

BOARD of SUPERVISORS



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MEMORANDUM

TO: Mohammed Nuru, Director, Public Works

FROM: Erica Major, Assistant Clerk, Land Use and Transportation Committee

DATE: December 5, 2018

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Peskin on November 27, 2018:

File No. 181155

Ordinance amending the Public Works Code to allow five members of the Board of Supervisors to schedule an administrative hearing before the Board regarding potential revocation of a major encroachment permit when the Director of Public Works has not taken timely steps to schedule and hold a hearing or issue a decision regarding the revocation; and affirming the Planning Department's determination under the California Environmental Quality Act.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: erica.major@sfgov.org.

c: David Steinberg, Public Works
Jeremy Spitz, Public Works
Jennifer Blot, Public Works
John Thomas, Public Works
Lena Liu, Public Works

1 [Public Works Code - Major Encroachment Permit Revocation Hearings]

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3 **Ordinance amending the Public Works Code to allow five members of the Board of**
4 **Supervisors to schedule an administrative hearing before the Board regarding potential**
5 **revocation of a major encroachment permit when the Director of Public Works has not**
6 **taken timely steps to schedule and hold a hearing or issue a decision regarding the**
7 **revocation; and affirming the Planning Department’s determination under the California**
8 **Environmental Quality Act.**

9 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
10 **Additions to Codes** are in *single-underline italics Times New Roman font*.
11 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
12 **Board amendment additions** are in double-underlined Arial font.
13 **Board amendment deletions** are in ~~strikethrough Arial font~~.
14 **Asterisks (* * * *)** indicate the omission of unchanged Code
15 subsections or parts of tables.

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

17 Section 1. The Planning Department has determined that the actions contemplated in
18 this ordinance comply with the California Environmental Quality Act (California Public
19 Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the
20 Board of Supervisors in File No. ____ and is incorporated herein by reference. The Board
21 affirms this determination.

22 Section 2. Article 15 of the Public Works Code is hereby amended by revising Section
23 786, to read as follows:

24 **SEC. 786. STREET (MAJOR) ENCROACHMENT PERMIT.**

1 (a) The Board of Supervisors by resolution may approve, conditionally approve, or
2 deny applications for a street encroachment permit, also known as a major encroachment
3 permit, to occupy the public right-of-way, as defined in Section 2.4.4, after the Public Works
4 Director processes the permit application in accordance with the requirements of Sections 786
5 et seq. The Director's processing of permits shall include a recommendation on the
6 application to the Board of Supervisors. The street encroachment permit shall contain an
7 encroachment agreement that provides additional detail on the permittee's rights and
8 obligations under the permit, including maintenance of the encroachment, and establishes the
9 regulatory relationship between Public Works and the permittee for implementation of the
10 permit. The encroachment agreement also shall include a permittee maintenance monitoring
11 and reporting program for Public Works' use in determining compliance with the permit terms.
12 There is no appeal of the Board of Supervisors decision on such permits.

13 * * * *

14 (e) (1) The Director, in his or her discretion, may recommend revocation of a street
15 encroachment permit. The Director shall notify the permittee in writing of this
16 recommendation. The Director shall hold an administrative hearing on ~~the his or her~~
17 recommendation to revoke the permit and issue a written decision on the recommendation to
18 revoke within a reasonable period after the hearing. Prior to the administrative hearing, the
19 Director shall develop an estimate of the cost of any revocation and associated restoration
20 and identify the responsible party that shall bear such cost if it is a party other than the
21 permittee. The Director shall provide this cost estimate to the permit holder in advance of the
22 administrative hearing and include the estimate in the hearing's administrative record. The
23 ~~P~~permittee may appeal the Director's decision to revoke to the Board of Supervisors within 30
24 days of the date of the Director's written decision. The appeal process shall be the same as
25 specified in Section 786(d).

1 (2) (A) (i) The public may petition the Public Works Director to revoke a permit.
2 Within 14 days of the receipt of the public revocation petition, the Director shall determine if
3 the petition complies with the requirements of this subsection (e)(2) and notify the lead
4 petitioner and permit holder of ~~his or her~~ the Director's decision to accept the petition and
5 schedule an administrative hearing on a specific date or to deny the petition. The Director's
6 decision to accept or deny the petition constitutes a final decision that is not subject to appeal.

7 (ii) If the Director accepts the petition, the Director ~~he or she~~ shall
8 schedule an administrative hearing no earlier than 60 days and no later than 90 days after the
9 date of petition acceptance in order to provide the permit holder with an opportunity to cure
10 the problems associated with the permit as identified in the petition. At the administrative
11 hearing, the Director shall provide the permit holder with an opportunity to present evidence
12 that the permit holder ~~he or she~~ has cured the problems identified in the petition.

13 (iii) Prior to any administrative hearing on the petition, the Director shall
14 develop an estimate of the cost of any revocation and associated restoration and identify the
15 responsible party that shall bear such cost if it is a party other than the permittee. The
16 Director shall provide this cost estimate to the lead petitioner and the permit holder in advance
17 of the administrative hearing and include the estimate in the hearing's administrative record.

18 (B) (i) Within a reasonable period after the administrative hearing, the
19 Director shall issue a written decision on the permittee's cure, if any, and the public revocation
20 petition and find, based on the public interest, that the Director ~~he or she~~ will reject the petition,
21 approve the petition, or initiate revocation of the permit on grounds other than those identified
22 in the petition. The Director shall mail notice of ~~this~~ ~~his or her~~ decision to the lead petitioner, the
23 permit holder, and the Clerk of the Board of Supervisors.

24 (ii) If the Director approves the revocation petition or initiates revocation
25 of the permit on grounds other than those identified in the petition, the Director ~~he or she~~ shall

1 proceed with the permit revocation process as specified in subsection (e)(1), including
2 scheduling a new administrative hearing on the Director's revocation decision.

3 (iii) If the Director rejects the petition based solely on engineering
4 design, the Director's decision constitutes a final decision that is not subject to appeal and the
5 petition is null and void. If the Director rejects the petition based solely on a determination that
6 the permit holder has successfully cured the problems identified in the petition, the Director's
7 decision constitutes a final decision that is not subject to appeal and the petition is null and
8 void.

9 (iv) If the Director's decision to reject the petition is neither based solely
10 on a determination of successful cure nor based solely on engineering design, then five
11 members of the Board of Supervisors may subscribe to a notice of appeal to reverse the
12 Director's decision and revoke the permit. Said notice of appeal shall be filed with the Clerk of
13 the Board of Supervisors within 30 days of the date of the Director's written decision rejecting
14 the petition.

15 (v) If the Director does not issue a final written decision resolving a petition
16 filed under this subsection (e)(2) within 180 days of the filing of the petition, then five members of the
17 Board of Supervisors may subscribe to a notice requesting an administrative hearing regarding the
18 permit revocation at the Board of Supervisors. For purpose of this subsection (e)(2)(B)(v), a final
19 written decision shall be a written decision that the petition does not comply with the requirements of
20 this subsection (e)(2) or a written decision regarding the petition following an administrative hearing
21 under subsection (e)(2)(B). The notice of appeal shall be filed with the Clerk of the Board of
22 Supervisors. The notice of appeal and the scheduling and conduct of the hearing shall be subject to the
23 terms of subsection (e)(2)(C). Upon the filing of the notice of appeal, the Director shall be deemed to
24 have rejected the petition, and the filing of the notice of appeal shall divest from the Director the
25 authority to schedule and hold an administrative hearing and to issue a decision under this subsection

1 (e). Prior to the Board of Supervisors' hearing, at the request of the Clerk of the Board and within a
2 time frame determined by the Clerk in the Clerk's sole discretion, the Director shall provide to the
3 Board, the lead petitioner, and the permit holder a report estimating the cost of any revocation and
4 associated restoration and identifying the responsible party that shall bear such cost if it is a party
5 other than the permittee. The Director's failure to provide such a report shall not invalidate the Board
6 of Supervisors' hearing nor its decision.

7 (C) The signature of members of the Board on the notice of appeal shall not be
8 deemed to be any indication of their position on the merits of the appeal but rather shall
9 indicate only that they believe there is sufficient public interest and concern in the matter to
10 warrant a hearing by the Board of Supervisors. The scheduling and conduct of the appeal
11 hearing shall be the same as specified in Section 786(d) once the Clerk of the Board of
12 Supervisors receives the notice of appeal from five members of the Board, except that the
13 Clerk shall notify the lead petitioner identified under subsection (e)(2)(D) and the permit holder
14 instead of notifying an appellant as there is no appellant.

15 (D) A valid public revocation petition for purposes of this subsection (e)(2) shall
16 be a single petition subscribed by no less than 25 San Francisco residents from the
17 Supervisorial district in which the street encroachment permit is located. Each signature on
18 the petition shall be notarized and accompanied with the address of the petitioner. A petition is
19 valid only if it includes documentary evidence of one or more of the following grounds for
20 revocation of the street encroachment permit: (i) the permittee has failed to maintain the
21 encroachment under the terms of the permit, (ii) the encroachment presents a significant
22 health or safety hazard, or (iii) the encroachment creates severe and negative impacts on the
23 surrounding neighborhood that cannot be mitigated. For any street encroachment permit
24 issued prior to June 1, 2017, a valid petition shall include any of the evidence identified in this
25 subsection (e)(2)(D)(i)-(iii) or evidence that revocation of the permit would serve a public

1 purpose. The petition shall identify a lead petitioner for purposes of receiving mailed notice of
2 any Director decisions related to the petition. No more than one petition for the subject street
3 encroachment permit shall be submitted in a single year-long period and the signatures and
4 notary statements for that petition shall be affixed no more than six months prior to the date of
5 submission.

6 * * * *

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8 Section 3. Effective Date. This ordinance shall become effective 30 days after
9 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
10 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
11 of Supervisors overrides the Mayor’s veto of the ordinance.

12
13 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
14 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
15 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
16 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
17 additions, and Board amendment deletions in accordance with the “Note” that appears under
18 the official title of the ordinance.

19
20 APPROVED AS TO FORM:
21 DENNIS J. HERRERA, City Attorney

22 By: 
23 JON GIVNER
24 Deputy City Attorney

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LEGISLATIVE DIGEST

[Public Works Code - Major Encroachment Permit Revocation Hearings]

Ordinance amending the Public Works Code to allow five members of the Board of Supervisors to schedule an administrative hearing before the Board regarding potential revocation of a major encroachment permit when the Director of Public Works has not taken timely steps to schedule and hold a hearing or issue a decision regarding the revocation; and affirming the Planning Department's determination under the California Environmental Quality Act.

Existing Law

Public Works Code Sections 786 et seq. establish the procedures for Public Works review and approval of street encroachment permits, also commonly referred to as major encroachment permits, and for the revocation of those permits. The Public Works Director, in his or her discretion, may recommend revocation of a street encroachment permit, and the permittee can appeal the Director's decision to revoke to the Board of Supervisors.

Members of the public also can petition the Public Works Director to revoke a permit. If the petition meets the requirements of the Public Works Code, the Director must schedule an administrative hearing on the proposed revocation. After the hearing, the Director must issue a written decision to reject the petition, approve the petition, or initiate revocation of the permit on grounds other than those identified in the petition. If the Director rejects the petition for reasons other than engineering design or the permittee's successful cure of problems associated with the permit, then five members of the Board of Supervisors may file a notice of appeal to reverse the Director's decision. If five Supervisors file the notice of appeal, the Board will hold a hearing on the proposed permit revocation.

Amendments to Current Law

The ordinance would allow five members of the Board of Supervisors to file an appeal if the Public Works Director does not issue a final decision resolving a revocation petition within 180 days after the petition is filed. If five Supervisors file such a notice of appeal, the Board will hold a hearing on the proposed permit revocation.