

[Pushcart Peddlers and Operators Regulations]

Ordinance amending the San Francisco Police Code and San Francisco Public Works Code by repealing Article 17.3 (Permit Regulations for Pushcart Peddlers) from the Police Code, transferring the regulations to a new Article 5.8 of the Public Works Code, commencing with Section 184.80, making nonsubstantive amendments to implement the transfer, and streamlining the notice and hearing procedures, adopting environmental findings.

NOTE: Additions are *single-underline italics Times New Roman*;
deletions are ~~*strike-through italics Times New Roman*~~.
Board amendment additions are double-underlined;
Board amendment deletions are ~~strike-through normal~~.

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

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

Section 2. The San Francisco Police Code is hereby amended by repealing in its entirety Article 17.3, Sections 1330 through 1330.21 (Permit Regulations for Pushcart Peddlers and Pushcart Operators Concerning Products for Human Consumption).

Section 3. The San Francisco Public Works Code is hereby amended by adding Article 5.8, to read as follows:

ARTICLE 5.8 PERMIT REGULATIONS FOR PUSH CART PEDDLERS AND PUSH CART
OPERATORS CONCERNING PRODUCTS FOR HUMAN CONSUMPTION
SEC. 184.80. DEFINITIONS.

1 For the purpose of this Article the following words and phrases mean and include:

2 (a) BART. San Francisco Bay Area Rapid Transit District.

3 (b) Department. The Department of Public Works.

4 (c) Director. The Director of the Department of Public Works or his or her designed
5 representative.

6 (d) Director of Health. The Director of Health of the City and County of San Francisco or a
7 designated representative of the Director of Health.

8 (e) Location. A pushcart location is a fixed point or defined route including an approximate
9 duration at specific fixed points and approximate time of day at specific fixed points along the route.

10 (f) Person. An individual or natural person.

11 (g) Pushcart. Any wagon, cart, or any other food-serving device, whether stationary or
12 movable, wherein or wherefrom any food or foodstuffs are sold, served, distributed, offered for sale at
13 retail, or given away to the public, whether consumed at said pushcart or elsewhere.

14 (h) Pushcart Employee. Any person hired or employed to operate a pushcart within the City
15 and County of San Francisco.

16 (i) Pushcart Peddler. Any person engaged in the business of operating a pushcart within the
17 City and County of San Francisco.

18 SEC. 184.81. PERMIT REQUIRED.

19 It shall be unlawful for any person, firm or corporation to engage in or carry on the business of
20 pushcart peddler, or to operate, or cause or permit to be operated any pushcart upon any public street,
21 sidewalk, alley, or any other public place in the City and County of San Francisco, without first having
22 obtained a permit from the Director after approval by the Director of Health. This Article shall apply
23 only to pushcarts on property or public right-of-way under the jurisdiction of the Department of Public
24 Works.

25 SEC. 184.82. EXCLUSIONS.

1 (a) A pushcart peddler who applies for and receives a permit from BART for operation of a
2 pushcart at the 16th St. and 24th St. BART stations and the street level plazas adjacent thereto shall
3 not be required to obtain a permit from the Director, and shall be exempt from the fee, application and
4 hearing procedures provided for in this Article. The pushcart peddler shall, however, be subject to the
5 provisions set forth in Sections 184.85, 184.86 and 184.92.

6 (b) When an application for a pushcart peddler permit is filed with BART, BART shall inform
7 the Director of Health so that the Director of Health may make an investigation into the applicant's
8 proposed pushcart peddling operation. The Director of Health shall make a recommendation to BART
9 pursuant to Section 184.86.

10 SEC. 184.83 PUSHCART PEDDLER FILING AND FEE PROVISION.

11 Every person desiring a pushcart peddler permit pursuant to this Article shall file an
12 application with the Director upon a form provided by the Director and shall pay a filing fee of
13 \$XX.00, which shall not be refundable. The permit application fee shall be allocated between the
14 Department and the Department of Public Health by the Controller according to the cost incurred by
15 each department in processing this application. The Board of Supervisors reserves the right to charge
16 a public right-of-way assessment fee for occupation of the right-of-way by a pushcart.

17 SEC. 184.84. PUSHCART PEDDLER APPLICATION FORM.

18 Except as otherwise provided herein, an application for a pushcart peddler permit pursuant to
19 the provisions of this Article shall specify:

20 (a) The name, business and residence address of the applicant.

21 (b) A description of the food product, products, services the applicant intends to sell.

22 (c) The specific location of the peddling activity, including a detailed description of where the
23 applicant intends to place his or her pushcart. Each permit issued pursuant to this Article shall be valid
24 for only one specified peddling location, as defined in this Article.

1 (d) Whether or not the applicant intends to operate a pushcart peddler business under a
2 fictitious name.

3 (e) Such information pertinent to the operation of the proposed activity not inconsistent with
4 this Article as the Director or the Director of Health may require of an applicant in addition to the
5 other requirements of this Section.

6 (f) The address to which notice, when required, is to be sent or mailed, and the name and
7 address of a person authorized to accept service of process, if not otherwise set forth herein.

8 (g) Whether the application is for a new permit, or for a change of location or addition of
9 products of an existing permit.

10 SEC. 184.85. REGULATING PUSHCART PEDDLER LOCATIONS; EXCEPTIONS.

11 (a) Every person desiring a permit pursuant to this Article shall conform to the requirements
12 set forth in this Section 184.85 and any regulations that the Director adopts pursuant to this Article;
13 provided, however, that permit holders as of May 17, 1983, shall be able to retain the location of their
14 pushcart subject to the requirements and regulations referenced in this Section.

15 (b) The Director may issue a pushcart peddler permit only when the Director finds that the
16 following location and time requirements are met:

17 (1) The location shall:

18 (A) Leave unobstructed path for pedestrian passage on any sidewalk a space not less
19 than 8 feet wide.

20 (B) Not occupy a space extending more than 4 1/2 feet from the curb line of any
21 sidewalk, nor wider than four feet nor extending more than five feet above the sidewalk.

22 (C) Not prohibit egress or ingress into any vehicle legally parked adjacent to the curb.

23 (D) Not be closer than 7 1/2 feet from building sprinkler inlets, and wet and dry
24 standpipe inlets, measured from the outer edge of the standpipe bank from the building line to the
25 sidewalk edge.

1 (E) Not be within 12 feet of the outer edge of any entrance way to any building or
2 facility used by the public including but not limited to doors, driveways and emergency exits measured
3 in each direction parallel to the building line and thence at a 90 degree angle to the curb.

4 (F) Not be on any sidewalk adjacent to a curb which has been duly designated
5 pursuant to local ordinance or regulation as a white, blue, or red zone, or a bus zone.

6 (G) Not be within five feet of any crosswalk or fire hydrant.

7 (H) Leave unobstructed fire escapes, underneath and perpendicular from the building
8 to the street, five feet from both ends of the fire escape.

9 (I) Not intrude on pedestrian "clear zones" at street corners;

10 (J) Be setback a minimum of forty (40) inches from any other above-ground structure
11 not otherwise specified herein, including, but not limited to, street light poles, parking meters, street
12 trees, and other public fixtures and encroachments.

13 (K) Not obstruct the view of any traffic sign, traffic signal, or any other existing public
14 facility;

15 (L) Not be adjacent to a park, recreation area, or open space .

16 (2) No pushcart or pushcart employee peddler shall peddle goods, wares or merchandise
17 between the hours of 12:00 a.m. (midnight) and 6:00 a.m. the following day.

18 (3) Notwithstanding any other provision of this Code, no pushcart peddler or pushcart
19 employee shall peddle goods, wares or merchandise:

20 (A) In any "P" district, as defined in Section 234 of the Planning Code, located on Twin
21 Peaks or in any areas in or adjacent to Open Space Districts located on Twin Peaks.

22 (B) On the north side of Jefferson Street between Jones and Taylor.

23 (c) The Director, after a public hearing, may adopt such orders, policies, regulations, rules, or
24 standard plans and specifications as he or she deems necessary in order to preserve and maintain the
25 public health, safety, welfare, and convenience. Such orders, policies, regulations, or rules may

1 include, but are not limited to, permit application materials, placement of and information contained on
2 signs, site conditions, accessibility of sidewalks and streets. When such orders, policies, regulations, or
3 rules will affect the operations and enforcement of the Department of Parking and Traffic, the Director
4 shall consult with and provide an opportunity to comment to the Director of the Department of Parking
5 and Traffic prior to adoption of such orders, policies, regulations, or rule. When such orders, policies,
6 regulations, or rules will affect the operations and enforcement of the Department of Health, the
7 Director shall consult with and provide an opportunity to comment to the Director of the Health prior
8 to adoption of such orders, policies, regulations, or rules.

9 SEC. 184.86. PUSH CART PEDDLER APPLICATIONS--REFERENCE TO DIRECTOR OF
10 HEALTH.

11 When an application is filed for a new pushcart peddler permit, or for addition of products or
12 change of location of an existing permit, under this Article, the Director of Health shall make or cause
13 to be made an investigation into the applicant's proposed pushcart peddling operation for the purpose
14 of determining that said operation conforms with the provisions of this Article and to all applicable
15 State and local laws. Upon the conclusion of his investigation, the Director of Health shall make his
16 recommendation to the Director or BART within 30 days after the filing of such application with the
17 Department or BART depending on the location of the proposed pushcart.

18 SEC. 184.88. NOTICE OF INTENT; APPEAL OF PROTEST OR DENIAL OF PERMIT.

19 (a) Notice of Intent; Contents of Notice. Following the filing of an application for a new
20 pushcart peddler permit under this Article, or for addition of products or change of location of an
21 existing permit, the permit applicant shall post a Notice of Intent to operate a pushcart peddler
22 business at a location and in the manner required by the Department. The form for the Notice of Intent
23 shall be provided to each applicant by the Department. Said notice shall include a posting date, a
24 description of the goods to be sold under the permit, the procedure for obtaining any additional
25 information, and the procedure for filing any protest or opposition to the proposed permit. The

1 applicant also shall provide the Department with a list of all fronting properties and residents and
2 stamped envelopes with the addresses of all such individuals for the purpose of providing mailed
3 notice.

4 (b) Appeal of Protest or Denial of Permit. (1) Any person or persons who deem their interests
5 or property or that of the general public will be adversely affected by the issuance of the pushcart
6 peddler permit at its intended location may protest the issuance of said permit by writing to the
7 Director within 10 calendar days from the posting date on the Notice of Intent. Upon receipt of any
8 such written protest, the Director will schedule a public hearing to hear all protests or opposition to
9 the issuance of the permit. The Director's decision to approve, approve with conditions, or disapprove
10 a permit is appealable to the Board of Appeals within 15 days of the Director's decision.

11 (c) Notice of Hearing. Not less than 10 days before the date of a Departmental hearing
12 scheduled under subsection (b) above, the Director shall cause to be published a notice of such hearing
13 in the official newspaper of the City and County of San Francisco. The cost of publishing said notice
14 shall be borne by the pushcart peddlers permit applicant. The Director shall maintain a file of the
15 names and addresses of all persons wishing to receive notice by mail of any application filed pursuant
16 to this Article. Not less than 10 days before the date of such hearing, the Director shall cause to be
17 mailed notice of such hearing to all persons requesting to be so notified. Such notices published or
18 mailed pursuant to this Section shall contain the following: the name and business address of the
19 applicant, the product or products to be sold, the location of the proposed sales activity, the days and
20 hours of operation, and whether the application is for a new permit or for a change of an existing
21 permit.

22 SEC. 184.89. PUSH CART EMPLOYEES TO OPERATE ONLY IN CONJUNCTION WITH
23 PUSH CART PEDDLER PERMIT.

1 Pushcart employees shall be unrestricted as to location, days and times of operation, and no
2 permit or license shall be required for pushcart employees, provided that said employee is operating at
3 an approved location as set forth in a valid pushcart peddler permit issued pursuant to this Article.

4 SEC. 184.90. EXHIBITION OF PUSHCART PEDDLER PERMIT.

5 Upon demand by any police officer, the Director, or the Director's designee, each pushcart
6 peddler or pushcart employee shall produce the pushcart peddler permit and a valid San Francisco
7 business license so that the location of the pushcart may be checked and verified. In addition, such
8 permit and license shall be displayed in a manner where it is in plain view of the public at all times.

9 SEC. 184.91. PUSHCARTS--INSPECTIONS.

10 All pushcarts having a permit issued pursuant to this Article and the Director of Health's
11 approval to operate with the City shall be subject to inspection and issuance of a new Certificate of
12 Sanitation at a time designated by the Director of Health and at the location of said pushcart as
13 specified in said permit.

14 SEC. 184.92. PUSHCARTS--DECAL AND DISPLAY.

15 The Director of Health shall annually issue a Certificate of Sanitation as a decal which shall be
16 affixed to a permanent holder designed to display such decal. The number assigned to each pushcart
17 shall be forwarded to the Director or BART depending on the location of the pushcart. Said decal shall
18 be displayed in a manner where it is in plain view of the public at all times.

19 SEC. 184.93. ISSUANCE OF PUSHCART PEDDLERS PERMIT.

20 The Director may issue a pushcart peddler permit pursuant to this Article within 14 days
21 following a Departmental hearing as provided herein, based on his investigation and the investigation
22 of the Director of Health, if he finds:

23 (a) That the operation, as proposed by the applicant, would comply with all applicable laws,
24 including but not limited to, the provisions of this Article and the San Francisco Municipal Code.

1 (b) That the applicant has not made any false, misleading or fraudulent statements of facts in
2 the permit application or any other document required by the Director or the Director of Health in
3 conjunction therewith.

4 (c) That the applicant's proposed operation is not located within 200 feet of an established
5 business which sells the same type of food product or other merchandise or similar service as intended
6 by said applicant, or of any location previously established and currently being operated by a mobile
7 caterer, licensed peddler, or pushcart peddler selling the same type of food product or other
8 merchandise or similar service as intended by said applicant.

9 (d) Pushcart peddler permit holders on May 17, 1983 shall not be subject to the provisions of
10 Subsection (c) above with respect to any product currently sold or which may in the future be sold at
11 the location presently allowed under that permit as long as the pushcart complies with the Section
12 184.85.

13 SEC. 184.94. PUSHCART OPERATOR; PERMIT FEE.

14 Every person granted a pushcart operator permit pursuant to this Article shall pay to the
15 Department an annual fee of \$XX.00 to renew a permit.

16 SEC. 184.95. SUSPENSION AND REVOCATION OF PERMITS.

17 The Director or Director of Health may suspend or revoke for good cause any permit of the
18 holder thereof, which has been issued pursuant to this Article, if he finds, after a noticed public
19 hearing, that such permit holder has engaged in or been found guilty of any of the following acts:

20 (a) Fraud, misrepresentation, or false statement contained in the application for permit.

21 (b) Violation of provisions of this Article or the San Francisco Municipal Code.

22 (c) Any violations occur as specified herein for another push cart peddler permit issued to the
23 same permittee.

24 SEC. 184.96. PENALTY.

1 (a) If the Director of Public Works determines that the permittee has exceeded the scope of the
2 permit, either in terms of duration or area, or determines any other violation of the permit terms or
3 conditions has occurred, the Director of Public Works shall order the permittee to correct the violation
4 within a specified time period. If any person has occupied public right-of-way without permit, the
5 Director shall immediately order the violator to vacate the occupied area. Should the violation not be
6 corrected as ordered or in the case of occupation without a permit, the permittee or person shall pay a
7 penalty fee of up to \$1,000 per day for each day of violation. Failure to pay any fee assessed under
8 these provisions shall constitute good cause for immediate revocation of the permit or removal of
9 unpermitted obstructions.

10 (b) Criminal Penalty.

11 (1) Any person who shall violate any of the provisions of this Section shall be guilty of an
12 infraction at each location where such violation occurs. Every violation determined to be an infraction
13 is punishable by (A) a fine not exceeding \$100 for the first violation within one year; (B) a fine not
14 exceeding \$200 for a second violation within one year from the date of the first violation; (C) a fine not
15 exceeding \$500 for the third and each additional violation within one year from the date of the first
16 violation.

17 (2) When a government official authorized to enforce this Section has reasonable cause to
18 believe that any person has committed an infraction in the official's presence that is a violation of this
19 Section, the official may issue a citation to that person pursuant to California Penal Code, Part II, Title
20 3, Chapters 5, 5C, and 5D.

21 (c) Administrative Penalty. In the alternative to the criminal penalty authorized by Subsection
22 (b) of this Section for violations of Subsection (a), Department of Public Works officials designated in
23 Section 38 of the Police Code may issue administrative citations for such violations. Except as provided
24 in Subsection (a), the administrative penalty shall not exceed \$300 for each violation. Such penalty
25 shall be assessed, enforced and collected in accordance with Section 39-1 of the Police Code.

1 SEC. 184.97. REMOVAL OF PUSHCARTS.

2 (a) Removal By Director, public nuisance or emergency. The Director of Public Works is
3 authorized to order the immediate removal of a pushcart when, in his or her opinion, the pushcart has
4 no permit, constitutes a safety hazard or public nuisance, or when the presence of an emergency
5 requires removal of the pushcart. After notification by the Director of the removal order the pushcart
6 shall be removed immediately from the street area by its owner. If the owner does not remove the
7 pushcart immediately, the Director may order the Department to remove the pushcart. The owner shall
8 pay to the City the costs of removal. No pushcart shall be placed at that location until the conditions
9 which have caused the removal order shall have been abated to the satisfaction of said Director.

10 (b) The Director is authorized to remove, or cause to be removed, any pushcart placed in a
11 street or sidewalk area in violation of any other provision of this Article. Removal shall take place no
12 earlier than 48 hours after notice is given describing the violation(s). The notice shall be both mailed to
13 the pushcart owner and placed in a conspicuous manner on the pushcart, and shall contain the
14 following:

15 (1) The condition(s) violated,

16 (2) The date and time of posting,

17 (3) The location of the pushcart,

18 (4) The identify of the person giving the notice,

19 (5) A statement giving notice of 48 hours to remedy the violation(s).

20 (c) Pushcarts which have been removed may be recovered within ninety (90) days from the date
21 of seizure and upon payment of a sum equal to the cost of removing said pushcart including a 20
22 percent charge for administrative costs as determined by the Department, and any costs incurred by the
23 Department in disposing of any materials contained in the pushcart. Costs incurred as a result of
24 removal under this Section are in addition to any fines or penalties incurred under Section 184.96.

25 SEC. 184.98. SEVERABILITY.

1 If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Article or
2 any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of
3 competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining
4 portions of this Article or any part thereof. The Board of Supervisors hereby declares that it would
5 have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof
6 irrespective of the fact that any one or more section, subsections, subdivisions, paragraphs, sentences,
7 clauses or phrases be declared unconstitutional or invalid or ineffective.

8
9 APPROVED AS TO FORM:
10 DENNIS J. HERRERA, City Attorney

11 By: _____
12 John D. Malamut
13 Deputy City Attorney