendor could be in direct competition with someone else.

Chair Lindell added that is problematic and has come up in the past. She explained the Committee will vote on the amendment change incorporated into part A from two years to three.

Mr. Conway asked about the 10 p.m. closing time. He asked if he could stay open later in the summer if he wanted. He was told that the Plaza curfew is 10 p.m. by ordinance.

Mr. Furry moved to recommend approval of the ordinance as written with Amendment A. Mr. Taggart seconded the motion.

Mr. Conway made a friendly amendment to add *push cart vendor's immediate family or designee as identified on the application on pages 9, line 9 and 11, section I (3) lines 7 and 8 where the vendors' immediate family members are addressed in the ordinance.*

Mr. Furry and Mr. Roybal accepted the friendly amendment to include both recommendations in the motion. The motion passed by unanimous voice vote.

~~B. Request for approval of a resolution amending Resolution No. 2002-79 for the purpose of amending the annual license fees for pushcart vendors. (Councilors Lindell and Dominguez) (Sebastian Gurule)~~

~~**Mr. Furry moved to approve Resolution #2002-79 to amend the annual license fee for pushcart vendors. Ms. Karp seconded the motion.**~~

~~Ms. Kapin said she would like to see the business gross sales numbers.~~

~~Chair Lindell replied that would not be appropriate. She said as written, the vendors are asked to share their numbers with the city to ensure taxes are paid with an agreement that the numbers would not be shared with the public.~~

~~**The motion to approve resolution #2002-79 was passed by unanimous vote. Mr. Roybal stated he is opposed to the increase in fee of 100%.**~~

~~**V. UNFINISHED BUSINESS- None**~~

~~**VI. INFORMATIONAL ITEMS**~~

~~A. Single Use Bag Ordinance Report -Katherine Mortimer- Postponed until a later meeting.~~

~~B. Santa Fe Business Incubator Presentation – Marie Longserre~~

~~Ms. Longserre said she is the President/CEO of the Santa Fe Business Incubator (SFBI). She introduced~~

ACTION SHEET
CITY COUNCIL COMMITTEE MEETING OF 12/10/14
ITEM FROM FINANCE COMMITTEE MEETING OF 11/17/14

ISSUE:

(Public Hearing)

17. Pushcart Vendors. (Councilor Lindell, Mayor Gonzales, and Councilors Dominguez and Ives) (Sevastian Gurule)

A. Request for Approval of an Ordinance Relating to the Plaza Pushcart Vendor Ordinance; Amending Subsection 23-5.5 SFCC 1987 to Change the Number of Licenses Issued and the Term of Each License and Making Such Other Changes as are Necessary to Clarify the Ordinance.

B. Request for Approval of a Resolution Amending Resolution No. 2002-79 to Change the Annual License Fees for Plaza Pushcart Vendors.

Committee Review:

Public Works Committee (approved)	11/10/14
City Business and Quality of Life Committee (approved)	11/12/14
City Council (request to publish)	12/10/14
City Council (public hearing)	01/14/15

Fiscal Impact – Yes

FINANCE COMMITTEE ACTION: APPROVED AS DISCUSSION ITEM

FUNDING SOURCE:

SPECIAL CONDITIONS OR AMENDMENTS

Approved with amendments.

STAFF FOLLOW-UP:

VOTE	FOR	AGAINST	ABSTAIN
COUNCILOR TRUJILLO	A & B X		
COUNCILOR RIVERA	X		
COUNCILOR LINDELL	X		
COUNCILOR MAESTAS	X	X (A)	
CHAIRPERSON DOMINGUEZ			

Officer Martinez said, "Basically, in our professional Animal Care Contract with the Animal Shelter, we gave them our licensing two years ago in negotiation. And we are still paying them close to \$200,000 per year. I think we get our licensing back, that could help pay for the needed manpower. I believe that contract ends at the end of the fiscal year. So maybe we could look at the licensing again and use it to pay for that."

Chair Dominguez said you guys are going to have to evaluate how that impacts the operations and such.

Councilor Maestas said, "Can you tell me where you are comfortable with the call volume per officer."

Officer Martinez said, "I think, right now they're 10 hour shifts, I think 10 calls is excessive for each officer. If they do a call per hour that still doesn't give them time to investigate and process the report. I think anywhere between 7-8 per officer is the maximum per officer per shift."

Chair Dominguez reiterated the Chief needs to let him know when this needs to go back on the agenda.

END OF CONSENT CALENDAR DISCUSSION

DISCUSSION

**17. PUBLIC HEARING
PUSHCART VENDORS (COUNCILOR LINDELL, MAYOR GONZALES AND COUNCILORS DOMINGUEZ AND IVES). (SEVASTIAN GURULE)**

A copy of a Fiscal Impact Report regarding this item is incorporated herewith to these minutes as Exhibit "1."

- A. REQUEST FOR APPROVAL OF AN ORDINANCE RELATING TO THE PLAZA PUSHCART VENDOR ORDINANCE; AMENDING SUBSECTION 23-5.5 SFCC 1987, TO CHANGE THE NUMBER OF LICENSES ISSUED AND THE TERM OF EACH LICENSE AND MAKING SUCH OTHER CHANGES AS ARE NECESSARY TO CLARIFY THE ORDINANCE.**
- B. REQUEST FOR APPROVAL OF A RESOLUTION AMENDING RESOLUTION NO. 2002-79, TO CHANGE THE ANNUAL LICENSE FEES FOR PLAZA PUSHCART VENDORS.**

Committee Review: Public Works Committee (approved) 11/10/14; City Business and Quality of Life Committee (approved) 11/12/14; City Council (request to publish) 12/10/14; and City Council (public hearing) 01/14/15.

Items 17(A) and (B) were combined for purposes of presentation and discussion, but were voted upon separately.

Sevastian Gurule said the proposed legislation is intended to increase the number of licenses from 4 to 6. He said with the People to the Plaza initiative, there has been a demand for additional pushcart vendors on the Plaza. He said they are also changing the number of years for the term of a license from 5 years to 3 years. He said they spent significant time reviewing the criteria used by the jury panel to score the applicants. In addition, the operational space has been increased from 54 sq. ft. to 96 sq. ft., allowing additional space for vendors to set up their wares and display, and to work comfortable within the allotted square feet. A minimum operation number of hours, months and days has been established. The existing Code has no requirements other than that a pushcart vendor has to be in operation by May 1st. The current draft establishes the requirement to be in operation as of March 1st and they must be in operation 20 days a month, 8 hours a day. The intent is to ensure the space is being utilized to its full capacity.

Mr. Gurule said there also is refining for the reporting of the CRS Report to the City, and we're also looking at increasing the annual license fee.

Public Hearing

There was no one speaking to the request.

The Public Hearing was Closed

Councilor Lindell said, "First of all, I would like to thank staff for the amount of time and effort that put in this. I spent a significant amount of time looking at it [along with] folks from Legal, Sev and Land Use. I think we've improved the Ordinance and we are striving to give opportunity to more people to make it a fairer process, and also to make it a program that operates on its own and doesn't need to be subsidized by the City. And I think those were the goals we pursued. I think we have accomplished them with this. And with that, I'm going to move for approval."

MOTION: Councilor Lindell moved, seconded by Councilor Trujillo for purposes of discussion, to approve this request.

DISCUSSION: Councilor Trujillo said he has talked to a lot of pushcart vendors, and when they are chosen they are designated in a special place. He asked if there has been any discussion of a weekly rotation. He said one of the questions they asked is why the tables and chairs were on one side of the Plaza by the Plaza Café and the Ore House, while there was no seating on the other sides. He said he thinks it would be ideal to have the pushcart vendors to move one spot over each week, and by the end of the summer they will make 2-3 rotations. This is something he has thought about and been asked about by other vendors.

Mr. Gurule said, "The feedback which we received in previous Code amendments, the existing vendors have expressed a concern about being in the same location, the reason being their patrons know exactly where to find them. If it is the wishes of the Governing Body, I'm not sure we can implement a weekly

change. I would encourage more something not every week, granted the summer months are the prime season. Maybe it's on an annual basis, or a monthly basis. Ultimately, the feedback we would get, and I understand the concerns Mr. Garcia had, in being able to have more of the traffic flow. Having your patrons to be fairly familiar where to find you, I think is a critical aspect that you should keep in mind."

Councilor Trujillo said, "It's a critical aspect, but it's the Plaza. It's not like it's a mile away, it's 500 feet. It's just a recommendation. I don't know if my colleagues would vote for it. I just think it's a fairer way. Who knows, one week business could be better on the east side of the Plaza than on the west side. It's something.... I've always wondered why we don't do it."

Mr. Gurule said, "If it is the closure of the Plaza from Memorial Day forward, I think we could have the ability to have more flexibility where to place the additional two for example, maybe in an area where the street is closed and allow for more of that free-flowing traffic and to take advantages of the chairs, benches and stuff set out this past year."

Councilor Trujillo said then we can put them all around the Plaza, in fact, in front of the Palace of the Governors. He thinks staff needs to look at it, reiterating it is just an idea, noting he isn't going to request it as a friendly amendment. He thinks it's something staff might investigate and talk to the vendors about it.

Mr. Gurule said in the previous process, when we talked to some of the vendors when going through the Code amendment, the main question from 3 vendors with whom he spoke was, "Can we retain our same space." He said, "Mr. Shandler pointed out that in the current amendment, we are striking language, so that if a current, licensed vendor receives their license again, we're striking that they can request that same space again. In other words, we would go ahead and go through a lottery or some fair process so spaces can be assigned for that license term."

Councilor Trujillo said, "It's the Plaza and it isn't that big. I understand people are used to being in one place. I can stand on one corner and look across the Plaza and I know where every vendor is. Like I said, it's just for discussion, so I just wanted to bring it up."

Councilor Maestas said, "Councilor Trujillo, that was one of my comments." He suggested amending the language to the effect that, the new permit period as amended is now three years. We're talking 36 months among 6 license holders. That's a 6 month rotation. Maybe you can do the lottery for the initial assignment and maybe rotate them in a clockwise or counter-clockwise fashion. I can give you some language.

Councilor Maestas asked if all license holders will be on the Plaza, and Mr. Gurule said this is correct.

Councilor Maestas said he believes it is an equity issue and it would be good to rotate every 6 months, and each license holder gets to benefit.

Councilor Maestas suggested an amendment on Ordinance page 7, line 8, "Upon initial assignment of designated space, spaces shall be rotated counter-clockwise every 6 months."

Councilor Trujillo asked when the vendors start on the Plaza.

Mr. Gurule said the Ordinance requires them to be in operation by May 1st, but we do have some vendors that operate year-round, weather permitting, with the exception of Mr. Garcia who leaves the country for the winter months. The Code allows the pushcart vendors to operate within that license term, so weather permitting, they can be there all year.

Councilor Trujillo said he understands 6 months, but thinks it should be a rotation one over, once every 2 weeks, and by the end of the summer they've rotated around the Plaza and hit every corner. He is willing to go with the month rotation. At least it would start the process of them moving different places. He thinks this gives everyone equal opportunity.

Councilor Maestas asked if we are going to hear the Ordinance and then the Resolution.

Chair Dominguez said we'll do both at the same time, noting the Public Hearing was on both.

Councilor Maestas said, "I'll get to the space rotation. My main issue was I didn't want to unnecessarily shorten the existing terms of the vendor licensees and we're not going to do that and that is good. And I like the extension from two to three years that Public Works made as an amendment to the Ordinance, so I am in support of that. But it seems that maybe the other parts of the Ordinance have to be updated to reflect the 3-year term. So if you look at Ordinance page 2, lines 12-15, that language is for a 2-year term. Well, maybe that is a 3-year terms. I guess we're okay on that."

Councilor Maestas continued, "On that same section on the application criteria, maybe it's a question for you Sevastian, how do we ensure these vendors are in good standing. Since they sell food, they're probably an LLC. How do we ensure they are in good standing in terms of their taxes paid, filing all the appropriate corporate reports. Do we have any criteria to ensure they haven't had health violations elsewhere, assuming they've been operating in other places in the City. I didn't see any kind of screening of the vendors. And I'm just a little concerned about that because a lot of these are food vendors. Has the City ever done that, required any kind of certificate of good standing as a corporation, good standing with Taxation & Revenue, a clean record over the past 3 years, no Health Department violations."

Mr. Gurule said, "We have not made a requirement to receive documentation from Environment & Health, or from Taxation & Revenue, on their letterhead to let the City know these vendors are in good standing. In the current Code there is a requirement to for us to collect the documentation that is reported to Tax & Review. And right now, my staff and I are getting ready to collect that information for the current license term, but it has not been part of the selection criteria that has been reviewed and scored by the jury panel."

Councilor Maestas asked what is the tax information.

Mr. Gurule said it is information, the documentation that they filed with Taxation & Revenue. And, for internal purposes, we can use it to analyze. Again, it is the first step that the Governing Body was looking at to ensure these vendors are actually reporting the GRT.

Councilor Maestas said, "I really feel like.... I would hate for us to select a vendor, a new vendor, and find out they are a bad actor, that they've had a number of Health Department violations or even wage violations with the Labor Department. I think there's got to be some screening at the application stage.

Mr. Gurule said, "Understood. And Councilor Maestas we do receive, before the applicant can fully execute their license that has been awarded to them, we do require a Department of Environment and Health Food Purveyors Permit. But that's at the time the license has already been awarded. During the application process, I'm sure we can put in some language if it's the wish of the Governing Body to do so."

Councilor Maestas said since we're opening this whole thing up, he really thinks, to ensure that the application process is thorough since we're going to be accepting more vendors doing more business. h.

FRIENDLY AMENDMENT: Councilor Maestas would like to amend the Ordinance that we reference any existing Code that speaks to appropriate screening criteria, like being current on their taxes, appropriate corporate registration and filings, no recent Health Department violation. He said, "I'm sure the Health Department has its own criteria with issuing Health Department licenses, but I don't know if they consider the record of that vendor. *[STENOGRAPHER'S NOTE: There was no indication as to whether the amendment was or was not friendly and the friendly amendment was not withdrawn.]*

Mr. Gurule said, "My experience is that in order to apply for the Food Purveyors Permit, there are State inspectors that go to the commissary, inspect the kitchen, the temperature of the refrigerator, the stove, as they basically do for all businesses that are preparing food. I know that occasionally, they conduct surprise inspections on the Plaza itself for the licensed vendors and in addition to the day to day Plaza Program, also for major commercial events – Indian Market, Spanish Market. I know they go through that process. I don't know of anything in addition."

Matthew O'Reilly said, "Sebastian is correct, when those health department inspections are done initially, and any surprise inspections that happen later take place, it is part of their standard operating procedure, but whether they inform us about that is another story. And typically, especially dealing with business licenses for brick and mortar food establishments, those inspections usually result in a punch list of items sometimes. And then they 're taken care of by the operator and then it's over. And I can't recall, having been involved in the issuance of business licenses through the Land Use Department, any time we got some sort of notice from the Health Department saying they were shutting down a restaurant or something, we usually just all of a sudden realized they were closed. So that's what I can add to that."

Councilor Maestas said, "Since you're there, do you think that this application process is thorough enough. Do you think we should add additional screening information."

Mr. O'Reilly said, "Personally, I think it is sufficient. And the reason I say that is that these are only one small type of business. In the entire City we have thousands and thousands of other businesses that are open that have all kinds of inspections. Inspections from the Health Department. Inspections annually from the Fire Department in some case. Zoning inspections that happens when business licenses are first issued. The City has its Ordinances, that it has the staff and manpower to follow up on. I'm not sure how we could ever follow up with the Health Department and some of the other inspections that are required,

on all of the things we already check for. And I don't think that we can require those other State Agencies, we can't force them to report things to us. And to be honest, if a food establishment got a negative checklist of items based on an inspection and corrected them, presumably the problem has been solved. And what happens between that date that the problem was solved and the next time that they have an inspection, it's hard to say how they operate their business during that time."

Councilor Maestas said, "My issue is not what happens after we issue the license, it's their standing. And I think anyone that has the privilege of doing business with the City and providing such a specialty service on the Plaza should be held to a high standard. And so that's why I thought there should be some kind of basic screening in all those areas. Obviously, what happens after that, is up to all of the appropriate regulatory agencies. But what we can do is, if you want to apply for this, you need to be a reputable business, in good standing all these key areas. And I don't have any specific language to offer, but maybe Sev and I can do some more research and see if we can add some language to this application section between now and the time it goes to Council. I would be happy to do that."

Councilor Maestas said, "In the criteria on page 5 of the Ordinance, I notice... page 5, line 22, there was 30 points given to the personal interview of the applicant. And I felt like that seemed like a lot, that's 30% of the total. And I really felt like the criteria or the evaluation factor on page 6, like 2, part B, up to 10 points for compatibility and diversity of the pushcart and food items with Plaza activities. I thought that should be 30 points, and the interview 10%, because I think that's more important. I think we do want a diversity of food items among the vendors. And so I was kind of puzzled. I don't know what the basis was for this new revised criteria. But I would suggest just a high point total allocated to Factor D, the compatibility and diversity of the pushcart and food items, and maybe lower the point allocation for the interview. Is there a reason why it's 30%. What was the rationale for that."

Mr. Gurule said, "The rationale behind that is, for several years that I've worked on this program, the interview with the applicant themselves tells a big story on how the applicant actually presents their product, how they make their product, and basically how is that they are going to be ambassadors, as most vendors around the Plaza, to be ambassadors of the City. They get approached a lot by the community and visitors. It's an attempt to really get to know the applicant. And it's a one on one presentation that the applicant has with the jury panel that allows the jury panel to ask specific questions to the applicant, based off the application they submit. And it gives more opportunity for the jury panel to do the best they can to score it appropriately."

Councilor Maestas said, "But it seems based on the description of that factor, they are only interviewed regarding their food item, how they propose to sell it and how it's prepared. They're not meant to be knowledgeable of City history. They're going to know the food product and how it's prepared. I just thought that 30% of the entire scoring is having them tell us about their own food item. I would rather score them on the diversity of their item."

FRIENDLY AMENDMENT: Councilor Maestas would like to amend the Ordinance to change the point allocation Factor B, to reduce that to 10 points and raise Factor D to 30 points. **THE AMENDMENT NOT FRIENDLY TO THE MAKER, BECAUSE WE'VE SPENT SO MUCH TIME TALKING ABOUT THIS, AND THE FOLKS THAT HAVE WORKED ON THIS SO MANY YEARS IN THE PAST, THE COMMITTEE THAT DID THE INTERVIEWS FELT STRONGLY THE INTERVIEW WAS A VERY IMPORTANT PART OF THE PROCESS..**

Councilor Maestas said, "It doesn't make sense. This is an existing scoring criteria. I'll have to take another crack at it later. Let's move on to the Resolution since we're talking about that. On page 2 of the Resolution, the term is not defined anywhere, unless I'm missing something. I know it's 3 years, but is it January 1. I just think we should put the actual term when it begins and I think it's January 1st, it's a calendar year term."

Mr. Gurule said, "That is correct. The license is issued for the calendar year, with the exception of the upcoming one to allow time for an amendment, but it is issued on a calendar year basis."

Councilor Maestas asked if that is clear.

Mr. Gurule said, "Yes sir, on page 2."

Councilor Maestas said, "So it's in the Ordinance but not the Resolution."

Mr. Gurule said that is correct.

Councilor Maestas said, "On the rate increase, we are doubling the rate to pay for the administration of this program of issuing the permits, and so we doubled it. We obviously did some kind of cost evaluation, but why are we doing 2% per term. Page 2 of the Resolution page 21 of the packet."

Mr. O'Reilly said, "Part of the process, in trying to figure out what was the correct fee to charge in this case, was an analogous analysis, if you will, of what we might lease this property for, were we to lease it, which we do as you know lease various properties around town. And it was based on our projections, and I would say, albeit very conservative projections of what would be the lease rate for land on the Plaza, given what Sevastian just referred to, which probably is some of the most valuable land in the Southwestern United States. I believe there was a desire not to excessively increase the total fee from \$1,500 to something much much higher, which, in my humble opinion as the Asset Development Director of the City, I think it could be."

Mr. O'Reilly continued, "Most of the time when we lease the property, sometimes it is a set percentage, 2%, 2½%, 3%, sometimes it's tied to the CPIU. The CPIU over the last 20 years, somewhere between 2.4 to 2.6% depending on how you calculate it on an average basis. I think it was an attempt to make sure that we were properly charging the correct fees on a yearly basis and that they were escalating, similar to the way we would escalate the fees for a lease. And it certainly could be another number, other than 2%."

FRIENDLY AMENDMENT: Councilor Maestas said, "I don't think this Resolution has been updated to reflect the amendment of the term from two to three years. I think the amendment in our packet speaks only to the Ordinance and not the Resolution. Specifically, line 6, page 2 of the Resolution. And then the terms that are listed on line 8 through 10." Mr. O'Reilly said, "That appears to be correct. The Resolution and the Ordinance, if it's the Committee's recommendation that it continue to go with 3 years, that both of them would be to be updated so that the Resolution matches the Ordinance." **THE AMENDMENT WAS FRIENDLY TO THE MAKER AND SECOND, AND THERE WERE NO OBJECTIONS BY THE OTHER MEMBERS OF THE COMMITTEE.**

Councilor Maestas said, "Just a recommendation for better language on line 5 of the Resolution, where it reads, '...The annual fee shall be increased by 2% per term of a pushcart vendor license following the 2015-2017 term...' And delete the sentence on page 2 of the Resolution, line 11 as follows: 'After the 2019-2020, the annual license fee shall be increased by 2% per term....' Councilor Maestas said the 2% increase is in effect after the initial term. He said, "Just some recommended language, but do change the term from 2 years to 3 years.'

RESTATEMENT OF THE MOTION AS AMENDED: Councilor Lindell moved, seconded by Councilor Trujillo, to approve Item 17(A), the proposed Plaza Pushcart Vendor Ordinance, as presented.

VOTE: The motion, as amended, was approved on a voice vote, with Councilor Lindell, Councilor Trujillo and Councilor Rivera voting in favor of the motion and Councilor Maestas voting against.

MOTION: Councilor Lindell moved, seconded by Councilor Maestas, to approve Item #17(B), the proposed Resolution, with the recommendations of Councilor Maestas to which the maker has agreed.

VOTE: The motion, as amended, was approved unanimously on a voice vote.

18. GENERAL BUDGET DISCUSSION (PLEASE BRING ANNUAL OPERATING BUDGET BOOKS).

Chair Dominguez said this is a follow-up on previous budget discussions. He said the Resolutions regarding IT which were introduced by Councilor Ives are in the packet. He said he was able to capture as much as possible from the Governing Body and put it in memorandum form which was circulated to the rest of the Governing Body members from Kelley. He said we will continue the previous budget discussions and try to "narrow down some policies and get to a better place."

Bryan Snyder, City Manager, said a good portion of the items in the packet are Human Resources related and he has asked Sandra Perez, Director, Human Resources Department, to speak those. He said she has asked the team from Aon to speak regarding the health plan. He said he will interject comments as needed throughout the presentation