

1 [Seismic strengthening of soft-story, wood-frame buildings.]

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3 **Ordinance finding a compelling public policy basis for expediting the processing and**
4 **review of permits for seismic retrofit upgrades of soft-story, wood-frame buildings and**
5 **amending the Planning Code, Building Code, Fire Code, and Public Works Code to**
6 **waive permit processing fees for the proportionate share of work related to such**
7 **seismic retrofit upgrades; making environmental findings and findings of consistency**
8 **with the City's General Plan and Planning Code Section 101.1.**

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

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

13 Section 1. City Policy Concerning Seismic Retrofit Upgrades for Soft-story, wood-
14 frame Construction.

15 (a) Findings. (1) Soft-story, wood-frame buildings are structures where the first story
16 is substantially weaker and more flexible than the stories above due to lack of walls or
17 moment-resisting frames at the first floor and a significant number of walls in the floors above.
18 Typically, these are apartments and condominiums that have parking or open commercial
19 space – for businesses such as restaurants or grocery stores – on the first floor, which makes
20 the first story “soft” and likely to lean or collapse in earthquakes. As a consequence, such
21 buildings are highly vulnerable during seismic events, as the City witnessed during the Loma
22 Prieta earthquake in 1989.

23 (2) The San Francisco Department of Building Inspection (DBI) is responsible for
24 enforcing the San Francisco Building Code and serves the City and County, and the general
25 public, by ensuring that life and property within the City is safeguarded. DBI fulfills its

1 responsibilities through plan check review of construction documents; the issuance of permits;
2 the inspection of construction as stipulated by permits; and through code enforcement
3 procedures that compel property owner compliance and that may include prosecution of code
4 violations. DBI and its governing body, the Building Inspection Commission, also provide a
5 public forum for community involvement in permit review, approval and enforcement
6 processes.

7 (3) DBI has initiated the Community Action Plan for Seismic Safety (CAPSS) initiative
8 to better understand the types of buildings in San Francisco that are most vulnerable to
9 seismic events and recommend measures, including legislation to retrofit and improve the
10 public safety related to soft-story, wood-frame buildings. The CAPSS initiative is currently
11 identifying the types of soft-story wood-frame buildings in San Francisco and their location;
12 evaluating a range of vulnerability factors; and designing retrofit options and costs, all while
13 engaging and alerting the public to make property owners and tenants aware of potential
14 seismic vulnerabilities. The CAPSS initiative is expected to recommend and draft a seismic
15 strengthening ordinance for vulnerable soft-story, wood-frame buildings.

16 (4) In furtherance of this effort and other City actions to ensure and enhance public
17 protection during seismic events, Mayor Newsom, on July 7, 2008, issued Executive Directive
18 No. 08-XX concerning seismic strengthening of soft-story, wood-frame buildings. Said
19 Directive is on file with the Clerk of the Board of Supervisors in File No. _____ and
20 is incorporated herein by reference.

21 (5) The public and media outlets share in the concern of the City's elected and
22 appointed officials that City government do all that it can to significantly expand and
23 accelerate ongoing efforts to ensure the safety of life and property in the City and County of
24 San Francisco. Such concern is demonstrated in articles such as those of the *San Francisco*
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1 *Chronicle*, dated June 29, 2008, on the seismic vulnerability of soft-story, wood-frame
2 construction. Said article is on file with the Clerk of the Board of Supervisors in File No.
3 _____ and is incorporated herein by reference. As a consequence of this public
4 concern, during the pendency of the abovementioned CAPSS process, and in response to
5 Mayor Newsom's Executive Directive No. 08-XX, the City should encourage residents and
6 property owners to voluntarily perform seismic retrofit upgrades for soft-story, wood-frame
7 buildings.

8 (b) In accordance with San Francisco Campaign and Governmental Conduct Code
9 Section 3.400(b), the City hereby finds there is a compelling public policy basis to expedite the
10 review and permitting process for projects where the scope of work includes voluntary seismic
11 retrofit upgrades to a soft-story, wood-frame buildings, as defined by the Director of the DBI
12 (the "Building Official"). The Ethics Commission, Building Official, Director of Planning, Fire
13 Marshal, Director of Public Works, and directors of other affected departments are urged to
14 amend their respective codes of conduct for permit processing to reflect this City policy.

15 Section 2. Environmental findings and findings of consistency with the City's General
16 Plan.

17 (a) Pursuant to Planning Code Section 302, this Board of Supervisors finds that this
18 Ordinance will serve the public necessity, convenience and welfare for the reasons set forth in
19 Planning Commission Resolution No. _____, and incorporates those reasons
20 herein by reference. A copy of said Planning Commission resolution is on file with the Clerk
21 of the Board of Supervisors in File No. _____.

22 (b) The Board of Supervisors finds that this ordinance is, on balance, consistent with
23 the General Plan and the Priority Policies of Planning Code Section 101.1(b) for the reasons
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1 set forth in Planning Commission Resolution No. _____, and
2 incorporates those reasons herein by reference.

3 (c) The Planning Department has completed environmental review of this ordinance
4 pursuant to the California Environmental Quality Act ("CEQA"), the CEQA Guidelines, and
5 Chapter 31 of the San Francisco Administrative Code. Documentation of that review is on file
6 with the Clerk of the Board of Supervisors in File No. _____ and is
7 incorporated herein by reference.

8 Section 3. The San Francisco Planning Code is hereby amended by amending Section
9 350, to read as follows:

10 Sec. 350. FEES, GENERAL.

11 Fees shall be imposed in order to compensate the Planning Department for the cost of
12 processing applications and for the development and revision of land use controls. Fees shall
13 be charged and collected as indicated for each class of application, permit, filing request or
14 activity listed in Sections 351 through 357 below.

15 (a) Estimated construction costs are as defined by the San Francisco Building Code.

16 (b) All fees are payable at time of filing application or request, except where noted
17 otherwise. However, the Director of Planning or his/her designee may authorize phased
18 collection of the fee for a project whose work is projected to span more than one fiscal year.

19 (c) Time and Materials. The Planning Department shall charge the applicant for any
20 time and materials cost incurred in excess of the initial fee charged if required to recover the
21 Department's costs for providing services.

22 (1) The Department shall charge time and materials to recover the cost of correcting
23 code violations and violations of Planning Commission and Department conditions of approval
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1 of use if such costs are not covered by any permit or application fees collected as part of the
2 legalization of such violations.

3 (2) Where a different limitation on time and material charges is set forth elsewhere in
4 this Article, that limitation shall prevail.

5 (3) The Planning Department may also charge for any time and material costs
6 incurred by other departments or agencies of the City and County of San Francisco.

7 (d) Refunds. When an application is withdrawn by the applicant prior to a public
8 hearing, or deemed canceled by the Planning Department due to inactivity on the part of the
9 applicant, then the applicant shall be entitled to a refund of the fee paid to the Department
10 less the time and materials expended minus a \$200.00 processing fee.

11 (e) Deferred or Reduced Fee.

12 (1) Any fraternal, charitable, benevolent or any other nonprofit organization, that is
13 exempt from taxation under the Internal Revenue laws of the United States and the Revenue
14 and Taxation Code of the State of California as a bona fide fraternal, charitable, benevolent or
15 other nonprofit organization, or public entity that submits an application for the development of
16 residential units all of which are affordable to low and moderate income households, as
17 defined by the United States Housing and Urban Development Department, for a time period
18 that is consistent with the policy of the Mayor's Office of Housing and the San Francisco
19 Redevelopment Agency, shall pay fees for applications specified in Section 352(a), (g), (h),
20 and (i) based on time and materials only, up to the full fee, and may defer payment of the fee
21 until (1) before final Planning Department approval of the building permit, preparatory to
22 issuance of the building permit, before the building permit is released to the applicant, or (2)
23 within one year of the date of action on the application, whichever comes first. This-exemption
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1 shall apply notwithstanding the inclusion in the development of other nonprofit ancillary or
2 accessory uses.

3 (2) An exemption from paying the full fees specified under Section 351, 352, 353, 355,
4 356, and 357 may be granted when the requestor's income is not enough to pay for the fee
5 without affecting their abilities to pay for the necessities of life, provided that the person
6 seeking the exemption demonstrates to the Planning Director or his/her designee that they
7 are substantially affected by the proposed project.

8 (3) If a project involves voluntary seismic retrofit upgrades to soft-story, wood-frame buildings,
9 as defined by the Director of the Department of Building Inspection, the applicant for said project shall
10 be exempt from the proportionate share of fees specified under Section 351, 352, 353, 355, 356, and
11 357 that is related to such retrofit work.

12 (f) Late Payment.

13 (1) Charges and Collection of Overdue Accounts. The Director or his/her designee
14 shall call upon the Bureau of Delinquent Revenues or duly licensed collection agencies for
15 assistance in collecting delinquent accounts more than 60 days in arrears, in which case any
16 additional costs of collection may be added to the fee amount outstanding. If the Department
17 seeks the assistance of a duly licensed collection agency, the approval procedures of
18 Administrative Code Article 5, Section 10.39-1 et seq. will be applicable.

19 (g) Fee Adjustments.

20 (1) The Controller will annually adjust the fee amounts specified in Section 351(d), (e),
21 (f), (g), (h), and Section 352(b), (d), (e), (g), (i), (j), (k), (l), (m) and (n), and Section 353(a), (c),
22 (d), and Section 355(b)(1), (2), (3), (4), (6), (c), (d), (e), and Section 356(c), and Section 357
23 by the two-year average consumer price index (CPI) change for the San Francisco/San Jose
24 Primary Metropolitan Statistical Area (PMSA). Effective September 30, 2007, the fee amounts
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1 specified in Section 351(d), (e), (f), (g), (h), and Section 352(a), (b), (c), (d), (e), (g), (j), (k), (l),
2 and (m), Section 353(a), (b), (c), (d), and Section 355(a), (b), Section 356(c), (d), (e), and
3 Section 357 will increase 6.3% to support an increase in departmental overhead from rent
4 costs at 1650 Mission Street.

5 Section 4. The San Francisco Building Code is hereby amended by amending Section
6 107A.1.2, to read as follows:

7 Sec. 107A.1.2 Exemption from fees. (a) The fees provided for in this chapter shall not
8 apply to permits issued to perform work on buildings which are owned and occupied by the
9 Federal or State governments. The San Francisco Housing Authority shall be exempt from all
10 permit fees in this chapter except the strong motion instrumentation fee. Permits required
11 under this code for buildings and sites owned or leased by the City and County of San
12 Francisco shall be subject to all fees set forth in this chapter.

13 (b) If a project involves voluntary seismic retrofit upgrades to soft-story, wood-frame buildings,
14 as defined by the Building Official, the applicant for said project shall be exempt from the
15 proportionate share of fees specified under this Chapter that is related to such retrofit work.

16 Section 5. The San Francisco Fire Code is hereby amended by adding Section
17 112.19, to read as follows:

18 Sec. 112.19. Notwithstanding the fees established herein, if a project involves voluntary
19 seismic retrofit upgrades to soft-story, wood-frame buildings, as defined by the Director of the
20 Department of Building Inspection, such project applicant shall be exempt from the proportionate
21 share of fees specified herein that is related to such retrofit work.

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

24 Sec. 723.2. MINOR SIDEWALK ENCROACHMENTS.
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1 (a) The Director of Public Works may grant permission, revocable at his or her will, to
2 an owner of property abutting any court, alley or street to install and maintain minor
3 encroachments such as fences, retaining walls, steps or stairways and other minor structures
4 in the sidewalk fronting such property where such encroachments are desirable or convenient
5 in conjunction with the owner's use and enjoyment of the property, or required for the safety,
6 convenience and comfort of the public using the sidewalk.

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

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

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

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

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

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

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

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

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

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

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

21 ~~(m) The Board of Supervisors reserves the right to exact a public right of way occupancy~~
22 ~~assessment fee for the use of the sidewalk or other public right of way space permitted under the~~
23 ~~provisions of this Section.~~

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

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

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

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

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

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

11 (d) Underground storage tanks.

12 (3) For purposes of Subsection (m)(2), the term "site permit" also shall mean "building
13 permit."

14 (4) Notwithstanding Subsection (m)(2), no public right-of-way occupancy assessment
15 fee shall be charged against the owner of an historic or architecturally significant building who
16 has installed or seeks a permit to install a minor sidewalk encroachment in order to conform
17 with an applicable Municipal Code; provided, however that this exception shall not apply if the
18 encroachment is a subsidewalk basement. For purposes of this Subsection, an historic or
19 architecturally significant building shall be a building so designated pursuant to Planning Code
20 Article 10 or specifically identified as an architecturally significant building on the Planning
21 Department's database or on a list maintained by the Planning Department.

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

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

3 (7) Notwithstanding this Subsection (m), the public right-of-way assessment fee for
4 underground vaults shall be as specified in Section 2.1.1 et seq.

5 (n) Notwithstanding the fees specified herein, if a project involves voluntary seismic retrofit
6 upgrades to soft-story, wood-frame buildings, as defined by the Director of the Department of Building
7 Inspection, such project applicant shall be exempt from the proportionate share of fees specified under
8 this Section and Sections 2.1.1 et seq. that is related to such retrofit work.

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

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

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