

1 [Public Works Code - Minor Encroachment Permits for Legacy Pushcart Peddlers]

2

3 **Ordinance amending the Public Works Code to create the Legacy Pushcart Peddler**
4 **designation, provide that utility access in the public right-of-way for Legacy Pushcart**
5 **Peddlers is a minor encroachment, and clarify the revocation and restoration**
6 **requirements for all minor encroachment permits; and affirming the Planning**
7 **Department's determination under the California Environmental Quality Act.**

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

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

16 Section 1. Environmental Findings.

17 The Planning Department has determined that the actions contemplated in this
18 ordinance comply with the California Environmental Quality Act (California Public Resources
19 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
20 Supervisors in File No. 221146 and is incorporated herein by reference. The Board affirms
21 this determination.

22 Section 2. General Findings.

23 (a) San Francisco has an interest in protecting and preserving historical businesses
24 that meet the criteria of "Legacy Businesses" under the provisions of the Legacy Business
25 Program. Administrative Code Section 2A.242 sets forth the criteria and process to qualify as

1 a Legacy Business. The Office of Small Business maintains a registry of Legacy Businesses
2 in San Francisco. The Legacy Business Registry includes certain pushcart peddlers, a type of
3 mobile food vendor regulated under Article 5.8 of the Public Works Code. This ordinance
4 does not amend or alter any of the criteria or other requirements that govern the Legacy
5 Business Registry in Administrative Code Section 2A.242.

6 (b) Legacy Pushcart Peddlers have contributed to the pedestrian-oriented
7 streetscapes of the City for decades, invested in the City and its diverse communities, created
8 unique employment opportunities, and built long-standing businesses that draw locals,
9 shoppers, and tourists from around the world.

10 (c) To continue attracting a wide base of customers, Legacy Pushcart Peddlers will
11 need to modernize their operations and expand their menu offerings. Enabling Legacy
12 Pushcart Peddlers to access water and electrical utility service at their pushcart locations will
13 ensure the continued contributions of these businesses to the City.

14
15 Section 3. Articles 5.8 and 15 of the Public Works Code are hereby amended by
16 revising Sections 184.80, 723.2, and 786, to read as follows:

17
18 **SEC. 184.80. DEFINITIONS.**

19 * * * *

20 **Director of Health.** The Director of the Public Health Department of the City and
21 County of San Francisco or a designated representative of the Director of Health.

22 ***Legacy Pushcart Peddler.*** Any Pushcart Peddler that has been added to the City's Legacy
23 Business Registry pursuant to Administrative Code Section 2A.242, as amended from time to time.

24 * * * *

1 **Pushcart.** Any wagon, cart, or any other food-serving device, whether stationary or
2 movable, wherein or wherefrom any food or foodstuffs are sold, served, distributed, offered for
3 sale at retail, or given away to the public, whether consumed at said pushcart or elsewhere.

4 **Pushcart Peddler.** Any person or entity engaged in the business of operating a
5 pushcart within the City and County of San Francisco. Pushcart Peddler shall include “Legacy
6 Pushcart Peddler” unless otherwise stated in this Article.

7
8 **SEC. 723.2. MINOR SIDEWALK ENCROACHMENTS.**

9 (a)(1) The Director of Public Works (“Director”) may grant permission, revocable at
10 the Director’s~~his or her~~ will, to an owner of property abutting any court, alley, or street to install
11 and maintain minor encroachments such as fences, retaining walls, steps or stairways, and
12 other minor structures in the sidewalk fronting such property where such encroachments are
13 desirable or convenient in conjunction with the owner's use and enjoyment of the property, or
14 required for the safety, convenience, and comfort of the public using the sidewalk. Pipelines or
15 other portions of an alternate water source system constructed within the public right-of-way
16 for the purposes set forth in Article 12C of the Health Code and in accordance with Health
17 Code Section 12C.6 are minor encroachments subject to the requirements of this Section
18 723.2.

19 (2) Notwithstanding this Section 723.2 or Section 786, the Director may, in the Director’s
20 sole discretion, grant permission, revocable at the Director’s will, to a Legacy Pushcart Peddler, as
21 that term is defined in Section 184.80 of the Public Works Code, to install and maintain encroachments
22 for the purpose of obtaining water or electric utility service, in any court, alley, or street, where such
23 encroachments satisfy criteria for such Legacy Pushcart Peddlers established by the Director and the
24 City Engineer. The encroachments authorized by this subsection (a)(2) shall be limited to those
25 necessary to obtain water or electric utility service, including flush-mounted fixtures, pushcarts, or

1 other pushcart components and infrastructure that must be hardwired to the fixture on a 24-hour basis.
2 Prior to issuing a minor encroachment permit pursuant to this subsection (a)(2), the Department shall
3 ensure that the applicant has obtained approval to access water or electric utility service from the
4 applicable authorities, including but not limited to the San Francisco Public Utilities Commission.
5 Nothing in this subsection (a)(2) shall limit the Legacy Pushcart Peddler's obligation to obtain any
6 additional permits, licenses, or approvals of any agencies required to commence and complete
7 construction and to operate the pushcart. Revocation or suspension of the Legacy Pushcart Peddler's
8 permit under section 184.97 shall also constitute grounds for revocation of a minor encroachment
9 permit pursuant to subsection (c)(1).

10 (b) Requirements and Conditions. Such encroachments shall not occupy more than 10%
11 ~~percent~~ of the area of the sidewalk fronting the property nor more than 25% ~~percent~~ of the width
12 of the sidewalk (together, "Dimensional Requirements"), unless the Director ~~of Public Works~~
13 determines that such restrictions are not applicable due to the nature of the encroachment.
14 The Director ~~may~~ shall require further restrictions or modifications and impose such conditions
15 as ~~he or she~~ the Director deems necessary or appropriate to protect the public peace, safety, health,
16 and welfare of pedestrians and other users of the sidewalks, public right-of-way, and public property
17 ("Conditions of Approval"). No advertisement shall be permitted on the encroachments.

18 The Dimensional Requirements in this subsection (b) shall not apply to a minor encroachment
19 permit sought by a Legacy Pushcart Peddler, provided that the encroachment shall leave an
20 unobstructed pedestrian path of travel on any sidewalk a space not less than six feet wide.

21 (c) Permit Issuance and Revocation. In considering the issuance of permits under the
22 provisions of this Section 723.2, the Director ~~of Public Works~~ shall give due regard to the
23 location, neighborhood pattern, anticipated pedestrian traffic, and access requirements of the
24 Fire Department, and to the convenience and necessities of the owners, occupants, or
25 tenants of offices, stores, or shops in the vicinity.

1 (1) Upon the Director’s determination that the permittee has failed to comply with the
2 Conditions of Approval, or that a Legacy Pushcart has failed to comply with the provisions of Section
3 723.2(a)(2), or that all or a portion of the public right-of-way is required for a different public purpose,
4 the Director shall provide the permittee with written notification of the time and date of a public
5 hearing to consider the grounds for revoking, modifying, or suspending the minor encroachment
6 permit. Following the public hearing, the Director may issue an order revoking or modifying the minor
7 encroachment permit for good cause. If the failure to comply with the Conditions of Approval poses an
8 imminent threat to public safety, health, or welfare, the Director shall immediately suspend the permit
9 pending a final decision to revoke or modify the permit. The Director’s modification, revocation, or
10 suspension of a minor encroachment permit may be appealed under subsection (e).

11 (2) Following the revocation of a minor encroachment permit, the former permittee shall
12 restore the public right-of-way to a condition satisfactory to the Director at the permittee’s sole and
13 absolute expense.

14 (d) *Permittee’s Indemnity.*

15 (1) For minor encroachment permits issued pursuant to Section 723.2(a)(1), the ~~The~~
16 owner of the real property or the owner's authorized agent applying for a permit under the
17 provisions of ~~this~~ Section 723.2(a)(1) shall agree to hold harmless, defend, and indemnify the
18 City and County of San Francisco, including, without limitation, each of its commissions,
19 departments, ~~its~~ officers, agents, and employees, from ~~and against any damage or injury~~ all losses,
20 liabilities, expenses, actions, claims, demands, injuries, damages, fines, penalties, suits, costs, or
21 judgements, including, without limitation, attorneys’ fees and costs (collectively, “claims”), caused by
22 reason of the installation or maintenance of the encroachment in the sidewalk, and the owner
23 or owners or subsequent owner or owners of the respective real property shall be solely liable
24 for any ~~damage or loss~~ claims occasioned by any act or neglect in respect to the installation or
25 maintenance of the encroachments in the sidewalk.

1 (2) For minor encroachment permits issued pursuant to Section 723.2(a)(2), the permittee
2 shall agree on its behalf and that of any successor or assignee to hold harmless, defend, and indemnify
3 the City and County of San Francisco, including, without limitation, each of its commissions,
4 departments, officers, agents, and employees (collectively referred to as the “City”) from and against
5 all losses, liabilities, expenses, actions, claims, demands, injuries, damages, fines, penalties, suits, costs
6 or judgments including, without limitation, attorneys’ fees and costs (collectively, “claims”) of any
7 kind allegedly arising directly or indirectly from (i) any act by, omission by, or negligence of, the
8 permittee or its subcontractors, or the officers, agents, or employees of either, while engaged in the
9 activities authorized by the minor encroachment permit, (ii) any accident, damage, death, or injury to
10 any contractor or subcontractor, or any officer, agent, or employee of either of them, while engaged in
11 the performance of the activities authorized by the minor encroachment permit, (iii) any accident,
12 injuries, or damages to any person(s) or accident, damage or injury to any real or personal property,
13 good will, in, upon, or in any way allegedly connected with the activities authorized by this minor
14 encroachment permit from any cause or claims arising at any time, and potentially falls within this
15 indemnity provision, even if the allegations are or may be groundless, false, or fraudulent, which
16 obligations arise at the time such claim is tendered to permittee by the City and continues at all times
17 thereafter. The permittee agrees that the indemnification obligations assumed under this Section 723.2
18 shall survive expiration, relinquishment, or revocation of the minor encroachment permit. The
19 permittee shall assume all maintenance and liability associated with the items allowed to be placed in
20 the public right-of-way under this Section 723.2.

21 (3) Before the Director may issue a minor encroachment permit pursuant to Section
22 723.2(a)(2), the permittee shall furnish a bond, or other form of security that is acceptable to the
23 Director, in an amount required to complete the installation of the encroachment remove the
24 encroachments, and restore the public right-of-way to a condition satisfactory to the Director based on
25

1 a cost that the City Engineer determines. The permittee shall provide evidence to the Department of
2 Public Works (“Department”) that the bond or other security is operative on an annual basis.

3 (4) Before the Director may issue a minor encroachment permit pursuant to this Section
4 723.2, the permittee must furnish evidence of an insurance policy that is satisfactory to the City’s Risk
5 Manager. Such insurance shall in no way relieve or decrease a permittee’s or its agents’ obligation to
6 indemnify the City under this subsection (d).

7 (e) Each permit issued under the provisions of ~~this~~ Section 723.2(a)(1) shall not
8 become effective until the permit has been signed by the owner or the owner’s authorized
9 agent and a copy thereof has been recorded in the office of the Assessor-Recorder of the City
10 and County of San Francisco. Each permit issued under the provisions of Section 723.2(a)(2) shall
11 not become effective until the permit has been signed by the Legacy Pushcart Peddler or the Legacy
12 Pushcart Peddler’s authorized agent and a copy thereof has been posted at the location of the
13 encroachment.

14 (f) Appeals. Within 15 days following the approval, denial, or revocation of a minor
15 encroachment permit by the Director, any person may file a notice of appeal as follows:

16 (1) Appeals of the revocation or denial of a permit issued by the Director for the
17 following encroachments that impede or otherwise impact the Central Subway Corridor, as
18 defined in Section 723.3(a)(3) of this Code; subsidewalk encroachments below the public
19 right-of-way or other encroachments in, on, and/or below the public right-of-way may be
20 appealed to the Board of Supervisors by filing a notice of appeal with the Clerk of the Board of
21 Supervisors.

22 (2) Appeals of the approval, denial, or revocation of all other permits may be
23 appealed by filing a notice of appeal with the Board of Appeals.

24 (3) In the alternative, when the encroachment is related to building construction,
25 rehabilitation, or maintenance, any person may appeal the encroachment permit decision to

1 the Building Inspection Commission. A person waives ~~his or her~~their right to appeal to the
2 Building Inspection Commission encroachment permit decisions relating to building
3 construction, rehabilitation, or maintenance by instead filing the appeal with the Board of
4 Supervisors or the Board of Appeals. No encroachment permit decision may be appealed to
5 both bodies.

6 (gf) For purposes of this Section 723.2, an encroachment permit is related to building
7 construction, rehabilitation, or maintenance when the object of the encroachment permit
8 affects the applicant's ability to construct, repair, or maintain the building.

9 (hg) Pending decision by the Board of Supervisors, the Board of Appeals, or the
10 Building Inspection Commission, the permit decision by the Director shall be suspended.

11 (ih) Before issuance of the permit, the applicant shall be required to pay to the
12 Department ~~of Public Works~~ a fee as set forth in Section 2.1.1 et seq. and a public right-of-way
13 occupancy assessment fee as set forth in subsection (~~k~~l).

14 (ji) Nothing in this Section 723.2 shall be construed as authorizing the Director ~~of~~
15 ~~Public Works~~ to grant a permit for any encroachment which the Director ~~he or she~~ determines to
16 be inimical to the health, welfare, safety, and best interest of the general public, or in violation
17 of the Charter or laws of the City and County of San Francisco or laws of the State of
18 California.

19 (kj) The Board of Supervisors, the Board of Appeals or the Building Inspection
20 Commission may affirm, reverse, or modify any permit decision made by the Director ~~of Public~~
21 ~~Works~~ under the provisions of this Section 723.2. The decision by the Board of Supervisors,
22 the Board of Appeals or the Building Inspection Commission is final.

23 (lk) The ~~Department~~Board of Supervisors reserves the right to exact ~~shall collect~~ a public
24 right-of-way occupancy assessment fee for the use of the sidewalk or other public right-of-way
25 space permitted under the provisions of this Section 723.2.

1 (1) In accordance with this subsection (~~1k~~) the public right-of-way occupancy
2 assessment fee for minor sidewalk encroachments, whether permitted or unpermitted and as
3 specified in subsection (~~1k~~)(2), shall be an annual fee of \$3.00 per square foot of occupancy of
4 the sidewalk or other public right-of-way space. For purposes of calculating the assessment
5 fee, the Department shall charge no less than \$100.00 per year even though the calculated
6 square footage charge for the encroachment may result in a smaller assessment fee.

7 (2) The following categories of minor sidewalk encroachments are subject to the
8 public right-of-way occupancy assessment fee:

9 (A) Encroachments in, on, above, or below the public right-of-way that are
10 affixed or appurtenant to any building whose owner obtained a site permit for new
11 construction on or after August 29, 2005. This subsection (~~1k~~)(2)(A) also shall apply to any
12 commercial, industrial, or mixed-use building whose owner obtained a site permit for new
13 construction prior to August 29, 2005; provided, however, that such building is not located in
14 any Neighborhood Commercial District as designated in Planning Code Article 7 and that the
15 encroachment associated with such building was installed or encroachment permit obtained
16 prior to August 29, 2005. This subsection (~~1k~~)(2)(A) shall specifically include, but not be limited
17 to, doors that open over the public right-of-way and subsidewalk basements; provided,
18 however, that this subsection shall exclude encroachments for shoring and tiebacks. This
19 subsection (~~1k~~)(2)(A) shall not apply to a building that has been converted from a commercial,
20 industrial, or mixed-use building into a building containing only residential use.

21 (B) Encroachments associated with a commercial, industrial, or mixed-use
22 building that change the vertical or horizontal plane of an existing sidewalk and modify the
23 existing sidewalk slope pattern in order to provide access necessary to comply with the
24 Americans with Disabilities Act; provided, however, that the building obtained a site permit for
25 new construction on or after August 29, 2005.

1 (C) Any enclosure of the public right-of-way that is used exclusively for private
2 benefit and was installed on or after August 29, 2005. This subsection (~~1k~~)(2)(C) also shall
3 apply to any enclosure installed prior to August 29, 2005 that is associated with a commercial,
4 industrial, or mixed-use building; provided, however, that the building is not located in any
5 Neighborhood Commercial District as designated in Planning Code Article 7.

6 (D) Underground storage tanks.

7 (3) For purposes of subsection (~~1k~~)(2), the term "site permit" also shall mean
8 "building permit."

9 (4) Notwithstanding subsection (~~1k~~)(2), no public right-of-way occupancy
10 assessment fee shall be charged against the owner of an historic or architecturally significant
11 building who has installed or seeks a permit to install a minor sidewalk encroachment *for the*
12 *sole purpose of ~~in order to~~ conforming* with an applicable Municipal Code *requirement*; provided,
13 however that this exception shall not apply if the encroachment is a sub-sidewalk basement.
14 For purposes of this subsection (~~1l~~)(4), an historic or architecturally significant building shall be
15 a building so designated pursuant to Planning Code Article 10 or specifically identified as an
16 architecturally significant building on the Planning Department's database or on a list
17 maintained by the Planning Department.

18 (5) Notwithstanding subsection (~~1k~~)(2), no public right-of-way occupancy
19 assessment fee shall be charged against the owner of a property for elements installed as a
20 requirement under Planning Code Section 138.1.

21 (6) Notwithstanding subsection (~~1k~~)(2), if a minor sidewalk encroachment permit is
22 necessary for the development of a project including residential units, all of which are
23 affordable to low- or moderate-income households as defined by the United States Housing
24 and Urban Development Department, then such project shall be exempt from payment of the
25 public right-of-way occupancy assessment fee.

1 (7) The public right-of-way occupancy assessment fee shall be subject to the
2 review and adjustment procedures as set forth in Sections 2.1.1 et seq.

3 (8) The public right-of-way occupancy assessment fee shall not be charged to any
4 federal, state, or local governmental agencies, commissions, or departments.

5 (9) Notwithstanding this subsection (~~lk~~), the public right-of-way assessment fee for
6 underground vaults shall be as specified in Section 2.1.1 et seq.

7 (10) Notwithstanding subsection (~~lk~~)(2), no public right-of-way occupancy
8 assessment fee shall be charged for pipelines or other portions of an alternate water source
9 system constructed within the public right-of-way for the purposes set forth in Article 12C of
10 the Health Code and in accordance with Health Code Section 12C.6.

11 (11) Notwithstanding subsection (~~lk~~)(2), no public right-of-way occupancy
12 assessment fee shall be charged to an owner of property that obtains a minor encroachment
13 permit to construct and maintain a floodwater management project that is located in public
14 rights of way and funded with San Francisco Public Utilities Commission grant funds.

15 (12) Notwithstanding subsection (~~lk~~)(2), no public right-of-way occupancy assessment fee
16 shall be charged to a Legacy Pushcart Peddler that obtains a minor encroachment permit pursuant to
17 this Section 723.2(a)(2).

18 (~~ml~~) Notwithstanding the fees specified ~~herein~~ in this Section 723.2, if a project involves
19 voluntary seismic retrofit upgrades to soft-story, wood-frame buildings, as defined by the
20 Director of the Department of Building Inspection, such project applicant shall be exempt from
21 the proportionate share of fees specified under this Section 723.2 and Sections 2.1.1 et seq.
22 that is related to such retrofit work.

23 (n) The Director may issue regulations setting forth standard design and operating
24 requirements for any minor sidewalk encroachment permit including minor sidewalk encroachment
25 permits issued to a Legacy Pushcart Peddler. The Director may, in the Director's discretion, require

1 an encroachment agreement that provides additional detail on the permittee's rights and obligations
2 under the permit, including maintenance of the encroachment, and establishes the regulatory
3 relationship between Public Works and the permittee for implementation of the permit.

4
5 **SEC. 786. STREET (MAJOR) ENCROACHMENT PERMIT.**

6 * * * *

7 (g) For purposes of Sections 786- et seq., a street encroachment permit shall include,
8 but is not limited to, an encroachment above and/or below ground that extends beyond the
9 centerline of the public right-of-way, one or more encroachments that occupy the public right-
10 of-way adjacent to more than one property owner and the applicant(s)/permittee(s) proposes it
11 collectively as a single permit, an encroachment where the applicant/permittee is not the
12 property owner adjacent to the encroachment, an encroachment that exceeds one or both of
13 the occupation limits specified in Section 723.2 governing minor sidewalk encroachments or
14 its successor Section, and any encroachment that the Director determines to have significant
15 impacts to the public right-of-way. Notwithstanding this Section 786, encroachments as defined in
16 Section 723.2(a)(2) shall be processed according to the procedures set forth in Section 723.2.

17 * * * *

18
19 Section 4. Effective Date. This ordinance shall become effective 30 days after
20 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
21 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
22 of Supervisors overrides the Mayor's veto of the ordinance.

23
24 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
25 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,

1 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
2 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
3 additions, and Board amendment deletions in accordance with the “Note” that appears under
4 the official title of the ordinance.

5

6 Section 6. Undertaking for the General Welfare. In enacting and implementing this
7 ordinance, the City is assuming an undertaking only to promote the general welfare. It is not
8 assuming, nor is it imposing on its officers and employees, an obligation for breach of which it
9 is liable in money damages to any person who claims that such breach proximately caused
10 injury.

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12 APPROVED AS TO FORM:
13 DAVID CHIU, City Attorney

14 By: /s/ Giulia Gualco-Nelson
15 GIULIA GUALCO-NELSON
Deputy City Attorney

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