ORDINANCE NO. 31-19

[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.

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

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

Section 1. The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. 181155 and is incorporated herein by reference. The Board affirms this determination.

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

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

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(e) (1) The Director, in his or her discretion, may recommend revocation of a street encroachment permit. The Director shall notify the permittee in writing of this recommendation. The Director shall hold an administrative hearing on the recommendation to revoke the permit and issue a written decision on the recommendation to revoke within a reasonable period after the hearing. Prior to the administrative hearing, the Director shall develop an estimate of the cost of any revocation and associated restoration and identify the responsible party that shall bear such cost if it is a party other than the permittee. The Director shall provide this cost estimate to the permit holder in advance of the administrative hearing and include the estimate in the hearing’s administrative record. The permittee may appeal the Director’s decision to revoke to the Board of Supervisors within 30 days of the date of the Director’s written decision. The appeal process shall be the same as specified in Section 786(d).
(2) (A) (i) The public may petition the Public Works Director to revoke a permit. Within 14 days of the receipt of the public revocation petition, the Director shall determine if the petition complies with the requirements of this subsection (e)(2) and notify the lead petitioner and permit holder of his or her the Director's decision to accept the petition and schedule an administrative hearing on a specific date or to deny the petition. The Director's decision to accept or deny the petition constitutes a final decision that is not subject to appeal.

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

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

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

(ii) If the Director approves the revocation petition or initiates revocation of the permit on grounds other than those identified in the petition, the Director shall
proceed with the permit revocation process as specified in subsection (e)(1), including scheduling a new administrative hearing on the Director’s revocation decision.

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

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

(v) If the Director does not issue a final written decision resolving a petition filed under this subsection (e)(2) within 180 days of the filing of the petition, then five members of the Board of Supervisors may subscribe to a notice requesting an administrative hearing regarding the permit revocation at the Board of Supervisors. For purpose of this subsection (e)(2)(B)(v), a final written decision shall be a written decision that the petition does not comply with the requirements of this subsection (e)(2) or a written decision regarding the petition following an administrative hearing under subsection (e)(2)(B). The notice of appeal shall be filed with the Clerk of the Board of Supervisors. The notice of appeal and the scheduling and conduct of the hearing shall be subject to the terms of subsection (e)(2)(C). Upon the filing of the notice of appeal, the Director shall be deemed to have rejected the petition, and the filing of the notice of appeal shall divest from the Director the authority to schedule and hold an administrative hearing and to issue a decision under this subsection.
(e). Prior to the Board of Supervisors’ hearing, at the request of the Clerk of the Board and within a
time frame determined by the Clerk in the Clerk’s sole discretion, the Director shall provide to the
Board, the lead petitioner, and the permit holder a report estimating the cost of any revocation and
associated restoration and identifying the responsible party that shall bear such cost if it is a party
other than the permittee. The Director’s failure to provide such a report shall not invalidate the Board
of Supervisors’ hearing nor its decision.

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

(D) A valid public revocation petition for purposes of this subsection (e)(2) shall
be a single petition subscribed by no less than 25 San Francisco residents from the
Supervisorial district in which the street encroachment permit is located. Each signature on
the petition shall be notarized and accompanied with the address of the petitioner. A petition is
valid only if it includes documentary evidence of one or more of the following grounds for
revocation of the street encroachment permit: (i) the permittee has failed to maintain the
encroachment under the terms of the permit, (ii) the encroachment presents a significant
health or safety hazard, or (iii) the encroachment creates severe and negative impacts on the
surrounding neighborhood that cannot be mitigated. For any street encroachment permit
issued prior to June 1, 2017, a valid petition shall include any of the evidence identified in this
subsection (e)(2)(D)(i)-(iii) or evidence that revocation of the permit would serve a public
purpose. The petition shall identify a lead petitioner for purposes of receiving mailed notice of
any Director decisions related to the petition. No more than one petition for the subject street
encroachment permit shall be submitted in a single year-long period and the signatures and
notary statements for that petition shall be affixed no more than six months prior to the date of
submission.

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

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

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

By:  

JON GIVNER
Deputy City Attorney

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January 28, 2019 Land Use and Transportation Committee - RECOMMENDED

February 05, 2019 Board of Supervisors - PASSED ON FIRST READING
Ayes: 11 - Brown, Fewer, Haney, Mandelman, Mar, Peskin, Ronen, Safai, Stefani, Walton and Yee

February 12, 2019 Board of Supervisors - FINALLY PASSED
Ayes: 11 - Brown, Fewer, Haney, Mandelman, Mar, Peskin, Ronen, Safai, Stefani, Walton and Yee

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 2/12/2019 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

London N. Breed
Mayor

Date Approved 2/12/19