

1 CITY OF SANTA FE, NEW MEXICO

2 ORDINANCE NO. 2009 - 49

3
4
5 AN ORDINANCE

6 REPEALING SECTIONS 18-8.1 THROUGH 18-8.8 SFCC 1987 REGARDING PUSH CART
7 VENDORS; AND CREATING A NEW SECTION 23-5.5 REGARDING PLAZA PUSH CART
8 VENDORS.

9
10 BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

11 Section 1. Article 18-8 (being Ord. #1984-89, as amended) is amended to read:

12 18-8 PUSH CARTS ON PRIVATE PROPERTY; STREET VENDORS.

13 Section 2. A new Section 18-8.1 SFCC 1987 is ordained to read:

14 18-8.1 [NEW MATERIAL] Definitions. As used in this section:

15 *Courtyard* means a space open to the sky, bounded on three (3) sides by a building and within
16 the lot of a place of business.

17 *Inside building* means a permanent structure enclosed by four (4) walls including multiple
18 units for business purposes.

19 *Mall* means an enclosed area providing building structures for multi-purpose tenancy where
20 vendors of goods are located. A mall includes a public walkway that gives access to vendors'
21 locations.

22 *Pushcart* means a non-permanent, non-motorized cart, barrow or unit that can be pushed by
23 hand.

24 Section 3. A new Section 18-8.2 SFCC 1987 is ordained to read:

25 18-8.2 [NEW MATERIAL] Pushcarts on Private Property. Pushcarts are permitted on

1 private property, with the permission of the property owner; or as otherwise permitted by the city
2 manager. Private property includes malls, courtyards or inside buildings. Pushcarts, as defined in
3 Section 18-8.1 SFCC 1987, are governed under the provisions of Section 18-2 SFCC 1987, entitled
4 Business Registration Fees.

5 **Section 4. Section 23-5.1 SFCC 1987 (being Ord. No. 1981-39, §15, as amended) is**
6 **amended to create the following definitions:**

7 *Plaza periphery area* means an area outside the Plaza Park, not including the Plaza Park,
8 bounded by Sandoval and Grant Streets on the west, Alameda Street on the south, Paseo de Peralta on
9 the east and Marcy Street on the north. This area includes both sides of the boundary streets.

10 *Pushcart* means a non-permanent, non-motorized cart, barrow or unit that can be pushed by
11 hand.

12 *Plaza pushcart vendor* means a vendor who uses a non-permanent, non-motorized cart,
13 barrow or unit that can be pushed by hand for the purpose of selling food products and is authorized
14 by the city to be located in the Plaza Park, the Plaza, excluding the Plaza Park, or at any location in
15 the Plaza periphery area.

16 **Section 5. A new Section 23-5.5 SFCC 1987 is ordained to read:**

17 **23-5.5 Plaza Pushcart Vendors; Licenses; Requirements; Selection Process; Conditions**
18 **of Operations.**

19 A. *Short Title.* This section may be cited as the “Plaza Pushcart Ordinance”.

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

24 C. *Number of Plaza Pushcart Vendor Licenses.* A total of four (4) Plaza pushcart
25 vendor licenses may be issued by the city manager.

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

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

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

7 (1) The city shall give public notice of the application period by whatever no-fee
8 notice or announcement channels are available through local print, audio or video media.

9 Application shall be made during the month of November beginning in 2009 and every five
10 (5) years after that, during the month of October.

11 (2) Each applicant shall be required to:

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

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

16 (c) Provide a state taxpayer identification number;

17 (d) Be residents of Santa Fe County;

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

20 (f) 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:

1 (a) The applicant understands that no refund or any portion of the
2 license fee shall be made to him if the license is relinquished or revoked.

3 (b) The applicant shall maintain adequate insurance in at least the
4 amounts stated in the New Mexico Tort Claims Act and shall provide proof of such
5 insurance coverage to the city on an annual basis during the term of the license. Such
6 insurance shall provide that the city is named as an additional insured on the policy
7 and that the city is notified no less than thirty (30) days in advance of cancellation of
8 such insurance policy for any reason. As a condition prior to operation as a Plaza
9 pushcart vendor, the Plaza pushcart vendor shall furnish the city with a copy of a
10 certificate of insurance..

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

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

18 (6) Each application shall include four (4) photographs of the front, back and
19 each side of the plaza pushcart vendor's cart, including the specifications of the cart; or if the
20 cart is not yet built, blueprints and specifications of each elevation of the proposed cart.

21 (7) A certificate of concept approval from the food services section of the state
22 environmental improvement division. If a plaza pushcart license is awarded, the vendor shall
23 be required to obtain a food purveyor's permit from the state environmental health division.

24 (8) Each applicant shall submit six (6) copies of the application, with original
25 photos attached. Photographs shall have been taken no more than one (1) year before the date

1 the application is submitted. Photographs shall be of a size that allows the person to be easily
2 recognized, and no larger than eight and one-half (8½) inches by eleven (11) inches.

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

5 G. *Procedures for License Selection.*

6 (1) For the purpose of issuance of licenses in 2010, the city manager shall
7 designate, no later than December 31, 2009 and for subsequent years, no later than November
8 1 beginning in 2014 and every five (5) years after that, a jury panel comprised of a minimum
9 of five (5) members from established city committees or other residents of the city of Santa
10 Fe. The names of the jury panel shall be disclosed to the applicants. Prior to the designation
11 of a jury panel, the city shall provide to the proposed jury panel members with the names of
12 the applicants for the Plaza pushcart vendor licenses.

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

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

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

23 (2) The jury panel shall review and score each application separately. Scoring of
24 each criteria shall be based on one (1) through five (5) points, with one (1) being poor; two
25 (2) being needs improvement; three (3) being satisfactory; four (4) being good and five (5)

1 being excellent. All scores shall be calculated by city staff and thereafter applications shall
2 be ranked accordingly.

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

5 (a) Design of the pushcart;

6 (b) Compatibility and diversity with Plaza activities;

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

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

10 (f) Quality, taste and cost of food; and

11 (g) Beginning in 2014, evaluations that have been performed by city
12 staff in accordance with Section 23-5.3(J) SFCC 1987, shall be included as part of
13 the selection criteria.

14 (4) Applications shall be ranked numerically on the above basis and licenses
15 shall be awarded in order of rank. In the event there is a tie in the ranking of applicants, the
16 jury panel shall determine the appropriate means by which the tie shall be broken. The city
17 shall provide written notice of the jury panel's ranking. A vendor may appeal to the city
18 manager the decision of the jury panel within fifteen (15) days of the city's notice of ranking.
19 The city manager or his designee has sole discretion to grant or deny the appeal. The ranking
20 of applications shall be adjusted pending the outcome of the appeal process.

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

23 (6) Prior to issuance of any license, the city shall assign spaces on the Plaza
24 Park, the Plaza or the Plaza periphery. An applicant who had a license the previous license
25 period who receives a license for the upcoming license period may retain the space he or she

1 used previously. Otherwise, spaces shall be assigned by means of a lottery.

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

4 (8) The annual Plaza pushcart vendor license fee may be paid in full or in two
5 increments. The full or initial increment shall be paid within thirty (30) days of the date of
6 the written notification of approval. If the license fee is not paid within thirty (30) days of the
7 date of the written notification, the license shall be issued to the applicant with the next-
8 highest score.

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

12 H. *Conditions of Operation.*

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

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

17 (3) Plaza pushcarts shall occupy no more than fifty-four (54) square feet (nine
18 feet by six feet (9' x 6')). Such space shall include a cart no larger than four feet by eight feet
19 by eight feet (4' x 8' x 8'), an umbrella if desired, a thirty-two (32) gallon trash can and a fire
20 extinguisher (class 2A10BC) as required by the city fire code.

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

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

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

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

2 (a) Standard size business cards;

3 (b) A sign that provides method of payment, not to exceed 8 ½ x 5 ½
4 inches; and

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

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

9 (9) Pushcart vendors shall only operate between the hours of 8:00 a.m. to 10:00
10 p.m. each day, including weekends, except as set forth in this paragraph. Pushcart vendors
11 shall not be set up after 12:00 noon, unless authorized by the city to extend the time, on the
12 day prior to the major commercial events specified in subsection 23-5.2A SFCC 1987 or at
13 any time on the days said major commercial events are held on the Plaza. A pushcart vendor
14 may apply to the sponsors of those events for inclusion as one of the vendors at that event.
15 The city may also request pushcart vendors to cease operation due to construction, for
16 security reasons or in the event of an emergency.

17 (10) Only the pushcart vendor or a member of the pushcart vendor's immediate
18 family or the one (1) person who has been designated on the application as the non-
19 immediate family member may sell the products. The license holder may list additional
20 immediate family members not included in the application or change the person designated as
21 a non-family member to sell, up to twice each year.

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

23 (a) The Plaza pushcart vendor shall be in operation no later than May 1
24 of each year the permit is issued, unless otherwise approved by the city. If the Plaza
25 pushcart vendor does not operated by May 1 of any year of the license period, then

1 the license shall be revoked, in accordance with section 23-5.5J SFCC 1987.

2 (b) The city retains the right to modify this requirement for pushcart
3 vendors because of inclement weather.

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

7 (13) Plaza pushcart vendors shall pay municipal gross receipts tax and submit
8 copies of combined reporting systems (CRS) tax returns to the city manager or designee in a
9 sealed envelope on an annual basis, with the dates of the returns corresponding with the term
10 of the license. Any pushcart vendor who fails to deliver the CRS tax returns to the city
11 manager or designee shall be terminated from the Plaza pushcart vendor program. It is
12 unlawful for any employee of the city of Santa Fe to reveal to any individual other than
13 another employee of the city of Santa Fe any information contained in a pushcart vendor CRS
14 return except in such manner, for statistical purposes, that the information revealed is not
15 identified as applicable to any individual taxpayer.

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

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

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

23 (2) If a pushcart vendor dies or becomes incapacitated, the city manager may
24 offer the remaining time on the license to a member of the Plaza vendor's immediate family
25 listed on the application. However, at the expiration of the license period, that immediate

1 family member shall be considered a new applicant in the selection process.

2 J. *Enforcement.*

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

7 (2) On an annual basis, the city shall meet with the pushcart vendors and conduct
8 a written evaluation of the pushcart vendor's compliance with the Santa Fe Plaza Pushcart
9 Vendor Ordinance. The city shall retain a copy of the written evaluation.

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

13 (4) Any vendor found to be not in compliance with this section shall be notified
14 in writing, by mail or personal service of the violation and shall have thirty (30) calendar days
15 from the date of the notice to come into compliance. If the violation is not corrected, the
16 vendor shall be notified in writing, by mail or personal service, that the license is suspended
17 for fifteen (15) days. If the vendor is found to not be in compliance a second time within a
18 license period, the vendor shall be notified in writing, by mail or personal service, that the
19 license is suspended for thirty (30) days. If the vendor is found to not be in compliance a third
20 time within a license period, the vendor shall be notified in writing, by mail or personal
21 service, that the license is revoked. For the time period a license is suspended, the fifteen (15)
22 day requirement set forth in subsection 23-5.5H(11) shall be adjusted accordingly.

23 (5) Within fifteen (15) calendar days of receiving a notice of violation, a vendor
24 may request a hearing before the city manager or his designee.

25 K. *Termination of pushcart vendor license.* The city of Santa Fe reserves the right to

1 terminate any or all Plaza pushcart vendor licenses, with or without cause, if such termination is
2 found to be in the best interest of the city of Santa Fe. In the event of termination, the city shall
3 provide a thirty (30) day notice to each pushcart vendor whose license is being terminated.

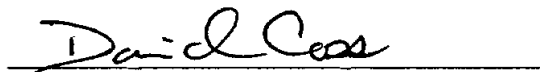
4 L. *Amendments.* The city of Santa Fe reserves the right to amend the Plaza Pushcart
5 Vendor Ordinance prior to the expiration of any Plaza pushcart vendor license.

6 M. *Continuation of Plaza pushcart vendor license.* In the event that a selection panel has
7 not been established or the applications have not been issued, the city manager may administratively
8 extend the term of a license, not more than two (2) times, for a six month period each time.

9 N. *Review.* This ordinance shall be reviewed by the governing body within one year of
10 adoption.

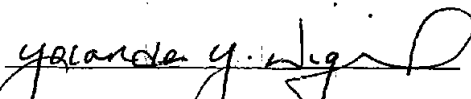
11 O. *Effective Date.* This ordinance shall become effective immediately upon adoption by
12 the governing body.

13 PASSED, APPROVED and ADOPTED this 10th day of November, 2009.


14 

15 DAVID COSS, MAYOR

16 ATTEST:

17
18
19 
20 YOLANDA Y. VIGIL, CITY CLERK

21 APPROVED AS TO FORM:

22 
23
24 FRANK D. KATZ, CITY ATTORNEY

25 *mdb/cao/jep&mdb/bills 2009/push cart vendors*