

CITY AND COUNTY OF SAN FRANCISCO
Department of Public Works

ORDER NO. 166,458

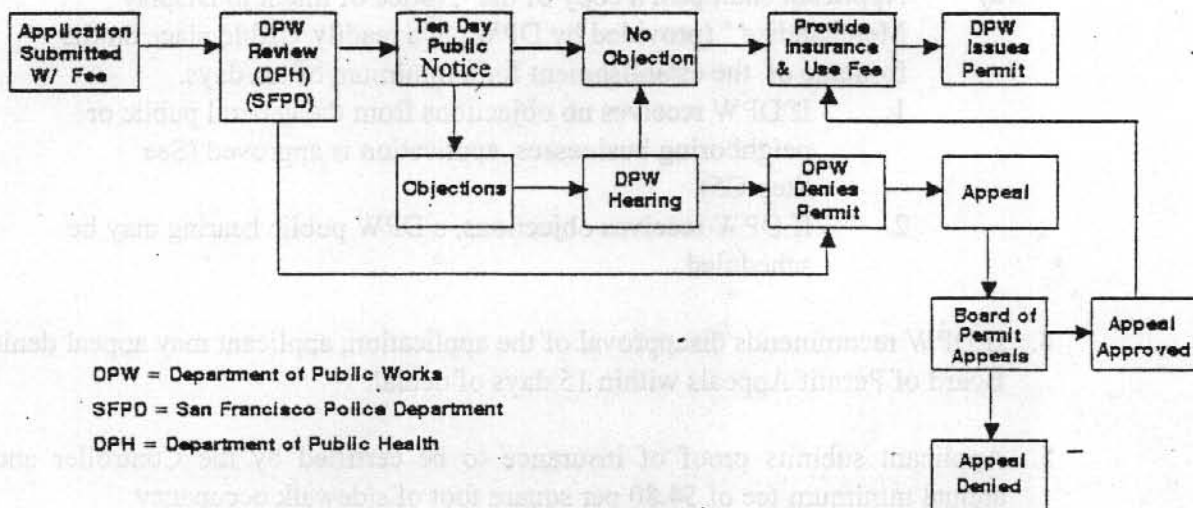
MODIFYING DPW ORDER NO. 165,147, DISPLAY OF FRUITS, VEGETABLES, LIVING PLANTS, CUT FLOWERS AND/OR NON-FOOD MERCHANDISE ON PUBLIC SIDEWALK AREAS BY ESTABLISHING PENALTIES FOR VIOLATIONS OF DISPLAY MERCHANDISE REGULATIONS AS SET FORTH IN ARTICLE 5.3 OF THE PUBLIC WORKS CODE.

I. PURPOSE:

Article 5.3 of the Public Works Code authorizes the Director of Public Works to regulate the display of fruits, vegetables, living plants, cut flowers and /or non-food merchandise in public sidewalk areas. This Department of Public Works (DPW) Order provides a schedule of penalties to be paid by business establishments that are in violation of guidelines originally established by DPW Order No. 165,147.

II. REVOCABLE PERMIT APPLICATION AND APPROVAL PROCESS:

A. The application process is summarized in the following flow chart:



B. Requests for revocable permits to display merchandise on public sidewalk areas shall include the following:

1. A completed application form stating the name of the applicant, the name and address of the business establishment, the days and hours that the sidewalk is to be occupied.

2. A fully dimensioned space layout plan that indicates the placement of all display stands, awnings, and merchandise and the locations of the business entrance(s). The plan must also indicate the length, width, height, material(s), and finish (paint, laminate, aluminum, plywood, etc.) of the display stand, the property line, the width of the sidewalk, any existing sidewalk obstructions such as parking meters, trees, fire hydrants, bus stops, bus shelters, light poles, news racks, etc., the location of any curb ramps, fire exits/fire escapes, and the exact width of the pedestrian clear zone.
3. An itemized list of merchandise intended to be displayed.
4. A non-refundable annual application fee of \$100, payable to DPW.

C. If the application meets all design guidelines set forth in this Order:

1. DPW shall inspect site.
2. DPW forwards a copy of application to other city agencies for review.
 - a) San Francisco Police Department (SFPD) will review all requests for sidewalk display; i.e. food or non-food merchandise.
 - b) Department of Public Health (DPH) will review requests for display of produce.

3. If DPW recommends approval of the application:

- a) Applicant shall post a copy of the "Notice of Intent to Display Merchandise" (provided by DPW) in a readily visible place on the frontage of the establishment for a minimum of ten days.
 1. If DPW receives no objections from the general public or neighboring businesses, application is approved (See Step C5).
 2. If DPW receives objections, a DPW public hearing may be scheduled.

4. If DPW recommends disapproval of the application, applicant may appeal denial to Board of Permit Appeals within 15 days of denial.

5. Applicant submits proof of insurance to be certified by the Controller and an annual minimum fee of \$4.80 per square foot of sidewalk occupancy.

D. Permits are subject to all applicable conditions specified in Section IV below. Any permit is valid for a time period as determined by the Director of Public Works, or until the applicant no longer owns or operates the business establishment, or until one (1) year from the date the permit was issued, or until the permit is revoked by the Director of Public Works, whichever occurs earlier. Permits are not transferable.

III. DESIGN GUIDELINES

- A. The area of display must be contiguous to the business establishment applying for or in possession of the permit.
- B. All fruits and vegetables shall be protected by an awning which extends 6 inches beyond the full length and width of display racks.
- C. The display, including stand and merchandise, shall be a minimum of 2-1/2 feet and a maximum of 3'-10" above the sidewalk, and shall extend into the sidewalk no more than 2 feet or 25% of the width of the sidewalk, whichever is less, from the front of the building.
- D. No element of the proposed display may interfere with access to any building. This includes paths of travel or egress and ingress. No element can be below a fire escape.
- E. All display stands must conform to the rules and regulations as set forth in California Building Code, Title 24, and the provisions of the Americans with Disabilities Act.
- F. All finish material shall be smooth, nonabsorbent and cleanable.

IV. CONDITIONS:

The permittee shall comply with the following conditions and all requirements and guidelines set forth in Article 5.3 of the Public Works Code.

- A. All displays shall be confined to the area approved by the Director of Public Works.
- B. Items shall be displayed on a stand and or in a manner approved by the Director of Public Works or his / her designee. The use of any non-approved items; such as boxes, crates, milk cartons, etc. for the purpose of display or creating display stands is not allowed.
- C. Items displayed shall be the same as those displayed for sale on the premises in the business operated by the permittee.
- D. All transactions (exchange of goods for compensation) must occur inside the business establishment.
- E. All cut fruit, shelled nuts, raisins, and other dried fruits are not permitted.
- F. All display stands shall be promptly removed from the sidewalk in accordance with approved times of operation each day. At no time will display be on the sidewalk when the business is closed.
- G. The permittee shall post the display permit on a conspicuous place viewable from the sidewalk.

- H. The permittee shall maintain the sidewalk and gutter in a clean condition at all times. Any litter or merchandise such as fruits, plastic bags, bottle caps, etc., when on the sidewalk or in the gutter shall be removed immediately. Sidewalks shall be washed daily at produce displays and as needed for non-food displays.
- I. Storefronts and exterior walls shall be washed down at least once a week.
- J. Graffiti shall be removed, cleaned off, or painted to match the existing walls, within 24 hours of its appearance.
- K. No garbage may be stored on any portion of the sidewalk. (Exception: Take-out food establishments are required to maintain garbage cans to Public Works standards at the outside of their doorways per Section 173 of the Public Works Code.)
- L. Garbage receptacles (dumpsters) must meet Health Code standards, must be tightly closed, and at no time may be overflowing. They may be placed on the sidewalk no earlier than 6:00 PM on the day prior to pick-up and must be removed from sidewalk at the time that the establishment opens for business after pick-up.
- M. The sidewalk shall be kept free of obstructions at all times. A minimum pedestrian clear zone of six feet clearances is required. Use of shopping carts at sidewalk displays is not allowed where the unobstructed portion of sidewalk is less than 8 feet. The applicant will not store or stack any merchandise, boxes, etc. on any part of the sidewalk except for no more than fifteen minutes while actively loading and/or unloading from a delivery vehicle.
- N. Deliveries shall be scheduled so that they will not interfere with any regularly scheduled proceedings, events and / or activities in the neighborhood, such as, but not limited to, school operations. Prior to 10 AM deliveries may be temporarily placed at curb side or at the property line in a safe manner. A minimum of 6 feet of unobstructed pedestrian zone shall be maintained during loading and/or unloading activities. After 10 AM permittee shall not occupy sidewalk space with both display stands and deliveries. Deliveries shall comply with all applicable codes, rules and regulations of the City and County of San Francisco.
- O. Deliveries shall be made to a rear entrance or through an alley where available.
- P. There shall be no liability on the City or upon any of its officers, agents or employees for any damage by the permittee from any cause arising out of permitted activities. Furthermore, the permittee agrees to indemnify, defend and hold harmless the City and County of San Francisco and its officers and employees from any liability arising out of permitted activities.
- Q. The permittee shall maintain liability insurance naming the City and County of San Francisco as additional insured in the amount not less than \$1,000,000.

- R. Assignment or sale of permit is prohibited. No outside party shall display/sell produce or items.
- S. A revocable permit issued under this procedure does not constitute a deed or grant of an easement by the City is revocable at any time at the will of the Director of Public Works or the Board of Supervisors.
- T. Sidewalk areas may not be painted, landscaped or altered in any way without the prior approval of the Department of Public Works.

V. SCHEDULE OF PENALTIES:

- A. The schedule of violations and their respective penalties are summarized in the following chart.
- B. These penalties are based on the standards set forth in San Francisco Public Works Code Section 183-4. Each permittee is obligated to continuously maintain his/her stands in compliance with these standards. The director may impose additional conditions on the permittee. The permittee can be subject to penalties for violating those conditions as well. Such additional fines shall be guided by the types of violations and corresponding penalties provided below. The amount of violation provided for herein is the maximum amount authorized to be imposed by these regulations. The actual amount which must be paid is within the discretion of the inspector.

TYPE OF VIOLATION	PENALTIES
Unmaintained/Unclean display or sidewalk/gutter area (e.g. litter, discarded merchandise, crushed fruit, etc.).	\$100
Permit not visibly posted (note: permits are not transferable).	\$100
Display stand(s) exceeding permitted area(s) or otherwise not in compliance with permitted design, including awning requirements for fruits and vegetables.	\$100
Sidewalk area painted, landscaped or altered without permit.	\$100
Obstruction of required minimum path of travel.	\$200
Display items not the same as items inside establishment.	\$200
Merchandise exceeding or beyond permitted areas(s) (e.g. blocking entrances, stored at curbs).	\$200
Display stands/merchandise in place outside the prescribed times as set forth in the DPW guidelines or permit.	\$200
Non compliance with local State and Federal laws governing accessibility as they apply to this permit.	\$200
Operation without valid permit.	\$200
Willful operation without valid permit.	\$500

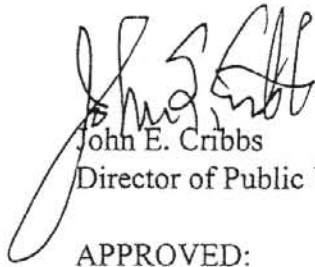
- C. When a notice of violation is issued by a DPW inspector for the violation of "Display without Permit" pursuant to the terms and conditions of Article 5.3, the inspector shall allow the business owner up to fifteen (15) business days of the date of violation to apply for a Sidewalk Display Permit. Such a period may be granted only for stands in existence prior to July 1, 1994, unless granted by the Director.

The business owner may continue displaying merchandise on the sidewalk during the permit process, if:


- (1) a complete permit application is received by DPW within fifteen (15) business days,
- (2) the application is diligently pursued by the applicant,
- (3) all conditions are met including construction of any required street improvements,
- (4) the applicant complies with the operating requirements during the grace period, and
- (5) all fees are paid and proper insurance submitted.

If a permit is denied, all display stands must be removed until such time as the denial is overturned and a permit is issued.

- D. When a notice of violation or citation is issued by a DPW inspector due to a serious threat to public health, safety and welfare, the condition for which the business was cited shall be corrected immediately in the presence of the DPW inspector.
- E. A permit is a privilege revocable at the will of the Director of Public Works. Any and all decisions pertaining to revocation are within the administrative discretion of the inspector or other official. It is also at the discretion of the inspector or official to issue verbal and/or written warning of violations.
- F. If a business continues to display merchandise in the sidewalk area after their permit has been revoked, the display merchandise stands and all appurtenances thereto may be seized and removed by DPW.
1. The seized display stands may be recovered by the business owner or his/her authorized agent for a period of up to ten (10) days following seizure.
 2. The owner/authorized agent shall pay an impound/recovery fee equal to the actual cost to the City for impounding, transporting and storing such display stands.
- G. If any part or provision of this DPW Order or its application to any person or circumstance is held invalid, the remainder of the DPW order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end the provisions of this DPW Order are severable.


John E. Cribbs
Director of Public Works

RECOMMENDED:


Denise M. Brady, Chief
Bureau of Street-Use and Mapping

APPROVED:

Vitaly B. Troyan
Deputy Director, Public Services

Distribution

Return to B.S.M. to Catherine Hom. Room 350 City Hall (1- Signed)

Outside BSM

Department Files (2)
DPW-DAC - Richard Skaff
CA-Code Enforcement Unit - Ilene Dick
DCP - J. Purvis / E. Rose
Police Department - Permit Section, 850 Bryant St., Rm 458, SF, 94103
Supervisor Barbara Kaufman
DPH - Ben Gale
BSES - John Roumbanis

Inside BSM

Cynthia Chono
Harry Gulbengay
Amir Kazemi

Approved: JUNE 24, 1994

John E. Cribbs, Director