

BOARD of SUPERVISORS



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April 14, 2014

File No. 140319

Sarah Jones  
Environmental Review Officer  
Planning Department  
1650 Mission Street, 4<sup>th</sup> Floor  
San Francisco, CA 94103

Dear Ms. Jones:

On April 1, 2014, Supervisor Wiener introduced the following legislation:

**File No. 140319**

**Ordinance amending the Public Works Code to establish the requirements for Surface-Mounted Facility Site Permits; to set fees for obtaining such permits; to make the provisions of the Ordinance retroactive; and making environmental findings.**

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, appearing to read "A. Ausberry".

By: Andrea Ausberry, Assistant Clerk  
Land Use & Economic Development Committee

Attachment

c: Nannie Turrell, Environmental Planning  
Jeanie Poling, Environmental Planning

*Not a project under CEQA Guidelines  
Sections 15060(c) and 15378,  
because there is no direct  
or indirect physical change in  
the environment. Individual  
projects will be reviewed  
when they are submitted to  
the Planning Department.  
Nannie Turrell 4/16/2014*



1 [Public Works Code - Surface-Mounted Facility Site Permits]

2  
3 **Ordinance amending the Public Works Code to establish the requirements for Surface-**  
4 **Mounted Facility Site Permits; to set fees for obtaining such permits; to make the**  
5 **provisions of the Ordinance retroactive; and making environmental findings.**

6  
7 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.  
8 **Additions to Codes** are in *single-underline italics Times New Roman font*.  
9 **Deletions to Codes** are in ~~*italics Times New Roman font*~~.  
10 **Board amendment additions** are in **double-underlined Arial font**.  
11 **Board amendment deletions** are in ~~**Arial font**~~.  
12 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code  
13 subsections or parts of tables.

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

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

19 Section 2. The Public Works Code is hereby amended by adding Article 27, Sections  
20 2700 to 2731, to read as follows:

21 **ARTICLE 27. SURFACE-MOUNTED FACILITIES**

22 **SEC. 2700. SURFACE-MOUNTED FACILITY SITE PERMIT.**

23 *(a) Surface-Mounted Facility Site Permit Required. It shall be unlawful for any Person to construct or*  
24 *install a Surface-Mounted Facility in any Public Rights-of-Way that is under the jurisdiction of the*  
25 *Department without first obtaining from the Department a Surface-Mounted Facility Site Permit under*  
*this Article 27 authorizing such construction or installation.*

1 (b) Minimum Permit Requirements. The Department shall require an Applicant for a Surface-  
2 Mounted Facility Site Permit to demonstrate to the satisfaction of the Department that:

3 (1) The City has granted Applicant the authority to construct, install, and maintain the  
4 proposed Surface-Mounted Facility in the Public Rights-of-Way; and

5 (2) The Director of the Department has approved the proposed location for the Surface-  
6 Mounted Facility pursuant to the requirements of this Article 27.

7 (c) Permit Conditions. The Department may include in a Permit such Conditions, in addition to those  
8 already set forth in this Article 27 and other Applicable Law, as may be required to govern the  
9 construction, installation, removal, or maintenance of Surface-Mounted Facilities in the Public  
10 Rights-of-Way, and to protect and benefit the public health, safety, welfare, and convenience.

11 (d) Authority Granted. A Permit shall authorize the Permittee to perform any excavation that is  
12 required to install the Surface-Mounted Facility in the Public Rights-of-Way.

13 (e) Exceptions to Permit Requirement. The requirements of this Article 27 shall not apply to the  
14 following:

15 (1) The replacement of an existing Surface-Mounted Facility at the same location provided the  
16 replacement Surface-Mounted Facility would be installed on the existing foundation and would be the  
17 same size or smaller than the existing Surface-Mounted Facility.

18 (2) The installation of any equipment in the Public Rights-of-Way pursuant to an encroachment  
19 permit issued by the Department pursuant to Article 15 of the Public Works Code.

20 (f) Other Provisions Inapplicable. This Article shall govern all actions taken by the City with respect  
21 to the approval or denial of an Application for a Surface-Mounted Facility Site Permit under this  
22 Article 27. The requirements of San Francisco Business and Tax Code Sections 5, 6, and 26(a) shall  
23 not apply to this Article 27 to the extent those provisions are in conflict with the provisions of this  
24 Article 27.

1 **SEC. 2701. DEPARTMENT ORDERS AND REGULATIONS.**

2 The Department may adopt such orders or regulations as it deems necessary to implement the  
3 requirements of this Article 27, or to otherwise preserve and maintain the public health, safety,  
4 welfare, and convenience, as are consistent with the requirements of this Article 27 and Applicable  
5 Law.

6  
7 **SEC 2702. DEFINITIONS.**

8 For purposes of this Article 27, the following definitions shall apply.

9 “Aesthetic Character” means pleasing in appearance in the context of the surrounding area.

10 “Applicable Law” means all applicable federal, state, and City laws, ordinances, codes, rules,  
11 regulations and orders, as the same may be amended or adopted from time to time.

12 “Applicant” means any Person intending to submit or submitting an Application for a Surface-  
13 Mounted Facility Site Permit under this Article 27, including any City department that requires  
14 permits from the Department to install, construct, or maintain facilities in the Public Rights-of-Way.

15 “Application” means an application for a Surface-Mounted Facility Site Permit under this  
16 Article 27.

17 “City” means the City and County of San Francisco.

18 “Conditions” means any additional requirements that a City department reviewing an  
19 Application for a Surface-Mounted Facility Site Permit has determined are necessary for the  
20 Application to meet those requirements of this Article 27 that are within that department’s purview.

21 “Department” means the Department of Public Works.

22 “Director” means the Director of Public Works.

23 “Graffiti” means any inscription, word, figure, marking or design that is affixed, marked,  
24 scratched, drawn or painted on a Surface-Mounted Facility, whether permanent or temporary, without  
25 the consent of the Permittee.

1           “Historic Resource” means a national historic landmark district, listed or eligible national  
2 register historic district, listed or eligible California register historic district, San Francisco landmark  
3 district, local historic or conservation district, locally significant district, a national historic  
4 landmark, California landmark, San Francisco landmark, structure of merit, architecturally  
5 significant building, or locally significant building. For the purposes of this Article 27, the term  
6 Historic Resource includes a “potential” Historic Resource, which is a structure that the Planning  
7 Department’s Historic Preservation staff has determined has high eligibility of becoming a Historic  
8 Resource. If an Applicant challenges the historic value of a potential Historic Resource, the Applicant  
9 must provide sufficient information for the Planning Department to make the determination that the  
10 identified potential Historic Resource is not a Historic Resource.

11           “Notice of Intent” means a notice that the Applicant intends to submit an Application for a  
12 Surface-Mounted Facility Site Permit.

13           “Permittee” means an Applicant that has obtained a Permit to construct, install, and maintain  
14 a Surface-Mounted Facility in the Public Rights-of-Way.

15           “Person” means any natural person, corporation, partnership, any City department, or any  
16 governmental agency, including the State of California or United States of America.

17           “Placement Criteria” means the Department’s criteria for locating Surface-Mounted Facilities  
18 in the Public Rights-of-Way intended to ensure that a Surface-Mounted Facility does not interfere with  
19 the public’s use of the Public Rights-of-Way, which the Department shall establish by regulation or  
20 order in consultation with the Planning Department.

21           “Pre-Application Approval Process” means the process forth in Sections 2704 through 2709  
22 and 2712 through 2714 through which an Applicant for a Surface-Mounted Facility Site Permit must  
23 obtain the Department’s prior approval of the proposed location for the Surface-Mounted Facility to  
24 be set forth in an Application.

1 “Preferred Location List” means a list submitted by an Applicant for a Surface-Mounted  
2 Facilities Permit identifying the Applicant’s Preferred Locations for a Surface-Mounted Facility.

3 “Preferred Locations” means the locations for a Surface-Mounted Facility that an Applicant  
4 determines best suits its needs and that are consistent with the requirements of this Article 27.

5 “Public Rights-of-Way” means the area in, on, upon, above, beneath, within, along, across,  
6 under, and over the public streets, sidewalks, roads, lanes, courts, ways, alleys, spaces, and  
7 boulevards within the geographic area of the City in which the City now or hereafter holds any  
8 property interest, which is dedicated to public use.

9 “Public Works Code” means the City and County of San Francisco Public Works Code.

10 “Surface-Mounted Facility” means any Utility facility (physical element or structure) that is  
11 installed, attached, or affixed in the Public Rights-of-Way on a site that is above the surface of the  
12 street (except a Utility pole or associated appurtenances) and that requires the Permittee to excavate  
13 in order to install the facility in the Public Rights-of-Way. The term Surface-Mounted Facility shall  
14 not include bus shelters.

15 “Surface Mounted Facility Site Permit” or “Permit” means a permit to install a Surface-  
16 Mounted Facility in the Public Rights-of-Way as it has been approved by the Department.

17 “Utility” means any of the following services: electricity, gas, information, sewer, steam,  
18 telecommunications, high-speed Internet, voice over Internet protocol, video over Internet protocol,  
19 traffic control, cable television, transit, open video, water, or other services that require the provider  
20 to install facilities in the Public Rights-of-Way to serve its customers.

21  
22 **SEC. 2703. LOCATION APPROVAL.**

23 (a) Required Prior to Application. In order to ensure that Surface-Mounted Facilities are installed in  
24 the most suitable locations, an Applicant must first obtain the Department’s approval of the proposed  
25 location for the Surface-Mounted Facility.

1 (b) Exceptions. If an Applicant demonstrates to the Department that there is only one feasible location  
2 for the proposed Surface-Mounted Facility the Department may by order waive the required Pre-  
3 Application Approval Process and authorize the Applicant to submit an Application without a pre-  
4 approved location, subject to any reasonable Conditions the Department may place on the proposed  
5 Surface-Mounted Facility. By regulation or order, the Department shall establish standards for  
6 determining when there is only one feasible location for a proposed Surface-Mounted Facility, but  
7 such standards shall be based on technical or physical constraints only.

8  
9 **SEC. 2704. PREFERRED LOCATIONS.**

10 (a) Identification of Preferred Locations. The Pre-Application Approval Process shall begin with an  
11 Applicant's initial site selection. An Applicant shall conduct a thorough survey of the area where it  
12 seeks to install a Surface-Mounted Facility to identify its Preferred Locations for the Surface-Mounted  
13 Facility.

14 (b) Criteria for Preferred Locations. In selecting its Preferred Locations, the Applicant should seek to  
15 minimize the effect the placement of the Surface-Mounted Facility will have on use of the Public  
16 Rights-of-Way by, among other things:

17 (1) Placing the Surface-Mounted Facility in the Public Rights-of-Way so as to maintain an  
18 appropriate path of travel along the sidewalk, paying particular attention to the needs of persons with  
19 disabilities. To the extent feasible, an Applicant shall locate the Surface-Mounted Facilities on streets  
20 where pedestrian travel is minimal.

21 (2) Placing the Surface-Mounted Facility in the Public Rights-of-Way so that the Aesthetic  
22 Character of the streetscape will not be unreasonably affected by the installation of the Surface-  
23 Mounted Facility. Unless no other location is feasible, the Applicant should avoid using sidewalks that  
24 are narrower than the City's standard sidewalk and sidewalks with special paving or other special  
25 design features.

1 (3) Ensuring that the Surface-Mounted Facility will not obstruct access to other facilities that  
2 are installed or the Department knows are to be installed in the Public Rights-of-Way by other entities  
3 including City departments and entities providing Utility services.

4 (4) Placing the Surface-Mounted Facility in a location that is consistent with the City's Better  
5 Streets Plan.

6 (5) Placing the Surface-Mounted Facility in a location that is consistent with the Placement  
7 Criteria.

8 (6) Placing the Surface-Mounted Facility in a location that will not unreasonably affect the  
9 Aesthetic Character of a City park or open space.

10 (c) Disfavored Locations. The following locations are disfavored, and the Department shall not issue  
11 a Surface-Mounted Facility Site Permit in these disfavored locations unless the Applicant can show  
12 that no other option is available:

13 (1) On Public Rights-of-Way where all Utility facilities are undergrounded.

14 (2) On Public Rights-of-Way where the City has completed or has plans for major capital  
15 improvements, including streetscape and pedestrian safety improvements.

16 (3) On Public Rights-of-Way that are known for having a high level of pedestrian traffic (e.g.  
17 Neighborhood Commercial zoning districts).

18 (4) On Public Rights-of-Way that are adjacent to or that will affect the view of a Historic  
19 Resource.

20 (5) On Public Rights-of-Way that the San Francisco General Plan has designated as being  
21 most significant to City pattern, defining City form, having an important street view for orientation, or  
22 as having views that are rated "excellent" or "good."

23 (6) On Public Rights-of-Way that are adjacent to a City park or open space, unless the  
24 Department finds that such locations could be used to minimize the effect on the Aesthetic character of  
25 the City park or open space.

1 (7) On Public Rights-of-Way that are adjacent to an elementary or middle school.

2  
3 **SEC. 2705. COMMUNITY INPUT ON PREFERRED LOCATIONS.**

4 (a) Community Meeting Required. The Pre-Application Approval Process shall require participation  
5 in a community meeting in which the Applicant shall discuss its Preferred Locations for a Surface-  
6 Mounted Facility with local residents and business owners. At the community meeting, the Applicant  
7 shall discuss at least two Preferred Locations for the proposed Surface-Mounted Facility and shall  
8 notify the attendees of process for the public to object to such Preferred Locations.

9 (b) Notice of Meeting. The Applicant shall provide notice of time and place for the community  
10 meeting as set forth in Section 2713. The time for the community meeting shall be after regular  
11 business hours and the place for the meeting must be within the vicinity of the Applicant's Preferred  
12 Locations.

13 (c) City Department Participation. The Applicant shall notify the Department and the Planning  
14 Department of the time and place for the community meeting. If one of the Preferred Locations is in  
15 front of a City park or open space, the Applicant shall also notify the Recreation and Park  
16 Department. Where feasible, the Department, the Planning Department, and the Recreation and Park  
17 Department shall attend the community meeting.

18 (d) Record of Meeting. The Applicant shall keep a record of all Persons that attended a community  
19 meeting and shall prepare and distribute a summary of the meeting to the attendees and the  
20 Department.

21 (e) Language Requirement. The Applicant shall ensure that on-call translation services are available  
22 for such meeting.

23  
24 **SEC. 2706. SUBMISSION OF PREFERRED LOCATION LIST.**

1 As part of the Pre-Application Approval Process, an Applicant may submit a Preferred Location List  
2 to the Department within 10 days of the community meeting in which the Applicant shall identify at  
3 least two Preferred Locations for the Surface-Mounted Facility and shall specify the Applicant's order  
4 of preference for the proposed locations.

5  
6 **SEC. 2707. DEPARTMENT ACTION ON PREFERRED LOCATION LIST.**

7 (a) Department Review. As part of the Pre-Application Approval Process, the Department shall  
8 complete its review of the Preferred Location List within 14 days of receipt from the Applicant. With  
9 the concurrence of the Applicant, the Department may extend this review period beyond 14 days.

10 (b) Notice to Applicant. After completion of its review, the Department shall notify the Applicant as  
11 follows:

12 \_\_\_\_\_ (1) Whether the Applicant has satisfied the requirement to conduct a community meeting.

13 \_\_\_\_\_ (2) Whether one or more of the Applicant's Preferred Locations are acceptable locations for  
14 Applicant's proposed Surface-Mounted Facility consistent with the Department's Placement Criteria.

15 \_\_\_\_\_ (3) Whether the Department agrees with the Applicant's order of preference for its Preferred  
16 Locations.

17 \_\_\_\_\_ (4) Whether the Department's approval of one or more of the Applicant's Preferred Locations  
18 shall include any Conditions.

19 \_\_\_\_\_ (5) Whether the Department will require the Applicant to notify the public of the proposed  
20 installation of the Surface-Mounted Facility prior to submitting an Application for a Surface-Mounted  
21 Facility Site Permit.

22 \_\_\_\_\_ (6) Whether the Department will propose any additional locations for the Applicant's Surface-  
23 Mounted Facility.

24 (c) Referral to Other City Departments. As part of the Pre-Application Approval Process, the  
25 Department shall refer every Preferred Location List to the Planning Department for its review. If a

1 Preferred Location List identifies any proposed location that is in front of any City park or open  
2 space under the jurisdiction of the Recreation and Park Department, the Department shall refer the  
3 Preferred Location List to the Recreation and Park Department.

4  
5 **SEC. 2708. PLANNING DEPARTMENT ACTION ON PREFERRED LOCATION LIST.**

6 (a) Planning Department Review. The Planning Department shall review a Preferred Location List to  
7 make the determination set forth in subsection (b) below. The Planning Department may also consult  
8 with other City departments during its review.

9 (b) Planning Department Determination.

10 (1) The Planning Department shall determine whether the installation of a Surface-Mounted  
11 Facility at any or all of the Preferred Locations in the Public Rights-of-Way will unreasonably affect  
12 the Aesthetic Character of the streetscape in the immediate vicinity of each of the Preferred Locations  
13 or if such installation will adversely affect pedestrian circulation or visibility, or, where applicable,  
14 will adversely affect a Historic Resource.

15 (2) The Planning Department's determination that the installation of a Surface-Mounted  
16 Facility at any or all of the Preferred Locations in the Public Rights-of-Way will not unreasonably  
17 affect the Aesthetic Character of the streetscape, adversely affect pedestrian circulation or visibility,  
18 or adversely affect a Historic Resource may include Conditions intended to minimize such effects  
19 including, but not limited to, a color for the Surface-Mounted Facility and any aesthetic changes to the  
20 Surface-Mounted Facility itself or to its installation.

21 (3) The Planning Department's determination may suggest changes to the Applicant's order of  
22 preference for the Preferred Locations.

23 (4) The Planning Department's determination may include a recommendation that the  
24 Applicant include additional locations for the proposed Surface-Mounted Facility in the Notice of  
25 Intent.

1 (5) The Planning Department's determination shall be in writing and shall set forth the  
2 reasons therefore. The Planning Department shall transmit its determination to the Department and  
3 the Applicant within 14 days of receipt of the Preferred Location List from the Department. With the  
4 concurrence of the Applicant, the Planning Department may extend this review period beyond 14  
5 days.

6  
7 **SEC. 2709. RECREATION AND PARK ACTION ON PREFERRED LOCATION LIST.**

8 (a) Recreation and Park Department Review. The Recreation and Park Department shall review any  
9 Preferred Location List that identifies a proposed location for a Surface-Mounted Facility that is in  
10 the vicinity of a City park or open space under its jurisdiction to make the determination set forth in  
11 subsection (b) below. The Recreation and Park Department may consult with other City departments  
12 during its review.

13 (b) Recreation and Park Department Determination.

14 (1) The Recreation and Park Department shall determine whether the installation of a Surface-  
15 Mounted Facility at a Preferred Location in the Public Rights-of-Way that is in the vicinity of a City  
16 park or open space under its jurisdiction will unreasonably affect the Aesthetic Character of such City  
17 park or open space.

18 (2) The Recreation and Park Department's determination that the installation of a Surface-  
19 Mounted Facility at a Preferred Location in the Public Rights-of-Way that is in the vicinity of a City  
20 park or open space will not unreasonably affect the Aesthetic Character of such City park or open  
21 space may include Conditions intended to minimize the effect of the Surface-Mounted Facility on the  
22 Aesthetic Character of such City park or open space including, but not limited to, a color for the  
23 Surface-Mounted Facility or any aesthetic changes to the Surface-Mounted Facility itself or to its  
24 installation.

1 (3) The Recreation and Park Department's determination may suggest changes to the  
2 Applicant's order of preference for the Preferred Locations.

3 (4) The Recreation and Park Department's determination may include a recommendation that  
4 the Applicant include additional locations for the proposed Surface-Mounted Facility in the Notice of  
5 Intent.

6 (5) The Recreation and Park Department's determination shall be in writing and shall set forth  
7 the reasons therefore. The Recreation and Park Department shall transmit its determination to the  
8 Department and the Applicant within 14 days of receipt of the Preferred Location List from the  
9 Department. With the concurrence of the Applicant, the Recreation and Park Department may extend  
10 this review period beyond 14 days.

11  
12 **SEC. 2710. LANDSCAPING.**

13 **(a) Condition of Approval.**

14 (1) The Department shall require as a Condition of approval of a Surface-Mounted Facility  
15 Site Permit that the Permittee install suitable landscaping and street trees, in order to minimize any  
16 negative effects on the Aesthetic Character of the streetscape resulting from Permittee's construction,  
17 installation, and maintenance of the permitted Surface Mounted Facility. The Department shall  
18 determine the number of required street trees and the total area of the landscaped area. Generally,  
19 the Department shall require the installation of at least one street tree and sidewalk landscaping of  
20 approximately 100 square feet with each permitted Surface-Mounted Facility.

21 (2) In any instance in which the Department cannot require the Permittee to install  
22 appropriate landscaping in the vicinity of the permitted Surface-Mounted Facility, including on the  
23 basis of inadequate sidewalk width, interference with utilities, or other reasons regarding the public  
24 health, safety, or welfare, the Department shall instead require the Permittee to make an "in-lieu"  
25 payment into the Department's "Adopt-A-Tree" fund. This payment shall be in the amount specified

1 in Public Works Code §§ 802(h) and 807(f) for the installation of one street tree in addition to a  
2 payment of \$7,500 for sidewalk landscaping, and shall be payable prior to the Department's issuance  
3 of the Permit. These in-lieu fees may be adjusted to reflect changes in the relevant Consumer Price  
4 Index, subject to the requirements of Section 2729(e).

5 (b) Care and Maintenance of Landscaping.

6 (1) The Permittee shall be responsible for the care and maintenance of any landscaping  
7 required to be installed in the Public Rights-of-Way under this Section. In this regard, the Permittee  
8 shall assume the duty of a "property owner" as set forth in Public Works Code § 805(a).

9 (2) The Permittee may enter into an agreement with the Department and delegate this  
10 responsibility to the Department, provided the Permittee and the Department can agree to suitable  
11 terms and conditions for the Department to assume this responsibility.

12  
13 **SEC. 2711. MURALS.**

14 (a) Condition of Approval. The Department shall include as a Condition of approval of a Surface-  
15 Mounted Facility Site Permit that any Person or group of Persons may propose to the Department and  
16 the Permittee that the permitted Surface-Mounted Facility be used for a mural that is appropriate for  
17 the location. The Permittee shall work with any Person or group of Persons selected to install the  
18 mural to facilitate the installation and maintenance of the mural. No mural shall be allowed unless it  
19 is approved by the San Francisco Art Commission. No mural may contain any product advertising of  
20 any kind. The Department may establish by regulation or order the process for placing a mural on a  
21 permitted Surface-Mounted Facility.

22 (b) "In-Lieu" Fee Required. Upon issuance of a Permit, the Department shall require a Permittee to  
23 make an "in-lieu" payment into the Department's "StreetSmARTS" program in the amount specified  
24 for the cost of one mural along with subsequent Graffiti protection and maintenance. Should a mural

1 be added to the permitted Surface-Mounted Facility, the Department shall return the “in-lieu” fee to  
2 the Permittee.

3  
4 **SEC. 2712. NOTICE OF INTENT TO SUBMIT APPLICATION.**

5 (a) Submission to the Department. As part of the Pre-Application Approval Process, within 1 day  
6 after the Preferred Location List has been reviewed and approved by all applicable City departments,  
7 the Applicant may submit a Notice of Intent to the Department for its review. An Applicant may  
8 request additional time to submit a Notice of Intent.

9 (b) Form and Contents. The Notice of Intent shall be in the form approved by the Department by  
10 regulation or order, but at a minimum shall contain the information required in Section 2713(c)(1)-(9).

11 (c) Department Approval. If the Department determines that a Notice of Intent is complete, the  
12 Department will approve the Notice of Intent and authorize the Applicant to post and mail the Notice  
13 of Intent as required in Section 2713.

14 (d) Completion Requirements. The Notice of Intent shall not be complete unless the Department  
15 determines that the Applicant has complied with the following requirements:

16 (1) The Applicant has satisfactorily conducted the community meeting required in Section  
17 2705.

18 (2) The Applicant has submitted to the Department plans showing all of the sizes and shapes of  
19 the cabinets proposed to be used for its Surface-Mounted Facilities, including the dimensions of any  
20 ancillary equipment. For Applicants that conduct business in jurisdictions other than San Francisco,  
21 the Applicant shall certify that the cabinets proposed for San Francisco are no larger than the  
22 smallest used in any other jurisdiction for similar services.

23 (3) If the Applicant is seeking approval of a larger cabinet on an existing Surface-Mounted  
24 Facility site, the Applicant has sufficiently demonstrated to the Department the reasons the larger  
25 cabinet is necessary.

1 (4) The Applicant has surveyed the vicinity of the Preferred Locations for its Surface-Mounted  
2 Facility to identify locations outside of the Public Rights-of-Way (including City-owned property) that  
3 may be appropriate for the installation of the Surface-Mounted Facility and the Applicant has made  
4 reasonable efforts to determine whether the owners of any and all suitable properties would be willing  
5 to allow the Applicant to use their property for Applicant's proposed Surface-Mounted Facility. For  
6 purposes of this subsection, the term "reasonable efforts" includes offering the owners of any suitable  
7 property reasonable compensation for the use of the property for the Applicant's Surface-Mounted  
8 Facility. The Department shall by rule or regulation establish guidelines defining what consists of  
9 "reasonable efforts."

10 (5) The Applicant attempted to place the Surface-Mounted Facility (or parts thereof)  
11 underground where such underground placement is technologically or economically feasible. An  
12 Applicant may satisfy the requirement contained in this subsection by demonstrating to the satisfaction  
13 of the Director that it is not technologically or economically feasible for the Applicant to place the  
14 Surface-Mounted Facility (or parts thereof) underground. At a minimum, the Applicant shall  
15 demonstrate to the Director that it conducted a thorough search for adequate underground technology  
16 and provide a report from a licensed engineer certifying the information.

17 (6) Where it is not technologically or economically feasible to underground the entire Surface-  
18 Mounted Facility, the Applicant has: (A) agreed to underground part of the Surface-Mounted Facility;  
19 (B) limited the height and footprint of the Surface-Mounted Facility to the maximum extent feasible;  
20 (C) either used stainless steel or painted the Surface-Mounted Facility the color used for City  
21 structures in the vicinity unless otherwise specified by the Department and added a Graffiti-proof  
22 coating; (D) screened the Surface-Mounted Facility by landscaping the Public Rights-of-Way in the  
23 area around the Surface-Mounted Facility or camouflaging the Surface-Mounted Facility where  
24 requested by any City department; and (E) complied with any Conditions imposed by any City  
25 department that reviewed the Applicant's Preferred Location List.

1 (7) The Applicant has explored reasonable opportunities to co-locate the Surface-Mounted  
2 Facility with any other Surface-Mounted Facility installed or to be installed in the Public Rights-of-  
3 Way by other entities including City departments.

4 (8) The Applicant has explored reasonable opportunities for its Surface-Mounted Facility to  
5 serve a dual function such as a bench or other amenity. The Department shall have the authority to  
6 require that a Surface-Mounted Facility serve a dual function, where the Department determines that  
7 such dual function is technologically and economically feasible.

8 (9) The Applicant has notified the Department whether the Applicant could remove an existing  
9 Surface-Mounted Facility from the Public Rights-of-Way because it would no longer be used or useful  
10 to the Applicant once the proposed Surface-Mounted Facility has been installed.

11 (10) The Applicant has submitted a plan to the Department, in a format specified by the  
12 Department, showing all of the Surface Mounted Facilities the Applicant expects to install in the  
13 Public Rights-of-Way within five years of the Application date. Any Applicant that does not anticipate  
14 installing any other Surface Mounted Facilities in the next five years may satisfy this requirement by  
15 submitting a statement to that effect instead of a five-year plan.

16 (11) The Department has determined that at least two of the Applicant's Preferred Locations  
17 for the Surface-Mounted Facility are acceptable or the Notice of Intent will include additional  
18 proposed locations identified by the Department or another City department that reviewed the  
19 Applicant's Preferred Location List, unless the Department has determined that there is only one  
20 feasible location for the proposed Surface-Mounted Facility.

21  
22 **SEC. 2713. PUBLIC NOTICE OF NOTICE OF INTENT TO SUBMIT APPLICATION.**

23 (a) Public Notice Required. As part of the Pre-Application Approval Process, the Department shall  
24 require an Applicant to notify the public that the Applicant has submitted a Notice of Intent to the  
25 Department.

1 (b) Notice Requirements.

2 (1) The Applicant shall send a copy of the Notice of Intent to all Persons owning or occupying  
3 any property located within 300 feet along either side of the fronting streets of any of the Preferred  
4 Locations for the Surface-Mounted Facility.

5 (2) The Applicant shall post a copy of the Notice of Intent in conspicuous places along the  
6 Public Rights-of-Way within 300 feet of either side of the fronting streets of any of Applicant's  
7 Preferred Locations for the Surface-Mounted Facility.

8 (3) The Applicant shall send a copy of the Notice of Intent to any neighborhood planning  
9 association identified by the Planning Department for any neighborhood within 300 feet of any of the  
10 Applicant's Preferred Locations for the Surface-Mounted Facilities.

11 (c) Form of Notice of Intent. The Notice of Intent shall be in a form to be approved by the Department  
12 by regulation or order. At a minimum, the Notice of Intent shall contain the following information:

13 (1) The fronting address for each of the Preferred Locations and photo-simulations of the  
14 Surface-Mounted Facility at each of the Preferred Locations.

15 (2) The Applicant's order of preference for the Preferred Locations.

16 (3) A brief description of the nature of the use of the proposed Surface-Mounted Facility and  
17 the consequences of not installing the facility.

18 (4) Any assessment made of the Applicant's Preferred Locations by the Planning Department  
19 and/or Recreation and Park Department.

20 (5) Any Conditions on the installation of the proposed Surface-Mounted Facility at each of the  
21 Preferred Locations imposed by any City department that reviewed the Applicant's Preferred Location  
22 List (including a statement indicating whether the Applicant has accepted the Conditions).

23 (6) Any additional proposed locations for the Surface-Mounted Facility identified by any City  
24 department that reviewed the Applicant's Preferred Location List (including a statement indicating  
25 whether the Applicant has accepted the proposed locations).

1 (7) The procedure for protesting any or all of the Preferred Locations for the Surface-Mounted  
2 Facility Notice of Intent.

3 (8) The Applicant's contact information for obtaining information related to the Notice of  
4 Intent and/or the technical requirements for the proposed Surface-Mounted Facility.

5 (9) A statement that more information about the proposed Notice of Intent can be obtained  
6 from the Applicant and more information about submitting a protest can be obtained from the  
7 Department.

8 (10) Language Requirement. The Department may require an Applicant to translate the Notice  
9 of Intent into such language(s) that the Department determines are appropriate based on the locations  
10 for the proposed Surface-Mounted Facility contained in the Notice of Intent.

11 (d) Filing with the Department. The Applicant shall file with the Department proof that the Applicant  
12 has complied with the notice requirements contained herein.

13  
14 **SEC. 2714. PROTEST OF APPLICANT'S PREFERRED LOCATIONS.**

15 (a) Protest Allowed. As part of the Pre-Application Approval Process, the Department shall allow any  
16 Person affected by a proposed Surface-Mounted Facility to protest an Applicant's Preferred Locations  
17 for a Surface-Mounted Facility.

18 (b) Protest Procedure. A protest must be in writing and must be submitted to the Department within  
19 10 days of the date the Notice of Intent was mailed and posted as required under Section 2713.

20 (c) Hearing Required. If a protest is timely submitted, the Department shall hold a hearing. The  
21 Department shall set a date for the hearing for no more than 20 days after the Department's receipt of  
22 the protest.

23 (d) Notice of Hearing Date. The Department shall send written notice to any Person submitting a  
24 protest, to the Applicant, and to any City department that reviewed the Preferred Location List of the  
25 date the Department has set for the hearing at least 7 days before the date set for the hearing. The

1 Department shall follow its regular procedures for notifying the general public of the date set for the  
2 hearing.

3 (e) Hearing Officer. The Department shall appoint an impartial hearing officer to conduct a public  
4 hearing on a protest.

5 (f) Hearing Record. The hearing record shall include:

6 \_\_\_\_\_ (1) Records of any community meetings held to discuss the Preferred Location List;

7 \_\_\_\_\_ (2) The Preferred Location List;

8 \_\_\_\_\_ (3) Any written determination from the Department, the Planning Department, or the  
9 Recreation and Park Department (as applicable), including any Conditions and/or additional  
10 proposed locations identified by such City department;

11 \_\_\_\_\_ (4) Any further written evidence from any City department submitted either prior to or during  
12 the hearing;

13 \_\_\_\_\_ (5) Any written submissions from the Applicant, any Person submitting a protest, or any other  
14 interested Person submitted either prior to or during the hearing; and

15 \_\_\_\_\_ (6) Any oral testimony from any City department, the Applicant, any Person submitting a  
16 protest, or any interested Person taken during the hearing.

17 (g) Hearing Officer's Report.

18 \_\_\_\_\_ (1) The hearing officer shall issue a written report and recommendation within 5 days of the  
19 close of evidence.

20 \_\_\_\_\_ (2) The hearing officer shall include in the report a summary of the evidence and a  
21 recommendation to the Director.

22 \_\_\_\_\_ (3) The hearing officer may recommend that the Director approve one of the Applicant's  
23 Preferred Locations, and will base such a recommendation upon the following matters only:

24 \_\_\_\_\_ (A) Which of the Preferred Locations best complies with this Article 27.

1 (B) Whether the Department's approval of the Preferred Location should include any of  
2 the Conditions recommended by a City department.

3 (C) Whether any of the additional proposed locations recommended by a City  
4 department would better comply with this Article 27 than any of the Applicant's Preferred Locations.

5 (4) The hearing officer may recommend that the Director deny all of the Applicant's Preferred  
6 Locations for the proposed Surface-Mounted Facility should the hearing officer determine that:

7 (A) None of the Applicant's Preferred Locations complies with this Article 27; or

8 (B) The Applicant will not accept the Conditions recommended by a City department  
9 that the hearing officer determines are necessary to comply with this Article 27; or

10 (C) The Applicant will not agree to install the Surface-Mounted Facility in one of the  
11 additional proposed locations recommended by a City department.

12 (h) Director's Decision. The Director shall issue a written decision adopting, modifying, or rejecting  
13 the hearing officer's written report and recommendation within 5 days of the Director's receipt of the  
14 hearing officer's report.

15  
16 **SEC. 2715. APPLICATION PROCESS FOR SURFACE-MOUNTED FACILITY SITE PERMIT.**

17 (a) Application. An Application for a Surface-Mounted Facility Site Permit shall contain such  
18 information as the Department shall determine is necessary by regulation or order.

19 (b) Time for Application.

20 (1) If, pursuant to Section 2703(b), the Department did not require the Applicant to follow the  
21 Pre-Application Approval Process, an Application may be submitted immediately upon the  
22 Department's determination there is only one feasible location for the proposed Surface-Mounted  
23 Facility.

24 (2) If the Pre-Application Approval Process has been completed, an Application may be  
25 submitted to the Department as further described below:

- 1 (A) If a timely protest to a Notice of Intent was not submitted immediately upon the  
2 expiration of the protest period.
- 3 (B) If a timely protest to a Notice of Intent was submitted immediately upon receipt of  
4 the Director's decision issued after the hearing.
- 5 (c) Completion Notice.
- 6 (1) Upon receipt of an Application, the Department shall first determine whether the  
7 Application is complete. The Department will notify the Applicant within 3 days whether the  
8 Application is complete.
- 9 (2) An Application is not complete if the Applicant does not specify that the location for the  
10 proposed Surface-Mounted Facility has been approved by the Department, or that the Department has  
11 waived the required Pre-Application Approval Process pursuant to Section 2703(b), and that the  
12 Applicant will comply with all of the Conditions of approval imposed by any City department or in a  
13 Director's decision issued after a hearing.
- 14 (d) Reasons for Denial.
- 15 (1) If, pursuant to Section 2703(b), the Department waived the Pre-Application Approval  
16 Process for its proposed location for a Surface Mounted Facility, the Department may deny an  
17 Application at the Applicant's selected location if the Applicant rejects any of the Conditions proposed  
18 by any City department that reviewed the Application
- 19 (2) If a timely protest was not submitted, the Department may deny an Application at the  
20 location identified in the Notice of Intent if the Applicant rejects any of the Conditions proposed by  
21 any City department that reviewed the Application.
- 22 (3) If a timely protest was submitted, the Department shall deny an Application if the Director  
23 has not approved a location for the proposed Surface-Mounted Facility or if the Applicant rejects any  
24 of the Conditions set forth in the Director's decision.
- 25 (e) Approval of Location.

1 (1) If, pursuant to Section 2703(b), the Department waived the Pre-Application Approval  
2 Process for its proposed location for a Surface Mounted Facility, the Department shall approve the  
3 location identified by the Applicant.

4 (2) If no protest was submitted, the Department shall evaluate the proposed Preferred  
5 Locations in the order ranked by the Applicant.

6 (3) If a protest was submitted, the Department shall approve the proposed location contained  
7 in the Director's decision.

8 (f) Final Determination. The Department shall finally approve or deny an Application at the  
9 Applicant's selected location within 2 days after the Department's determination that the Application  
10 is complete.

11  
12 **SEC. 2716. NOTICE OF FINAL DETERMINATION.**

13 (a) Notice by Mail.

14 (1) The Department shall promptly mail a notice of final determination regarding an  
15 Application for a Surface-Mounted Facility Site Permit to both the Applicant and to any neighborhood  
16 association identified by the Planning Department for any neighborhood within 300 feet of the  
17 approved Surface-Mounted Facility.

18 (2) If a protest to a Notice of Intent was submitted, in addition to the Applicant and the relevant  
19 neighborhood associations identified in subsection (a)(2) above, the Department shall also promptly  
20 mail a notice of final determination regarding an Application to any Person who either filed a protest,  
21 submitted evidence, or attended at the hearing, provided that person's name and address are known to  
22 the Department.

23 (b) Posting of Notice. The Department shall require the Applicant to promptly post notice of a  
24 Department final determination regarding an Application in conspicuous places throughout the block  
25 face where the approved Surface-Mounted Facility will be located.

1 (c) Contents of Notice. A notice of final determination regarding an Application shall contain such  
2 information as the Department reasonably requires.

3 (d) Compliance with Notice Requirement. The Department may require the Applicant to provide the  
4 Department with such evidence as the Department may require of the Applicant's compliance with the  
5 notice requirements of this Section.

6  
7 **SEC. 2717. APPEALS.**

8 (a) Appealable Determinations. The Department's approval or denial of an Application for a Surface-  
9 Mounted Facility Site Permit may be appealed to the Board of Appeals.

10 (b) Board of Appeals Review. Upon such appeal, the Board of Appeals shall determine whether the  
11 final determination was correct under the provisions of this Article 27.

12  
13 **SEC. 2718. EXCAVATION REQUIREMENTS.**

14 The requirements of Subarticles V and VI of Article 2.4 of the Public Works Code, and any  
15 Department regulation order related to Article 2.4, shall apply to any excavation required to install a  
16 Surface-Mounted Facility in the Public Rights-of-Way. The Department may invoke the procedures  
17 contained in Subarticle VII of Article 2.4 of the Public Works Code to enforce any violations of the  
18 requirements of Subarticles V and VI.

19  
20 **SEC. 2719. COMPLIANCE.**

21 Any Surface-Mounted Facility installed in the Public Rights-of-Way pursuant to a Surface-  
22 Mounted Facility Site Permit issued under this Article 27 shall be installed in a manner that complies  
23 with the terms and conditions of the Permit and this Article 27.

24  
25 **SEC. 2720. NOTICE OF COMPLETION AND INSPECTION.**

1 (a) Notice of Completion. A Permittee shall notify the Department immediately upon completion of  
2 the installation of a Surface-Mounted Facility.

3 (b) Inspection. The Department shall inspect a Surface-Mounted Facility installed in the Public  
4 Rights-of-Way within a reasonable time after a Permittee provides the Department with a notice of  
5 completion required under subsection (a) above. The Department shall determine during the  
6 inspection whether the installation is in accordance with the requirements of the Surface-Mounted  
7 Facility Site Permit.

8  
9 **SEC 2721. ADDITIONAL PERMIT REQUIREMENTS.**

10 (a) Permittee's Use of the Public Rights-of-Way. A Permittee's use of the Public Rights-of-Way to  
11 construct, install, and maintain a Surface-Mounted Facility shall be subordinate to any prior lawful  
12 occupancy and the continuing right of the City to use and occupy the Public Rights-of-Way, or any  
13 part thereof, exclusively or concurrently with any other Person or Persons, and further subject to the  
14 public easement for streets and any and all other deeds, easements, dedications, conditions,  
15 covenants, restrictions, encumbrances, franchises and claims of title which may affect the Public  
16 Rights-of-Way.

17 (b) Removal or Relocation. When made necessary by any work to be performed under the  
18 governmental authority of the City (including but not limited to any lawful change of grade, alignment  
19 or width of any street, or construction of City facilities of any kind), or when necessary to protect the  
20 public health, safety or welfare, a Permittee shall at its own cost and expense temporarily or  
21 permanently remove, relocate, adjust, and/or support a Surface-Mounted Facility or any part thereof,  
22 to such other locations in the Public Rights-of-Way, in such manner as appropriate and as may be  
23 approved by the City in writing and in advance, or otherwise required by the City. The City may not  
24 unreasonably withhold its approval of any plan for removal, relocation, adjustment, and/or support of  
25 a Surface-Mounted Facility ordered pursuant to this Section. Such removal, relocation, adjustment,

1 and/or support shall be completed within the time and manner prescribed by the City; however, where  
2 feasible the City may require the Permittee to follow the procedures set forth in this Article 27 to  
3 obtain a new site for the Surface-Mounted Facility.

4 (c) Public Rights-of-Way Restoration. Whenever the Department requires a Permittee to remove,  
5 relocate, adjust, and/or support a Surface-Mounted Facility to ensure the public health, safety or  
6 welfare the Permittee shall, after such work is complete, at its own cost and expense, promptly restore  
7 the Public Rights-of-Way in accordance with Applicable Law. If a Permittee fails to restore the Public  
8 Rights-of-Way in accordance with Applicable Law, the Department shall have the option to perform or  
9 cause to be performed such restoration in such manner as the Director deems expedient and  
10 appropriate on behalf of the Permittee and charge the actual costs incurred including, but not limited  
11 to administrative costs, to the Permittee.

12 (d) City Costs Reimbursement. If a Permittee does not remove, relocate, adjust, and/or support a  
13 Surface-Mounted Facility in the manner and time prescribed by the Department, the Department shall  
14 take all reasonable, necessary, and appropriate action, including removing the Surface-Mounted  
15 Facility, and may charge the Permittee the reasonable costs actually incurred including, but not  
16 limited to, administrative costs. Upon the receipt of a demand for payment by the Department, the  
17 Permittee shall reimburse the City for any costs incurred by the Department to remove a Surface-  
18 Mounted Facility or to restore the Public Rights-of-Way or the costs may be deducted from the  
19 Permittee's deposit under Section 2725.

20  
21 **SEC. 2722. POST-INSTALLATION OBLIGATIONS.**

22 (a) Required Signage. A Permittee shall place a sign on a permitted Surface-Mounted Facility that  
23 shall contain the Permittee's name and provide a telephone number for people to call to notify the  
24 Permittee that there is damage to or Graffiti on a Surface-Mounted Facility or associated landscaping  
25 is in need of maintenance. A telephone call to that number will be considered notice to the Permittee.

1 (b) Surface-Mounted Facility Maintenance. A Permittee shall be solely responsible for maintaining a  
2 Surface-Mounted Facility installed in the Public Rights-of-Way in a clean and safe condition. A  
3 Permittee shall repair any damage to a Surface-Mounted Facility within a reasonable time after  
4 discovering or being notified of such damage to a Surface-Mounted Facility.

5 (c) Landscaping Maintenance. A Permittee shall be solely responsible for the maintenance of any  
6 installed landscaping or street tree installed by the Permittee as a Condition of the Department's  
7 issuance of a Surface-Mounted Facility Site Permit for so long as the permitted Surface-Mounted  
8 Facility remains at the location. Such landscaping shall be kept in a state of good visual quality, with  
9 any dead or diseased material promptly removed and replaced. Any litter accumulating within the  
10 landscaped area shall be removed within a reasonable time.

11 (d) Graffiti Removal. A Permittee shall be solely responsible for the removal of any Graffiti from  
12 Surface-Mounted Facility installed in the Public Rights-of-Way. A Permittee shall remove all Graffiti  
13 from a Surface-Mounted Facility within 72 hours after discovering such Graffiti during an inspection  
14 or being notified that there is Graffiti on a Surface-Mounted Facility.

15 (e) Inspection Required. A Permittee shall regularly inspect each Surface-Mounted Facility installed  
16 in the Public Rights-of-Way to determine whether any of its Surface-Mounted Facilities are damaged,  
17 in need a landscaping maintenance, or have been tagged with Graffiti.

18 (f) Records. A Permittee shall maintain written records of all inspections, repairs to, and maintenance  
19 of any permitted Surface-Mounted Facilities in the Public Rights-of-Way in such form as may be  
20 required by the Department. The Department may require that a copy of these written records be sent  
21 to the Department on a regular basis.

22  
23 **SEC. 2723. VIOLATIONS.**

24 (a) Notice of Deficiency. If the Department determines, either after an inspection required under  
25 Section 2720(b) or at any other time, that a Surface-Mounted Facility is not in compliance with the

1 Surface-Mounted Facility Site Permit, this Article 27, or other Applicable Law, the Department shall  
2 issue a notice of deficiency and require the Permittee to take corrective action to bring the Surface-  
3 Mounted Facility into compliance.

4 (b) Department Remedies.

5 (1) If a Permittee fails to take corrective action with respect to a Surface-Mounted Facility  
6 within a reasonable time after receiving a notice of deficiency the Department shall:

7 (A) Take all reasonable, necessary, and appropriate action to remedy a Permittee's  
8 non-compliance; or

9 (B) Charge to a Permittee the reasonable costs that the Department has actually  
10 incurred including, but not limited to, administrative costs. Upon the receipt of a demand for payment  
11 from the Department, the Permittee shall immediately reimburse the Department for any such costs  
12 incurred by the Department or the costs may be deducted from the Permittee's deposit under Section  
13 2725.

14 (C) Deny any pending Application submitted by the Permittee.

15 (2) In the event the required corrective action includes Graffiti removal, the Department may  
16 all issue a fine of up \$1,000 per day. Upon the receipt of such a fine from the Department, the  
17 Permittee shall pay the fine immediately or the fine may be deducted from the Permittee's deposit  
18 under Section 2725.

19 (3) In addition to the foregoing, if the Department determines that a Permittee has repeatedly  
20 failed to take corrective action with respect to a Surface-Mounted Facility after receiving a notice of  
21 deficiency the Department may require the Permittee to remove the non-compliant Surface-Mounted  
22 Facility from the Public Rights-of-Way.

23  
24 **SEC. 2724. ABANDONMENT.**

1 (a) Notice of Abandonment. A Permittee shall notify the Department, or the Department may  
2 determine and notify a Permittee, that a permitted Surface-Mounted Facility has been abandoned. In  
3 such event, a Permittee shall promptly remove the abandoned Surface-Mounted Facility as required  
4 by the Department and at Permittee's expense.

5 (b) Certification of Continued Use. Should the Department have reason to believe a permitted  
6 Surface-Mounted Facility has been abandoned, the Department may request that a Permittee certify  
7 that the permitted Surface-Mounted Facility is still in use. If the Permittee fails to timely respond to  
8 the Department's request, the Department may determine that the permitted Surface-Mounted Facility  
9 has been abandoned.

10 (c) Remedy for Non-Compliance. If a Permittee fails to remove an abandoned Surface-Mounted  
11 Facility within a reasonable period of time after notifying the Department or receiving a notice of  
12 abandonment, the Department shall take all reasonable, necessary, and appropriate action to remedy  
13 the Permittee's failure to comply with the notice (including removing the Surface-Mounted Facility)  
14 and may charge to the Permittee the reasonable costs the City has actually incurred including, but not  
15 limited to, administrative costs.

16  
17 **SEC. 2725. DEPOSIT.**

18 Each Permittee shall submit and maintain with the Department a bond, cash deposit, or other  
19 security acceptable to the Department securing the faithful performance of the obligations of the  
20 Permittee and its agents under any and all Surface-Mounted Facility Site Permits issued to the  
21 Permittee under this Article 27. The deposit shall be in the sum of \$25,000 in favor of the  
22 "Department of Public Works, City and County of San Francisco." If, in accordance with this Article  
23 27, the Director deducts any amounts from such a deposit, the Permittee must restore the full amount  
24 of the deposit prior to the Department's issuance of a subsequent Permit. The Department shall

1 return the deposit to the Permittee should Permittee cease to operate any Surface-Mounted Facilities  
2 in the Public Rights-of-Way.

3  
4 **SEC. 2726. LIABILITY.**

5 As a condition of a Surface-Mounted Facility Site Permit, each Permittee agrees on behalf of  
6 itself and any agents, successors, or assigns to be wholly responsible for the construction, installation,  
7 and maintenance of any permitted Surface-Mounted Facility. Each Permittee and its agents are  
8 jointly and severally liable for all consequences of such construction, installation, and maintenance of  
9 a Surface-Mounted Facility. The issuance of any Permit, inspection, repair suggestion, approval, or  
10 acquiescence of any Person affiliated with the City shall not excuse any Permittee or its agents from  
11 such responsibility or liability.

12  
13 **SEC. 2727. INDEMNIFICATION AND DEFENSE OF CITY.**

14 (a) Indemnification of City. As a condition of a Surface-Mounted Facility Site Permit, each Permittee  
15 agrees on behalf of itself and its agents, successors, or assigns, to indemnify, defend, protect, and hold  
16 harmless the City from and against any and all claims of any kind allegedly arising directly or  
17 indirectly from the following:

18 (1) Any act, omission, or negligence of a Permittee or its any agents, successors, or assigns  
19 while engaged in the construction, installation, or maintenance of any Surface-Mounted Facility  
20 authorized by a Permit, or while in or about the Public Rights-of-Way that are subject to the Permit,  
21 for any reason connected in any way whatsoever with the performance of the work authorized by the  
22 Permit, or allegedly resulting directly or indirectly from the construction, installation, or maintenance  
23 of any Surface-Mounted Facility authorized under the Permit;

24 (2) Any accident, damage, death, or injury to any of a Permittee's contractors or  
25 subcontractors, or any officers, agents, or employees of either of them, while engaged in the

1 performance of the construction, installation, or maintenance of any Surface-Mounted Facility  
2 authorized by a Permit, or while in or about the Public Rights-of-Way that are subject to the Permit,  
3 for any reason connected with the performance of the work authorized by the Permit, including from  
4 exposure to radio frequency emissions;

5 (3) Any accident, damage, death, or injury to any Person or accident, damage, or injury to any  
6 real or personal property in, upon, or in any way allegedly connected with the construction,  
7 installation, or maintenance of any Surface-Mounted Facility authorized by a Permit, or while in or  
8 about the Public Rights-of-Way that are subject to the Permit, from any causes or claims arising at  
9 any time, including any causes or claims arising from exposure to radio frequency emissions; and

10 (4) Any release or discharge, or threatened release or discharge, of any hazardous material  
11 caused or allowed by a Permittee or its agents about, in, on, or under the Public Rights-of-Way.

12 (b) Defense of City. Each Permittee agrees that, upon the request of the City, the Permittee, at no cost  
13 or expense to the City, shall indemnify, defend, and hold harmless the City against any claims as set  
14 forth in subsection (a) above, regardless of the alleged negligence of City or any other party, except  
15 only for claims resulting directly from the sole negligence or willful misconduct of the City. Each  
16 Permittee specifically acknowledges and agrees that it has an immediate and independent obligation  
17 to defend the City from any claims that actually or potentially fall within the indemnity provision, even  
18 if the allegations are or may be groundless, false, or fraudulent, which obligation arises at the time  
19 such claim is tendered to the Permittee or its agent by the City and continues at all times thereafter.  
20 Each Permittee further agrees that the City shall have a cause of action for indemnity against the  
21 Permittee for any costs the City may be required to pay as a result of defending or satisfying any  
22 claims that arise from or in connection with a Permit, except only for claims resulting directly from  
23 the sole negligence or willful misconduct of the City. Each Permittee further agrees that the  
24 indemnification obligations assumed under a Permit shall survive expiration of the Permit or  
25 completion of installation of any Surface-Mounted Facility authorized by the Permit.

1 (c) Additional Requirements. The Department may specify in a Permit such additional  
2 indemnification requirements as are necessary to protect the City from risks of liability associated  
3 with the Permittee's construction, installation, and maintenance of a Surface-Mounted Facility.

4  
5 **SEC. 2728. INSURANCE.**

6 (a) Minimum Insurance Coverages. The Department shall require that each Permittee maintain in full  
7 force and effect, throughout the term of a Surface-Mounted Facility Site Permit, an insurance policy  
8 or policies issued by an insurance company or companies satisfactory to the City's Risk Manager.  
9 Such policy or policies shall, at a minimum, afford insurance covering all of the Permittee's  
10 operations, vehicles, and employees, as follows:

11 \_\_\_\_\_ (1) Workers' compensation, in statutory amounts, with employers' liability limits not less than  
12 \$1,000,000 each accident, injury, or illness.

13 \_\_\_\_\_ (2) Commercial general liability insurance with limits not less than \$1,000,000 each  
14 occurrence combined single limit for bodily injury and property damage, including contractual  
15 liability, personal injury, products and completed operations.

16 \_\_\_\_\_ (3) Commercial automobile liability insurance with limits not less than \$1,000,000 each  
17 occurrence combined single limit for bodily injury and property damage, including owned, non-owned  
18 and hired auto coverage, as applicable.

19 \_\_\_\_\_ (4) Contractors' pollution liability insurance, on an occurrence form, with limits not less than  
20 \$1,000,000 each occurrence combined single limit for bodily injury and property damage and any  
21 deductible not to \$25,000 each occurrence.

22 (b) Other Insurance Requirements.

23 \_\_\_\_\_ (1) Said policy or policies shall include the City and its officers and employees jointly and  
24 severally as additional insureds, shall apply as primary insurance, shall stipulate that no other

1 insurance effected by the City will be called on to contribute to a loss covered thereunder, and shall  
2 provide for severability of interests.

3 (2) Said policy or policies shall provide that an act or omission of one insured, which would  
4 void or otherwise reduce coverage, shall not reduce or void the coverage as to any other insured.  
5 Said policy or policies shall afford full coverage for any claims based on acts, omissions, injury, or  
6 damage which occurred or arose, or the onset of which occurred or arose, in whole or in part, during  
7 the policy period.

8 (3) Said policy or policies shall be endorsed to provide 30 days advance written notice of  
9 cancellation or any material change to the Department.

10 (4) Should any of the required insurance be provided under a claims-made form, a Permittee  
11 shall maintain such coverage continuously.

12 (5) Should any of the required insurance be provided under a form of coverage that includes a  
13 general annual aggregate limit or provides that claims investigation or legal defense costs be included  
14 in such general annual aggregate limit, such general aggregate limit shall be double the occurrence  
15 or claims limits specified in subsection (a) above.

16 (c) Indemnity Obligation. Such insurance shall in no way relieve or decrease a Permittee's or its  
17 agent's obligation to indemnify the City under Section 2727.

18 (d) Proof of Insurance. Before the Department will issue a Permit, a Permittee shall furnish to the  
19 Department certificates of insurance and additional insured policy endorsements with insurers that  
20 are authorized to do business in the State of California and that are satisfactory to the City evidencing  
21 all coverages set forth in subsection (a) above.

22 (e) Self-Insurance. Where a Permittee is self-insured, and such insurance is no less broad and affords  
23 no less protection to the City than the requirements specified in subsection (a) above, the Department,  
24 in consultation with the City's Risk Manager, may accept such insurance as satisfying the

25

1 requirements of subsection (a) above. Evidence of such self-insurance shall be provided in the  
2 manner required by the City's Risk Manager.

3  
4 **SEC. 2729. CITY DEPARTMENT FEES AND COSTS.**

5 (a) In General. City departments shall impose fees for their review of an Application for a Surface-  
6 Mounted Facility Site Permit, which for purposes of this Section includes their review of an  
7 Applicant's Preferred Location List. The purpose of these fees is to enable City departments to  
8 recover their costs related to reviewing an Application or Preferred Location List.

9 (b) Fees for Review of Preferred Location Lists.

10 (1) The Department shall require a non-refundable fee of \$150 for the Department's review of  
11 the Preferred Location List.

12 (2) The Planning Department shall require a non-refundable fee of \$286 for the Planning  
13 Department's review of each location on the Preferred Location List.

14 (3) The Recreation and Park Department shall require a non-refundable fee of \$396 for the  
15 Recreation and Park Department's review of a Preferred Location List.

16 (4) In the event a hearing is required following an Applicant's submission of a Preferred  
17 Location List to the Department, the Applicant shall pay Department a non-refundable hearing fee of  
18 \$150 for each hearing.

19 (c) Application Fee. Each Applicant shall pay to the Department a non-refundable Application fee of  
20 \$150.

21 (d) Inspection Fee. Each Permittee shall pay the Department a non-refundable time and materials  
22 inspection fee not to exceed \$500 to inspect a permitted Surface-Mounted Service Facility as required  
23 under Section 2720(b).

24 (e) Adjustment of Fees for CPI. Beginning with fiscal year 2015-2016, the fees established herein may  
25 be adjusted each year, without further action by the Board of Supervisors, to reflect changes in the

1 relevant Consumer Price Index ("CPI") (as determined by the Controller). No later than April 15th  
2 of each year, the Director shall submit the current fee schedule to the Controller, who shall apply the  
3 CPI adjustment to produce a new fee schedule for the following year. No later than May 15th of each  
4 year, the Controller shall file a report with the Board of Supervisors reporting the new fee and  
5 certifying that the fees produce sufficient revenue to support the costs of providing the services for  
6 which the for a Surface-Mounted Facility Site Permit fee is charged, and that the fees do not produce  
7 revenue that exceeds the costs of providing the services for which each Permit fee is charged.

8 (f) Discretion to Require Additional Fees. In instances where the review of a Preferred Location List  
9 or Application is or will be unusually costly to the Department or to other City departments, the  
10 Director, in his or her discretion, may, after consulting with other applicable City departments,  
11 agencies, boards, or commissions, require an Applicant to pay a sum in excess of the amounts charged  
12 pursuant to this Section. This additional sum shall be sufficient to recover actual costs incurred by the  
13 Department and/or other City departments, agencies, boards, or commissions, in connection with an  
14 Application and shall be charged on a time and materials basis. Whenever additional fees are  
15 charged, the Director, upon request, shall provide in writing the basis for the additional fees and an  
16 estimate of the additional fees.

17 (g) Deposit of Fees. All fees paid to the Department for Surface-Mounted Facility Site Permits shall  
18 be deposited in the Public Works Excavation Fund established by San Francisco Administrative Code  
19 Section 10.100-230. All other fees shall go directly to the appropriate City department.

20 (h) Reimbursement of City Costs. A City department may determine that it requires the services of a  
21 technical expert in order to evaluate an Application, which for purposes of this Section includes their  
22 review of an Applicant's Preferred Location List. In such case, the Department shall not approve the  
23 Application unless the Applicant agrees to reimburse the applicable City department for the  
24 reasonable costs incurred by that department for the services of a technical expert.

1 **SEC. 2730. DEPARTMENT MEETINGS AND TECHNOLOGICAL ADVANCEMENTS.**

2 *(a) Department Meetings. Once a year, the Department will convene a meeting with Persons who*  
3 *submitted Applications for Surface-Mounted Facility Site Permits in the past year and any other*  
4 *interested Persons to discuss issues related to the permitting and construction of Surface-Mounted*  
5 *Facilities in the Public Rights-of-Way. The Department may also invite equipment vendors to the*  
6 *meeting. The Department will also post a public notice of the meetings. At such meetings, the*  
7 *Department will discuss technological advancements, Graffiti and blight abatement, and the efficacy*  
8 *of community outreach conducted by the Applicants.*

9 *(b) Technological Advancements. Should the Department determine that advances in technology have*  
10 *made it both economically and technologically feasible for a Permittee to place an existing Surface-*  
11 *Mounted Facility underground the Department may require that any Surface-Mounted Facility the*  
12 *Department permitted under this Article be placed underground. The Department shall notify a*  
13 *Permittee of this determination in writing and shall provide the Permittee with reasonable time to*  
14 *comply with the undergrounding requirement.*

15  
16 **SEC. 2731. SEVERABILITY.**

17 *If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Article 27*  
18 *or any part thereof, is for any reason held to be unconstitutional, invalid, or ineffective by any court of*  
19 *competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining*  
20 *portions of this Article 27 or any part thereof. The Board of Supervisors hereby declares that it would*  
21 *have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof,*  
22 *irrespective of the fact that any one or more sections, subsections, subdivision paragraphs, sentences,*  
23 *clauses, or phrases be declared unconstitutional, invalid or ineffective.*

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

5 Section 4. Retroactivity. The Board of Supervisor intends that the requirements of this  
6 ordinance shall be retroactive. Any permit under Article 2.4 of the Public Works Code that is  
7 not final on the effective date of this ordinance shall be subject to the requirements of this  
8 ordinance.

9 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
10 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
11 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
12 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
13 additions, and Board amendment deletions in accordance with the "Note" that appears under  
14 the official title of the ordinance.

15  
16 APPROVED AS TO FORM:  
17 DENNIS J. HERRERA, City Attorney

18  
19 By: \_\_\_\_\_  
20 William K. Sanders  
21 Deputy City Attorney

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