

Amendment of the whole
In committee. 03/08/06

FILE NO. 060081

ORDINANCE NO.

1 [Minor Sidewalk Encroachments – Partial ~~R~~epeal of public right-of-way occupancy
2 assessment fee.]

3 **Ordinance amending Public Works Code Section 723.2 to repeal the public right-of-way**
4 **occupancy assessment fee for specified minor sidewalk encroachments and to**
5 **delineate those specified minor sidewalk encroachments for which the fee shall apply;**
6 **~~requesting the Department of Public Works to prepare and submit to the Board a report~~**
7 **~~describing the number and types of minor sidewalk encroachment permits;~~ and making**
8 **repeal of the fee for specified encroachments set forth herein retroactive to August 29,**
9 **2005.**

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11 Note: Additions are *single-underline italics Times New Roman*;
12 deletions are *strikethrough italics Times New Roman*.
13 Board amendment additions are double underlined.
14 Board amendment deletions are ~~strikethrough normal~~.

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

16 Section 1. Findings.

17 (a) Pursuant to Ordinance No. 179-05, the Department of Public Works has initiated
18 collection of an annual \$3.00 per square foot public right-of-way occupancy assessment fee
19 for all minor sidewalk encroachment permits issued under Public Works Code Section 723.2.
20 A copy of said Ordinance is on file with the Clerk of the Board of Supervisors in File No.
21 050986 and is incorporated herein by reference.

22 (b) It has come to the attention of this Board that the Department has assessed this
23 fee against a wide variety of encroachments. Some encroachments generate direct or
24 indirect revenue for the permit holders, some provide neighborhood amenities, and other
25 encroachments were installed to comply with City Codes or regulations or to provide for
disabled access.

1 (c) This Board believes that the occupancy assessment fee program for minor
2 sidewalk encroachments should be repealed for certain encroachments but retained for other
3 encroachments~~until the Board and other City decisionmakers obtain additional data on the~~
4 ~~number of sidewalk encroachment permits and types and sizes of such encroachments.~~

5 Section 2. The San Francisco Public Works Code is hereby amended by amending
6 Section 723.2, to read as follows:

7 SEC. 723.2. MINOR SIDEWALK ENCROACHMENTS.

8 (a) The Director of Public Works may grant permission, revocable at his or her will,
9 to an owner of property abutting any court, alley or street to install and maintain minor
10 encroachments such as fences, retaining walls, steps or stairways and other minor structures
11 in the sidewalk fronting such property where such encroachments are desirable or convenient
12 in conjunction with the owner's use and enjoyment of the property, or required for the safety,
13 convenience and comfort of the public using the sidewalk.

14 (b) Such encroachments shall not occupy more than 10 percent of the area of the
15 sidewalk fronting the property nor more than 25 percent of the width of the sidewalk, unless
16 the Director of Public Works determines that such restrictions are not applicable due to the
17 nature of the encroachment. The Director may require further restrictions or modifications and
18 impose such conditions as he or she deems necessary. No advertisement shall be permitted
19 on the encroachments.

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

1 (d) The owner of the real property or the owner's authorized agent applying for a
2 permit under the provisions of this Section shall agree to hold harmless the City and County of
3 San Francisco, its officers, agents, and employees, from any damage or injury caused by
4 reason of the installation or maintenance of the encroachment in the sidewalk, and the owner
5 or owners or subsequent owner or owners of the respective real property shall be solely liable
6 for any damage or loss occasioned by any act or neglect in respect to the installation or
7 maintenance of the encroachments in the sidewalk.

8 (e) Each permit issued under the provisions of this Section shall not become
9 effective until the permit has been signed by the owner or the owner's authorized agent and a
10 copy thereof has been recorded in the office of the Recorder of the City and County of San
11 Francisco; provided, however, that within 15 days following the approval, denial or revocation
12 of a permit by the Director, any person may file a notice of appeal with the Clerk of the Board
13 of Supervisors. In the alternative, when the encroachment is related to building construction,
14 rehabilitation or maintenance, any person may appeal the encroachment permit decision to
15 the Building Inspection Commission. A person waives his or her right to appeal to the
16 Building Inspection Commission encroachment permit decisions relating to building
17 construction, rehabilitation or maintenance by instead filing the appeal with the Clerk of the
18 Board of Supervisors. No encroachment permit decision may be appealed to both bodies.

19 (f) For purposes of this Section, an encroachment permit is related to building
20 construction, rehabilitation or maintenance when the object of the encroachment permit
21 affects the applicant's ability to construct, repair or maintain the building.

22 (g) Upon filing the appeal to the Board of Super-visors, the appeal shall be referred
23 to the full Board for hearing.

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1 (h) The Clerk of the Board shall set a time and place for hearing such appeal, which
2 shall be not less than 10 nor more than 30 days after such filing.

3 (i) Pending decision by the Board of Supervisors or the Building Inspection
4 Commission, the permit decision by the Director shall be suspended. The Board of
5 Supervisors may disapprove the Director's permit decision only by a vote of not less than 2/3
6 of all members of the Board. In the event that one or more of the full membership of the
7 Board is disqualified or excused from voting because of an interest prohibited by general law
8 or the San Francisco Charter, any such disapproval shall be by a vote of all members of the
9 Board that are not disqualified or excused. The Board of Supervisors must decide such
10 appeal within 30 days of the time set for the hearing thereon, provided that, if the full
11 membership of the Board is not present on the last day on which said appeal is set or
12 continued for hearing within said period, the Board may postpone said hearing and decision
13 thereon until, but not later than, the full membership of the Board is present; provided, further,
14 that the latest date to which said hearing and decision may be so postponed shall be not more
15 than 90 days from the date of filing of the appeal. Failure of the Board of Supervisors to act
16 within such time limit shall be deemed to constitute approval by the Board of the action of the
17 Director of Public Works.

18 (j) Before issuance of the permit, the applicant shall be required to pay to the
19 Department of Public Works a fee as set forth in Section 2.1.1 et seq. and a public right-of-
20 way occupancy assessment fee as set forth in subsection (m).

21 (k) Nothing in this Section shall be construed as authorizing the Director of Public
22 Works to grant permit for any encroachment which he or she determines to be inimical to the
23 health, welfare, safety and best interest of the general public, or in violation of the Charter or
24 laws of the City and County of San Francisco or laws of the State of California.

1 (l) The Board of Supervisors or the Building Inspection Commission may affirm,
2 reverse or modify any permit decision made by the Director of Public Works under the
3 provisions of this Section. The decision by the Board of Supervisors or the Building Inspection
4 Commission is final.

5 (m) The Board of Supervisors reserves the right to exact a public right-of-way
6 occupancy assessment fee for the use of the sidewalk or other public right-of-way space
7 permitted under the provisions of this Section.

8 (1) ~~In accordance with Subsection (m) the public right of way occupancy assessment~~
9 ~~fee for minor sidewalk encroachments, whether permitted or unpermitted, shall be an annual fee of~~
10 ~~\$3.00 per square foot of occupancy of the sidewalk or other public right of way space. For purposes of~~
11 ~~calculating the assessment fee, the Department shall charge no less than \$100.00 per year even though~~
12 ~~the calculated square footage charge for the encroachment may result in a smaller assessment fee.~~

13 ~~———— (2) ——— The public right of way occupancy assessment fee shall be subject to the review~~
14 ~~and adjustment procedures as forth in Sections 2.1.1 et seq.~~

15 ~~———— (3) ——— The public right of way occupancy assessment fee shall not be charged to any~~
16 ~~federal, state, or local governmental agencies, commission, or departments.~~

17 ~~———— (4) ———~~

18 In accordance with Subsection (m) the public right-of-way occupancy assessment fee
19 for minor sidewalk encroachments, whether permitted or unpermitted and as specified in
20 Subsection (m)(2), shall be an annual fee of \$3.00 per square foot of occupancy of the
21 sidewalk or other public right-of-way space. For purposes of calculating the assessment fee,
22 the Department shall charge no less than \$100.00 per year even though the calculated square
23 footage charge for the encroachment may result in a smaller assessment fee.

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

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

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

20 (c) Any enclosure of the public right-of-way that is used exclusively for
21 private benefit and was installed on or after August 29, 2005. This Subsection (m)(2)(c) also
22 shall apply to any enclosure installed prior to August 29, 2005 that is associated with a
23 commercial, industrial, or mixed-use building; provided, however, that the building is not
24 located in any Neighborhood Commercial District as designated in Planning Code Article 7.

- 1 (d) Underground storage tanks.
- 2 (3) Notwithstanding Subsection (m)(2), no public right-of-way occupancy
3 assessment fee shall be charged against the owner of an historic or architecturally significant
4 building who has installed or seeks a permit to install a minor sidewalk encroachment in order
5 to conform with an applicable Municipal Code. For purposes of this Subsection, an historic or
6 architecturally significant building shall be a building so designated pursuant to Planning Code
7 Article 10 or specifically identified as an architecturally significant building on the Planning
8 Department's database or on a list maintained by the Planning Department.
- 9 (4) The public right-of-way occupancy assessment fee shall be subject to the
10 review and adjustment procedures as forth in Sections 2.1.1 et seq.
- 11 (5) The public right-of-way occupancy assessment fee shall not be charged
12 to any federal, state, or local governmental agencies, commissions, or departments.
- 13 (6) Notwithstanding this Subsection (m), the public right-of-way assessment
14 fee for underground vaults shall be as specified in Section 2.1.1 et seq.

15 Section 3. This Section is uncodified. ~~Within four months of the effective date of this~~
16 ~~legislation, the Department of Public Works shall prepare and submit a report to the Board~~
17 ~~concerning the number of minor sidewalk encroachment permits and the types~~
18 ~~encroachments. Encroachment types should be categorized according to use, which may~~
19 ~~include, profit-generating encroachments, encroachments providing neighborhood amenities,~~
20 ~~encroachment necessary to comply with City Codes or regulations, encroachment necessary~~
21 ~~to comply with the Americans with Disabilities Act, or any other categories that the~~
22 ~~Department deems appropriate. The report also should include data on the size of~~
23 ~~encroachments within each category.~~

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1 Section 4. ~~This Section is uncodified. The suspension of the public right-of-way~~
2 ~~occupancy assessment fee in Public Works Code Section 723.2 shall be retroactive to August~~
3 ~~29, 2005, the effective date of the legislation that enacted the fee. The public right-of-way~~
4 ~~occupancy assessment fee shall be charged only to those minor sidewalk encroachments~~
5 ~~specifically enumerated in Section 723.2(m)(2)(a)-(d) and (m)(6) of this Ordinance and the fee~~
6 ~~is hereby repealed for all other minor sidewalk encroachments, including those~~
7 ~~encroachments identified in Section 723.2(m)(3). This repeal shall be retroactive to August 29,~~
8 ~~2005, the effective date of the legislation that enacted the public right-of-way assessment fee~~
9 ~~for minor sidewalk encroachments.~~

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

By: _____
John D. Malamut
Deputy City Attorney