CITY OF SANTA FE, NEW MEXICO

BILL NO. 2017-25

INTRODUCED BY:

Councilor Signe I. Lindell

Councilor Renee D. Villarreal

AN ORDINANCE

AMENDING SUBSECTION 23-5.3 SFCC 1987 REGARDING PLAZA ARTISTS/ARTISANS; LICENSES; REQUIREMENTS; SELECTION PROCESS; CONDITIONS OF OPERATIONS; AND AMENDING SUBSECTION 23-5.5 SFCC 1987 TO INCREASE PLAZA PUSHCART VENDOR LICENSE TERMS TO FIVE YEARS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

Section 1. Section 23-5.3 SFCC 1987 (being Ord. #1990-6 (as amended)) is amended to read:

23-5.3 Plaza Artists/Artisans; Licenses; Requirements; Selection Process; Conditions of Operations.

A. *Short Title.* This section may be cited as the "Santa Fe Plaza Park Artist/Artisan Program Ordinance."

B. Plaza Park artist/artisan licenses may be issued at the discretion of the city. Such licenses shall be privileges of the holders of a license, subject to the provisions of this chapter. Such licenses are not and shall not be construed as rights in property or otherwise; and may be

revoked by the city at any time, subject to the provisions of this chapter.

C. Plaza Park artist/artisan licenses may be approved by the city manager.

(1) A total of twenty[~~-one~~] ([~~21~~] 20) licenses may be issued for sixteen (16) Plaza Park spaces as follows:

(a) Eleven (11) individual licenses (each license has a space);

(b) [~~Seven (7)~~] Six (6) rotating licenses (all licenses share [~~two (2)~~] three (3) spaces).

(c) Two (2) collective licenses (each license has one (1) space)[~~; and~~

~~(d) One (1) portrait artist license (one (1) space)~~].

(2) An artist/artisan license shall be valid for a period of five (5) years from January 1 or the date issued, whichever is later, of the first year to December 31 of the fifth year, subject to the provisions of this chapter.

(3) Collectives shall be responsible for insuring that all artists/artisans operating under the collective license meet the provisions of this section.

(4) If after the selection process is completed, a collective or [~~portrait~~] individual license is not issued, the city manager may issue additional rotating spaces or days for the existing licensed rotators.

D. *Requirements for Artist/Artisan License Applications.*

(1) The city shall give public notice of the application period by whatever no-fee notice or announcement channels are available through local print, audio or video media. For the purpose of issuance of licenses in 2008, applications shall be submitted by January 31, 2008. Thereafter application shall be made during the month of October beginning in [~~2012~~] 2017 and every five (5) years after that. An applicant may apply for more than one (1) type of license; however, no more than one (1) license shall be issued to one (1) applicant. An application shall be submitted for each category of license; and

for each art medium. The applicant shall not apply for more than two (2) art mediums. The application shall indicate which category of license is the applicant's first choice for a license.

(2) Applicants shall be required to pay an application fee for each application submitted. Such application fee shall be established by a resolution adopted by the governing body.

(3) Each applicant, as a condition of possessing an artist/artisan license, shall allow disclosure of the applicant's name, address and nature of business as a matter of public record.

(4) Applicants shall provide a state taxpayer identification number.

(5) Except for new businesses, applicants must provide a letter of good standing from the New Mexico taxation and revenue department.

(6) Applicants who have not been issued a license prior to 2003 shall be residents of Santa Fe county.

([~~5~~]7) Applicants for the individual license category shall have held and operated on a continual basis an individual license, a rotating license or participated in a collective license for the five (5) consecutive years prior to applying for an individual license. An applicant who was listed as a primary maker on a deceased license holder's license application, for five (5) consecutive years, may apply for an individual license if the applicant can demonstrate that he was the primary maker of the artwork.

([~~6~~]8) Each applicant shall designate on the application the type of artwork the applicant will offer for sale.

([~~7~~]9) Each applicant shall designate on the application the proposed hours of operation of the artist/artisan.

([~~8~~]10) All persons listed on the application shall not hold any other type of

city license or registration, or be a member of an organization that holds any other type of city license or registration, to sell the same types of artwork as is sold on the Plaza during the term for which the license application is made, except for the following:

(a) A business registration at their place of work;

(b) For the limited time periods for which there is a special event on the Plaza and the Plaza artist/artisan is not able to participate in the special event;

(c) For the days in which the artist/artisan participates in other permitted arts and craft shows and will not display on the Plaza Park; or

(d) For days that the rotating artist/artisan is not at the Plaza Park space, the rotating or collective artist/artisan may sell his artwork elsewhere in the city.

([~~9~~]11) Only one (1) Plaza Park artist/artisan license shall be allowed per immediate family.

([~~10~~]12) The artist/artisan license fee, as established by adoption of a resolution by the governing body, for each Plaza Park artist/artisan shall be paid to the city. No refund of any portion of the fee shall be made when a license is relinquished or revoked. If fees are not paid accordingly, the license shall be revoked.

([~~11~~]13) Each applicant shall sign a statement that:

(a) A declaration under penalty of perjury that the art or craft item for which the applicant seeks certification is of the applicant's own creation or the creation of the applicant's immediate family defined as a spouse, mother, father, sister, brother or child, and that the applicant neither employs other persons nor is employed by another person in the production of the art or craft item for which the applicant seeks certification, with the exception of immediate family members.

(b) Affirms that all artwork to be sold meets the qualifications set forth in paragraph F.(3) below. Affirms that the applicant is either or both the primary maker of the artwork or the primary seller of the artwork. If the applicant is not the primary maker, the application shall indicate the name(s) of the primary maker(s). The names of all members of the applicant's immediate family who may be making or selling the artwork shall be included in the application. Up to one (1) person, other than an immediate family member, who may be selling the artwork shall be indicated on the application.

([~~b~~]c) Grants the city manager, or his designee, when a complaint has been filed with the city, the authority to physically take artwork offered for sale by the artist/artisan, on the Plaza Park, into custody for examination and investigation of that particular item for compliance with this chapter, provided that such taking shall be only for a reasonable period of time not to exceed thirty (30) days.

([e]d) Affirms that if the applicant is granted a vendor license, then the applicant shall maintain adequate insurance in at least the amounts stated in the New Mexico Tort Claims Act and shall provide proof of such insurance coverage to the city on an annual basis during the term of the license. Such insurance shall name the city as the certificate holder.

([~~d~~]e) Affirms in front of a notary public that all information included in and with the application is true and correct to the best of the applicant's knowledge; that the applicant, if a license is issued, will comply with all provisions of this section and any other applicable laws; and acknowledges that violation of this section or any other applicable law constitutes grounds for permanent revocation of the license.

([~~12~~]14) Applications may not be submitted by any artist/artisan who previously was issued a license but the license was revoked according to the procedures for revocation of the license set forth in subsection 23-5.3(H).

([~~13~~]15) Each application shall include four (4) photographs of the artist/artisan's studio or workspace. The artist/artisan shall agree to have the studio or workspace viewed by the city or by the jury panel or its designated representative during the selection process.

([~~14~~]16) Each application shall include ten (10) photographs or digital images of each art medium, representing the range of artwork to be sold. Two (2) dimensional artists/artisans may submit reproductions in lieu of photographs or digital images. The photographed or reproduced artwork shall have been made no more than one (1) year before the date the application is submitted. All applications, photographs and/or reproductions shall remain in the possession of the city.

([~~15~~]17) Each application shall include a written statement describing the process(es) that the artist/artisan uses to create each different type of artwork.

([~~16~~]18) Each applicant shall provide a proof of their signature or stamp.

([~~17~~]19) Each application shall include up to six (6) photographs or digital images of the proposed display with close ups of the sides, front and back showing the artwork that will be sold.

([~~18~~]20) Each application shall include photographs of the applicant and every other person named on the application. Photographs shall have been taken no more than one (1) year before the date the application is submitted, of a size that allows the person to be easily recognized, and no larger than eight and one-half (8 1/2) inches by eleven (11) inches.

([~~19~~]21) Each artist/artisan included in the collective license[~~,~~] or rotating

license [~~or the portrait artist license~~] shall meet all requirements, including but not limited to the application submittal requirements, for individual vendor license applicants unless specified otherwise.

([~~20~~]22) Each application shall be reviewed by city staff for completeness. Incomplete applications shall not be considered.

([~~21~~]23) Dimensions for photographs, digital images and reproductions shall be no larger than eight and one-half (8 1/2) inches by eleven (11) inches.

E. *Procedures for License Selection.*

(1) For the purpose of issuance of licenses in 2008, the city manager shall designate no later than February 8, 2008 and for subsequent years, no later than [~~November~~] October 31 beginning in [~~2012~~] 2017 and every five (5) years after that, a jury panel. The city manager may disclose the names of the jury panel to the applicants. The jury panel shall include no less than five (5) members of the public who are artists and/or artisans or who have specialized knowledge of art and/or crafts representing a broad spectrum of artistic media. Prior to the designation of a jury panel, the city shall provide to the proposed jury panel members the names of the applicants for the Plaza artist/artisan licenses.

(a) A proposed jury panel member shall not be allowed to serve on the committee if he is related to an applicant for a Plaza artist/artisan 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 proposed jury panel member shall not be allowed to serve on the committee if he has a conflict of interest with any applicant in accordance with the city of Santa Fe Code of Ethics Ordinance, Article 1-3 SFCC 1987.

(c) Jury panel members shall affirm that they shall be fair and impartial during the selection process.

(2) Applications for each category of license and each art medium shall be reviewed by city staff to ensure that the application is complete. ~~Thereafter, the jury panel shall review and score each application separately. Scoring of each criteria shall be based on one (1) through five (5) points, with one (1) being poor; two (2) being needs improvement; three (3) being satisfactory; four (4) being good and five (5) being excellent.~~ All scores shall be calculated by city staff and thereafter applications shall be ranked accordingly. Artists/artisans of a collective shall be judged as a whole.

(a) If applicant applies for a primary art medium only, then the total criteria score shall be the applicants ranking.

(b) If applicant applies for a primary and secondary art medium and the total criteria score of the primary and secondary art medium is [~~14~~] 55 or above, then the total criteria score of the primary art medium and the secondary art medium shall be averaged and the average shall be the applicant's ranking.

(c) If applicant applies for a primary and secondary art medium and the total criteria score of the primary or secondary art medium is [~~13~~] 54 or below, then the total criteria score of the primary or secondary art medium that scored [~~13~~] 54 or below shall not be considered as part of the average referenced in paragraph (b) above.

(d) In the event the applicant is approved for a license and the primary or secondary art medium applied for received a total criteria score of [~~13~~] 54 or below, the art medium that received a [~~13~~] 54 or below shall not be sold by the license holder.

(3) The jury panel shall evaluate applications according to the following

selection criteria and point system:

(a) Originality and creativity (30 points);

(b) Technique, craftsmanship and production methodology (30 points);

[~~(c) Compatibility and diversity with Plaza activities and the appropriateness of the artwork to the Plaza Park setting. Artwork should: be culturally appropriate; reflect an aesthetic that is not offensive to the community; and be indicative of the area's landscape and history. This subsection is not intended to restrict artistic creativity, expression or style or preclude contemporary art or craft forms or production; and~~]

([~~d~~]c) An interview with the applicant, at which the applicant will be asked to [~~explain and/or~~] demonstrate the creation of the artwork to the jury panel (20 points); and

([~~e~~]d) [~~Beginning in 2012, e~~] Evaluations that have been performed by city staff in accordance with subsection 23-5.3H SFCC 1987, shall be included as part of the selection criteria (10 points); and

(e) Compatibility and diversity with Plaza activities and the appropriateness of the artwork to the Plaza Park setting. Artwork should: be culturally appropriate; reflect an aesthetic that is not offensive to the community; and be indicative of the area's landscape and history. This subsection is not intended to restrict artistic creativity, expression or style or preclude contemporary art or craft forms or production, (10 points).

[~~(4) For the 2008 selection process the following additional points shall be added to determine the final ranking:~~]

(a) Applicants who hold an individual license at their time of

application shall be granted an additional [~~five percent (5%)~~] ten percent (10%) to their ranking [~~for each year they have held such a license, but not to exceed fifty percent (50%)~~];

(b) Applicants who have held a rotating vendor license but are applying for an individual vendor license shall be granted an additional [~~one and a half percent (1.5%)~~] two and one half percent (2.5%) to their ranking [~~for each year they have held a rotating license, not to exceed fifteen percent (15%)~~];

(c) Applicants who have held a rotating artist/artisan license and are applying for a rotating vendor license shall be granted an additional five percent (5%) to their ranking [~~for each year they have held a rotating license, not to exceed fifty percent (50%);~~

~~(d) Applicants who are an immediate family member of a Plaza artist/artisan with a prior license and who can document that they made the wares may also receive the respective additional points~~].

([~~5~~]4) Applications shall be ranked numerically on the above basis and licenses shall be awarded in order of rank. In the event there is a tie in the ranking of applicants, the jury panel shall determine the appropriate means by which the tie shall be broken. The city shall give notice of the jury panel's ranking. An artist/artisan may appeal to the city manager the decision of the jury panel within fifteen (15) days of the city's notice of ranking. The city manager or his designee has sole discretion to approve or deny the appeal. The ranking of applications shall be adjusted pending the outcome of the appeal process.

([~~6~~]5) After the appeal period has ended and any adjustments made to the ranking, the city shall mail notification of approval of licenses to successful applicants.

([~~7~~]6) Prior to issuance of any license, the city shall assign spaces on the

Plaza Park. An applicant who had a license the previous license period who receives a license for the coming license period may retain the space he or she used previously. Otherwise, spaces shall be assigned by means of a lottery. Prior to issuance of the rotating licenses, the city shall, by means of a lottery assign [~~two (2)~~] three (3) days a week for each artist/artisan. On an annual basis, during the term of the license, the assigned days for the rotating artists/artisans shall be reassigned by the city by means of a lottery or by a pre-developed schedule.

([~~8~~]7) Each successful applicant shall obtain a city business registration as set forth in Section 18-2 SFCC 1987 for use only on the Plaza. Each applicant shall also obtain a business registration for the location where the applicant produces the artwork. Each artist included in a collective license shall obtain an artist/artisan license for the Plaza area only as set forth in subsection 18-8.10 SFCC 1987.

([~~9~~]8) The artist/artisan license fee shall be paid within thirty (30) days of the date of the written notification of approval. If the license fee is not paid within thirty (30) days of the date of the written notification, it shall be issued to the applicant with the next-highest score.

([~~10~~]9) In the event that during the five (5) year license period a Plaza artist/artisan space is available but no qualified applicant remains from the selection process, the city may repeat the selection process and issue licenses for the remaining time.

F. *Conditions of Operation.*

(1) License holders shall not lease their designated space.

(2) Artists/artisans shall not hinder or impede pedestrian flow on any sidewalk within the Plaza Park or traffic flow on any street surrounding the Plaza Park.

(3) All artists/artisans[~~, except the portrait artist,~~] shall occupy no more than

forty-two (42) square feet (seven feet by six feet (7'x 6')). [~~The portrait artist shall occupy no more than seventy (70) square feet (seven feet by ten feet (7' x 10')).~~] Artists/Artisans may have one (1) or two (2) display tables not to exceed a total of twenty-one (21) square feet. Artists/artisans may have vertical displays not to exceed six (6') feet in height from the ground. The artwork shall not be displayed more than six (6') feet from the ground. If the jury panel approved two (2) art mediums, then the artist/artisan shall display each medium equally. The artist/artisan shall not change the approved mediums during the term of the license. Each table shall have skirting around three (3) sides. The side facing the Plaza Park may be left open. An umbrella and up to two (2) chairs are permitted. In addition to the display space, an additional work surface not to exceed four (4) square feet for operations may be used provided it is not used for display. All other supplies and storage shall be kept in a neat and orderly fashion within the vendor's space. [~~The portrait artist may have one (1) easel.~~]

(4) Except as set forth in this paragraph, all artwork shall be designed and handmade by the artist/artisan to whom the license is issued or a member of the artist's/artisan's immediate family identified on the application. The license holder shall be the primary maker and/or the primary seller of the artwork as stated in Section 23-5.3(D)[(~~11)(a)~~] (13)(b) SFCC 1987. In the event of crisis, upon approval by the city, the license holder may temporarily designate an immediate family member that has been identified on the application as an alternate primary maker or primary seller.

(a) All artwork shall be handmade and not machine made except as set forth in this section. The artwork shall not be assembled from kits or be minor rework.

[~~(b) Portraits offered for sale shall be created on the Plaza Park by the portrait artist while the subject poses or from photographs provided by the public~~

~~requesting the portrait. Artists/artisans issued a portrait artist license may sell mailing tubes, protective frames, mats or glass as part of a sale.~~]

([~~e~~]b) Works such as sculpture or paintings, drawings, prints, or photographs and all other two (2) dimensional works of art shall be originals or high quality reproductions of the artist's work, consecutively numbered and signed or stamped by the artist. Quality reproductions of two (2) dimensional works are acceptable if hand enhanced. Reproductions shall be labeled as such describing the reproduction process. No less than one-half (1/2) of the display space shall be devoted to original artwork.

(c) For works such as photography and digital art, the city of Santa Fe recognizes that artwork created utilizing photographs and/or computer technology are inherently reproducible. The city also recognizes that the use of cropping, enlargement, and darkroom and digital processes can produce different effects from the same image. All of this is allowed in the Santa Fe Plaza Park Artist/Artisan program provided the licensed artist/artisan show and sell only original work that they have created, signed, numbered and produced in limited editions. Such work is not considered to be reproductions.

(d) During the term of the license, artists/artisans shall offer for sale only the type, quality and materials of artwork indicated on the artist/artisan's license application and accepted by the jury panel.

(e) The artwork shall comply with any applicable federal, state or city requirements regarding the authenticity of handcrafted products.

(f) Each artist/artisan shall visibly display a city-issued certificate at their stall on which the following words shall appear: "The issuance of this certificate does not constitute an endorsement by the city of Santa Fe or the

article sold pursuant to the terms of this certificate.

([f]g) An authenticity statement shall be included in the sale of all the artwork. The statement shall describe the process and materials used in creating the artwork. The statement shall be signed by the artist/artisan who created the artwork.

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

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

(a) Standard size business cards;

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

(c) Up to two (2) signs, not exceeding eight and one-half by eleven inches (8 1/2" by 11") each, describing the artwork.

(7) The artist's/artisan's current business registration shall be available on site for inspection at all times of operation.

(8) Artist/artisan displays shall only operate between the hours of 8:00 a.m. to 7:00 p.m. each day, including weekends, except as set forth in this paragraph. Artists/artisans shall not be set up after 12:00 noon, unless authorized by the city to extend the time, on the day prior to the major commercial events specified in subsection 23-5.2A SFCC 1987 or at any time on the days said major commercial events are held on the Plaza. An artist/artisan may apply to the sponsors of those events for inclusion as one of the vendors at that event. The city may also request artists/artisans to cease operation due to security reasons or in the event of an emergency.

(9) A nonprofit organization issued a collective license shall determine how the time available shall be allocated among the artists/artisans included in the collective.

No more than one (1) artist/artisan may display his or her own artwork at one (1) time. The collective shall provide the city a written schedule showing the days and artists/artisans for each month. Artists/artisans participating under a collective license may be replaced by other members of the collective upon review and approval by the city.

(10) Only the artist/artisan or a member of the artist/artisan's immediate family or the one (1) person who has been designated on the application as the non-immediate family member shall sell the artwork. The license holder may list additional immediate family members not included in the application or change the person designated as a non-family member to sell the artwork, up to twice each year.

(11) Artists/artisans shall not sell food or drink.

(12) The artists/artisans shall operate their licenses as follows:

(a) During the months of March through October, all individual artist/artisans shall be set up and conduct business at least fifteen (15) days per month no less than five (5) hours per day, unless other-wise approved by the city.

[~~(b) The portrait license holder shall be set up and conduct business at least fifteen (15) days per month no less than five (5) hours per day from Memorial Day through Labor Day, weather permitting and as authorized by the city. After Labor Day and before Memorial Day, the city may authorize the use of the space to a rotating license holder if the portrait artist is not using the space.~~]

([~~e~~]b) Rotating license holders shall be set up at least twelve (12) days per month, unless otherwise approved by the city. If the rotating license holder is not able to set up, the rotating license holder shall be responsible for contacting another rotating license holder to set up during the license holder's

absence. A rotating license holder shall not use more than one (1) space per day.

([~~d~~]c) The city retains the right to modify this requirement for all artist/artisans because of inclement weather. If an individual license holder is temporarily not set up to sell, the license holder may allow an artist/artisan issued a rotating or collective license to use the space upon notification to and approval by the city.

(13) Temporary vehicle parking on Palace Avenue for the setup or tear down of artist/artisan displays is permitted provided that artists/artisans shall have obtained a loading zone permit from the city parking division and comply with the requirements for such permit.

(14) Plaza park artist/artisan vendors shall be liable for paying applicable municipal gross receipts tax and submit a current letter of good standing from the New Mexico taxation and revenue department to the city manager or designee in a sealed envelope. Letters shall be submitted on an annual basis no later than December 31. A plaza park artist/artisan vendor license is subject to revocation if any plaza park artist/artisan vendor fails to deliver the a current letter of good standing to the city manager or designee.

([~~14~~]15) The city may adopt a code of conduct that shall apply to all artists/artisans.

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

(1) If at any time after issuance of a license, an artist/artisan is not going to use a license, the artist/artisan shall notify the city and relinquish the license. The city may revoke a license if the city determines that the license has not been used for more than thirty (30) consecutive days. The city may offer the remaining time on the license to the next qualified applicant from the selection process set forth in this section.

(2) If a Plaza artist/artisan dies or becomes incapacitated, the city manager may offer the remaining time on the license to a member of the Plaza artists's/artisan's immediate family listed on the application. However, at the expiration of the license period, that immediate family member shall be considered a new applicant in the selection process.

H. *Enforcement.*

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

(2) On an annual basis, the city shall meet with artists/artisans and conduct a written evaluation of the artist/artisan's compliance with the Santa Fe Plaza Park Artist/Artisan program. The city shall retain a copy of the written evaluation.

(3) The city shall investigate complaints alleging violation of this section provided that the complaint is filed on a form provided by the city, signed by the complainant and including the complainant's telephone number and address.

(4) The city has the authority to physically take any piece of artwork for sale by the artist/artisan into custody for examination and investigation of that particular artwork for compliance with this section, provided that such taking shall be only for a reasonable period of time not to exceed thirty (30) days. The city has the authority to require that an artist/artisan demonstrate the creation of the artwork at any time after issuance of the license, in order to determine if the artist/artisan is in compliance with this section. During the term of the license, city staff shall have the right to inspect the studio or workspace of the artist/artisan.

(5) Any artist/artisan found to be not in compliance with this section shall be

notified in writing, certified mail return receipt requested, of the violation and shall have thirty (30) calendar days from the date of the notice to come into compliance. If the violation is not corrected, the artist/artisan shall be notified in writing, certified mail return receipt requested, that the license is suspended for fifteen (15) days. If the artist/artisan is found to not be in compliance a second time within a license period, the artist/artisan shall be notified in writing that the license is suspended for thirty (30) days. If the artist/artisan is found to not be in compliance a third time within a license period, the artist/artisan shall be notified in writing, certified mail return receipt requested, that the license is revoked. For the time period a license is suspended, the fifteen (15) day requirement set forth in subsection 23-5.3F(12) shall be adjusted accordingly.

(6) Within fifteen (15) calendar days of receiving a notice of violation, an artist/artisan may request a hearing before the city manager or his designee.

I. *Termination of Artist/Artisan License.* The city of Santa Fe reserves the right to terminate any or all Plaza artist/artisan licenses, with or without cause, if such termination is found to be in the best interest of the city of Santa Fe. In the event of termination, the city shall provide a thirty (30) day notice to each plaza artist/artisan whose license is being terminated.

J. *Amendments.* The city of Santa Fe reserves the right to amend the Plaza Park Artist/Artisan Ordinance prior to the expiration of any Plaza artist/artisan license.

K. *Continuation of Artist/Artisan License.* In the event that a selection panel has not been established or the applications have not been issued, the city manager may administratively extend the term of a license, not more than two (2) times, for a six (6) month period each time.

L. *Review.* This section shall be reviewed by the governing body within one (1) year of adoption.

Section 2. Section 23-5.5 SFCC 1987 (being Ord. #2009-49 (as amended)) is amended to read:

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

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

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

C. *Number of Plaza Pushcart Vendor Licenses.* The city manager may issue up to six (6) Plaza pushcart vendor licenses per term.

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

E. *Term.* A vendor license shall be valid for a period of [~~three (3)~~] five (5) years from January 1 or the date issued, whichever is later, of the first year to December 31 of the [~~third~~] fifth year, subject to the provisions of this chapter.

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

(1) The city shall give public notice of the application period by whatever no-fee notice or announcement channels are available through local print, audio or video media. For the 2015-2017 license term, application shall be made during the month of April 2015. For the 2018-[~~2020~~] 2022 license term, application shall be made during the month of [~~September~~] October 2017. Every [~~three~~] five years thereafter, application shall be made during the month of September.

(2) Each applicant shall be required to:

(a) Pay an application fee. The application fee shall be established by a resolution adopted by the governing body;

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

(c) Provide a state taxpayer identification number;

(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;

(e) Be a resident of Santa Fe county;

(f) Describe on the application the type of food product the applicant will offer for sale, including prices; and

(g) Designate on the application the proposed hours of operation of the Plaza pushcart.

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

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

(a) The license fee, or any portion thereof, is nonrefundable.

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

(i) Name the City of Santa Fe as an additional insured on the policy; and

(ii) State that the city shall be notified no less than thirty (30) days in advance of cancellation of such insurance policy for any reason.

Prior to operation as a Plaza pushcart vendor, the Plaza pushcart vendor

shall furnish the city with a copy of a certificate of insurance.

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

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

(6) Each application shall include:

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

(b) a set of blueprints and specifications of each elevation of the proposed cart, if the cart has not been built.

(7) If a Plaza pushcart license is awarded, the vendor shall be required to obtain a permit to operate as a food establishment from the New Mexico environment department.

(8) Each applicant shall submit six (6) copies of the application, with original photographs or blueprints and specifications attached. Photographs shall have been taken no more than one (1) year before the date the application is submitted. Photographs shall be no larger than eight and one-half inches by eleven (8 1/2" x 11") inches.

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

(10) The pushcart vendor license fee, as established by resolution of the governing body, shall be paid to the city. No refund of any portion of the fee shall be

made when a license is relinquished or revoked. If fees are not paid accordingly, the license shall be revoked.

G. *Procedures for License Selection.*

(1) 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 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 1-7 SFCC 1987.

(c) 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.

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

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

(3) Scores shall be calculated by city staff. The results shall be ranked numerically and licenses shall be awarded in order of rank, from highest score to lowest. In the event there is a tie in the ranking of applicants, the jury panel shall determine the appropriate means by which the tie shall be broken. The city shall provide written notice of the jury panel's ranking. An applicant may appeal to the city manager the decision of the jury panel within fifteen (15) days of the date of the city's notice of ranking. The city manager or his designee has sole discretion to grant or deny the appeal. The ranking of applications may be adjusted based on the outcome of the appeal process.

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

(5) Prior to issuance of any license, the city shall assign pushcart spaces on the Plaza Park, the Plaza or the Plaza periphery. 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 shall be assigned by means of a lottery.

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

(7) The annual Plaza pushcart vendor license fee may be paid in full or in two (2) increments. The full or initial increment shall be paid within thirty (30) days of the

date of the written notification of approval; the second increment shall be paid no later than six (6) months from the date of issuance of the license. If the license fee is not paid within thirty (30) days of the date of the written notification, the license shall be issued to the applicant with the next-highest score.

(8) In the event that a Plaza pushcart vendor space is available but no qualified applicant remains from the selection process, the city may repeat the selection process and issue licenses for the remaining time.

H. *Conditions of Operation.*

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

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

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

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

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

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

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

(a) Standard size business cards;

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

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

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

(9) The pushcart vendor shall identify on the application the names of the individuals who are authorized to sell from the pushcart, along with the vendor. Such individuals may include one (1) member of the pushcart vendor's immediate family, or designee, one (1) non-immediate family member and one (1) employee of the vendor. Up to two (2) times per year, during the license term, the license holder may change the names of the designated individuals.

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

(a) For the months of March through October, pushcart vendors shall be set up a minimum of twenty (20) days per month, for six (6) hours per day, between the hours of 8:00 a.m. to 10:00 p.m, during the term of the license. This requirement may be modified by the city because of inclement weather.

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

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

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

(11) The city shall designate temporary vehicle parking for the setup or tear

down of pushcarts provided that Plaza pushcart vendors shall obtain a loading zone permit from the city parking division and comply with the requirements for such permit.

(12) [~~Plaza pushcart vendors shall pay municipal gross receipts tax and submit copies of combined reporting systems (CRS) tax returns to the city manager or designee in a sealed envelope. CRS returns shall be submitted on a bi-annual basis for the reporting periods ending June 30 and December 31 and the submittal shall include all reporting periods (whether the vendor files monthly, quarterly or bi-annually), with the dates of the returns corresponding with the term of the license. A pushcart vendor license is subject to revocation if any pushcart vendor fails to deliver the CRS tax returns to the city manager or designee. It is unlawful for any employee of the City of Santa Fe to reveal to any individual other than another employee of the City of Santa Fe any information contained in a pushcart vendor CRS return except in such manner, for statistical purposes, that the information revealed is not identified as applicable to any individual taxpayer.~~] Plaza pushcart vendors shall be liable for paying applicable municipal gross receipts tax and submit a current letter of good standing from the New Mexico taxation and revenue department to the city manager or designee in a sealed envelope. Letters shall be submitted on an annual basis no later than December 31. A plaza pushcart vendor license is subject to revocation if any plaza pushcart vendor fails to deliver a current letter of good standing to the city manager or designee.

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

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

(1) If at any time after issuance of a license, a pushcart vendor is not going to use a license, the vendor shall notify the city and relinquish the license.

(2) The city may revoke a license if the city determines that the license has

not been used for more than twenty (20) days within a calendar month, for the months of March through October. The city may offer the remaining time on the license to the next qualified applicant from the selection process set forth in this section.

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

J. *Enforcement.*

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

(2) The city shall investigate complaints alleging violation of this section provided that the complaint is signed by the complainant and includes the complainant's telephone number and address.

(3) Any vendor found to be out of compliance with this section shall be notified in writing, by certified mail or personal service, of the violation and shall have ten (10) calendar days from the date of the notice to come into compliance. If the violation is not corrected, the vendor shall be notified in writing, by certified mail or personal service, that the license is suspended for fifteen (15) days. If the vendor is found to not be in compliance a second time within a license period, the vendor shall be notified in writing, by certified mail or personal service, that the license is suspended for thirty (30) days. If the vendor is found to not be in compliance a third time within a license period, the vendor shall be notified in writing, by certified mail or personal service, that

the license is revoked.

(4) Within five (5) calendar days of receiving a notice of violation, a vendor may request a hearing before the city manager or his designee.

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

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

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

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

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

Section 3: Effective Date.

This ordinance shall become effective immediately upon adoption.

APPROVED AS TO FORM:



KELLEY A. BRENNAN, CITY ATTORNEY

M/Legislation/Bills 2017/Plaza Vendor Changes