



# City of Santa Fe, New Mexico

# memo

Date: January 28, 2016

To: Governing Body

Via: Brian Snyder, City Manager *BLS*

From: Sevastian E. Gurule, Constituent Services Director *SEG*

Re: Plaza Pushcart City Code One Year Review

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## **Background and Summary**

On January 14, 2015 the Governing Body approved the code amendments to the Plaza Pushcart Vendor Ordinance. Some of the key amendments include:

- Adding two (2) additional Pushcart spaces for a total of six (6) spaces.
- Increased the space from fifty-four (54) sq. ft. to ninety-six (96) sq. ft.
- Changed the license term from five (5) years to three (3) years.
- Require a letter of "Good Standing" from NM Tax & Rev and Environmental Services at time of application.
- Changed the scoring criteria.
- Established a staggered license fee increase for the 2015 – 2017 license term.

We had a total of seven (7) applicants for the six available spaces. The results of the 2015 jury selection in order of rank are:

1. El Chile Toreado - Luis Medina
2. JF Mustang's - John Mustain
3. Roque's Carnitas - Roque Garcia
4. El Molero - Daniel & Andrea Caldera
5. The Betterday Coffee & Pie Cart - Tom Frost
6. Lone Wolf Foods - Donald Lopez

As you all know, the historic Santa Fe Plaza is very special with a unique ambiance unlike any other in the world. The Plaza Pushcart Vendor program enhances the Plaza experience for both locals and visitors alike year round; while at the same time granting the selected vendors the opportunity to generate gainful income on the most precious real-estate in the state. The code amendments have made this successful program even better by ensuring: a fair jury selection process, quality control, usage of assigned spaces and an enforcement mechanism to address any and all concerns. In addition, revenues generated are used to fund the position that administers the code requirements; additional revenues are going to the general fund.

# Plaza Park Vendors

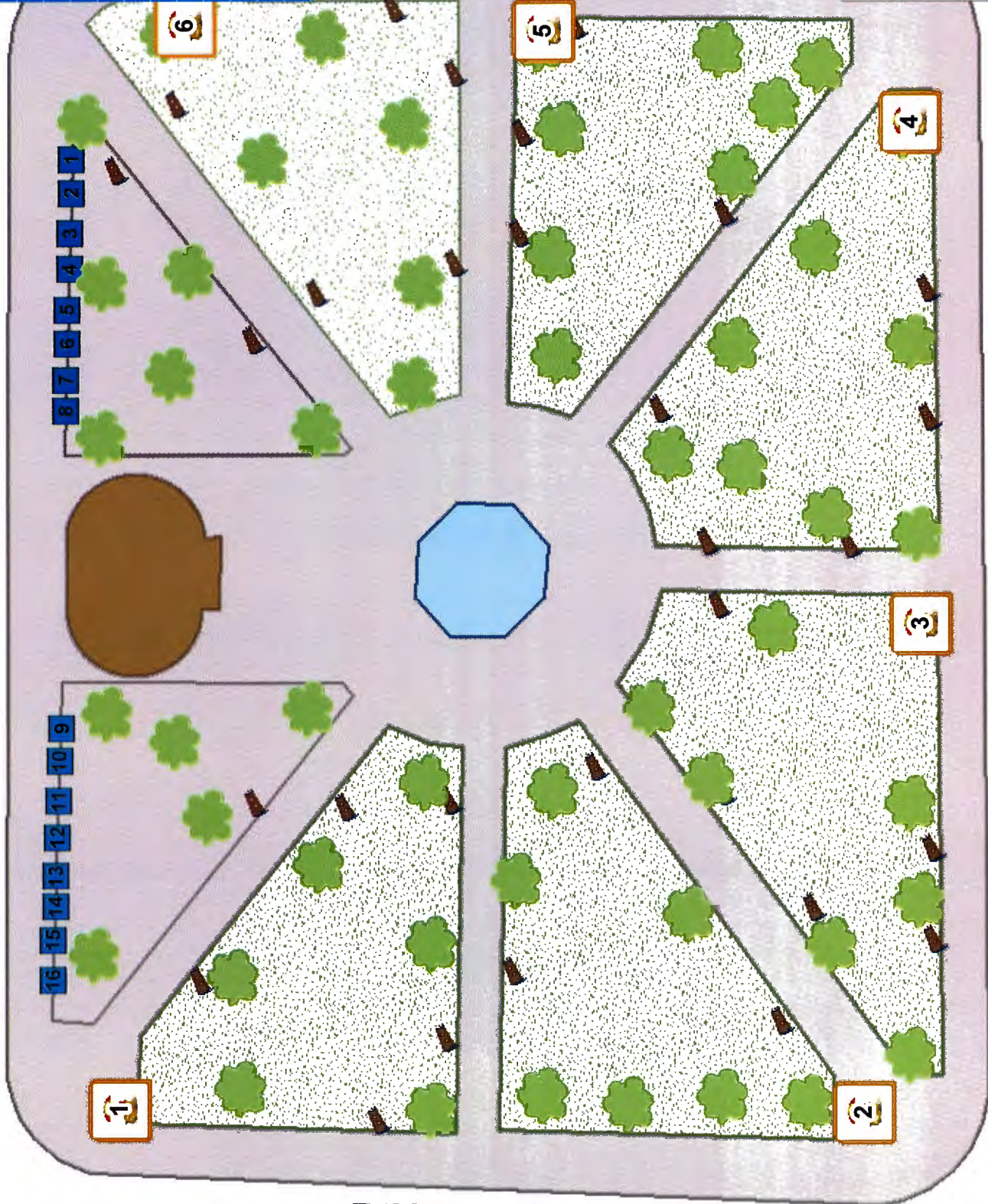
W PALACE AVE

LINCOLN AVE

E SAN FRANCISCO ST

Table Vendors	
1	Julie Meadow
2	Robert Martinez
3	Melanie Brittain
4	Ben Chavez
5	Kiran Levy
6	Willie Saiz
7	Pam Slipyan
8	El Museo Cultural
9	Martha Wright
10	Rotator #1
11	Portrait
12	Christina Mendiola
13	Rotator #2
14	NNMFACG
15	Cliff Mills
16	Mary Padilla

OLD SANTA FE TRAIL



Food Carts	
1	El Chile Toreado
2	J.F. Mustang's
3	Roque's Carnitas
4	El Molero
5	Better Day Coffee
6	Lone Wolf Foods

1 CITY OF SANTA FE NEW MEXICO

2 ORDINANCE NO. 2015-1

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4  
5 AN ORDINANCE

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

10  
11 Section 1. Subsection 23-5.5 SFCC 1987 (being Ord. #2009-49, §5) is amended to  
12 read:

13 23-5.5 Plaza Pushcart Vendors; Licenses; Requirements; Selection Process; Conditions  
14 of Operations.

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

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

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

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

24 E. *Term.* A vendor license shall be valid for a period of three (3) years from January 1  
25 or the date issued, whichever is later, of the first year to December 31 of the third year, subject to the

1 provisions of this chapter.

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

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

8 (2) Each applicant shall be required to:

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

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

13 (c) Provide a state taxpayer identification number;

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

17 (e) Be a resident of Santa Fe county;

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

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

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

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

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(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:

(1) Name the city of Santa Fe as an additional insured on the policy; and

(2) 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 23-5.5(J).

(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.

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

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

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

11 G. *Procedures for License Selection.*

12 (1) When necessary, the city manager shall designate a jury panel comprised of  
13 five (5) members who are residents of the city of Santa Fe to select the Plaza pushcart  
14 vendors. Prior to the designation of the panel, the city shall disclose the names of the  
15 pushcart applicants to potential panel members and the names of the potential panel members  
16 to the applicants.

17 (a) A jury panel member shall be prohibited from serving on the panel if  
18 he is related to an applicant for a Plaza pushcart license by consanguinity or affinity  
19 to the third degree. For purposes of this section consanguinity means related by  
20 blood; affinity means one's spouse or related through one's spouse; and third degree  
21 means aunts, uncles, nieces and nephews.

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

25 (c) Each jury panel member shall affirm that they shall be fair and

1 impartial during the selection process.

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

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

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

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

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

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

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

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



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

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

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

13 H. *Conditions of Operation.*

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

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

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

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

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

25 (6) Loud speakers, for voice transmission and amplification of music, banging,

1 hawking or yelling are prohibited.

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

3 (a) Standard size business cards;

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

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

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

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

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

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

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

23 (c) Pushcart vendors shall not be set up after twelve o'clock noon  
24 (12:00) on a day prior to a major commercial event specified in subsection 23-5.2(A)  
25 SFCC 1987 or at any time on the days a major commercial event is held on the Plaza.

1 A pushcart vendor may apply to the sponsors of the major commercial events for  
2 inclusion as one of the vendors at that event.

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

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

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

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

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

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

24 (2) The city may revoke a license if the city determines that the license has not  
25 been used for more than twenty (20) days within a calendar month, for the months of March

1 through October. The city may offer the remaining time on the license to the next qualified  
2 applicant from the selection process set forth in this section.

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

8 J. *Enforcement.*

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

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

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

25 (4) Within five (5) calendar days of receiving a notice of violation, a vendor may

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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.

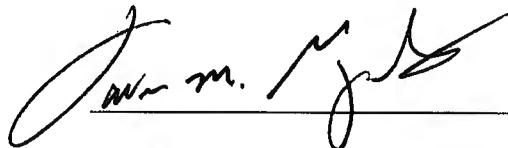
L. *Amendments.* The city of Santa Fe reserves the right to amend the Plaza Pushcart Vendor Ordinance prior to the expiration of any Plaza pushcart vendor license.

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.

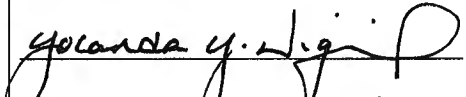
N. *Review.* This subsection shall be reviewed by the governing body within one (1) year of adoption.

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

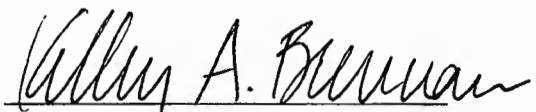
PASSED, APPROVED, and ADOPTED this 14<sup>th</sup> day of January, 2015.

  
\_\_\_\_\_  
JAVIER M. GONZALES, MAYOR

ATTEST:

  
\_\_\_\_\_  
YOLANDA Y. VIGIL, CITY CLERK

1 APPROVED AS TO FORM:

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4 KELLEY A. BRENNAN, CITY ATTORNEY

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25 *M/Legislation/Ordinances 2015/2015-1 Pushcart Vendors*