

1 [Minor Sidewalk Encroachments – Public right-of-way occupancy assessment fee.]

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3 **Ordinance amending Public Works Code Section 723.2 to clarify that the public right-**
4 **of-way occupancy assessment fee for minor sidewalk encroachments applies to**
5 **specified building permits and to all subsidewalk basements.**

6 Note: Additions are *single-underline italics Times New Roman*;
7 deletions are ~~*strikethrough italics Times New Roman*~~.
8 Board amendment additions are double underlined.
Board amendment deletions are ~~strikethrough normal~~.

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

10 Section 1. The San Francisco Public Works Code is hereby amended by amending
11 Section 723.2, to read as follows:

12 SEC. 723.2. MINOR SIDEWALK ENCROACHMENTS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (d) Underground storage tanks.

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

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

9 (45) 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 (56) The public right-of-way occupancy assessment fee shall not be charged to
12 any federal, state, or local governmental agencies, commissions, or departments.

13 (67) 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.

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

18 By: _____
19 John D. Malamut
20 Deputy City Attorney

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