

1 [Public Works Code – Minor Encroachment Fee Waiver for Affordable Housing Projects]

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3 **Ordinance amending Public Works Code Section 723.2 to provide for a waiver of the**
4 **annual public right-of-way occupancy fee for minor sidewalk encroachment permits**
5 **necessary for the development of 100% affordable housing projects and adopting**
6 **environmental findings.**

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

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

11 Section 1. The Planning Department has determined that the actions contemplated in
12 this Ordinance are in compliance with the California Environmental Quality Act (California
13 Public Resources Code sections 21000 et seq.). Said determination is on file with the Clerk of
14 the Board of Supervisors in File No. _____ and is incorporated herein by reference.

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

17 **SEC. 723.2. MINOR SIDEWALK ENCROACHMENTS.**

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

24 (b) Such encroachments shall not occupy more than 10 percent of the area of the
25 sidewalk fronting the property nor more than 25 percent of the width of the sidewalk, unless

1 the Director of Public Works determines that such restrictions are not applicable due to the
2 nature of the encroachment. The Director may require further restrictions or modifications and
3 impose such conditions as he or she deems necessary. No advertisement shall be permitted
4 on the encroachments.

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

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

17 (e) Each permit issued under the provisions of this Section shall not become effective
18 until the permit has been signed by the owner or the owner's authorized agent and a copy
19 thereof has been recorded in the office of the Recorder of the City and County of San
20 Francisco. Within 15 days following the approval, denial or revocation of a permit by the
21 Director, any person may file a notice of appeal as follows:

22 (1) Appeals of the revocation or denial of a permit issued by the Director for the
23 following encroachments that impede or otherwise impact the Central Subway Corridor, as
24 defined in Section 723.3(3) of this Code: subsidewalk encroachments below the public right-
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1 of-way or other encroachments in, on, and/or below the public right-of-way may be appealed
2 to the Board of Supervisors by filing a notice to appeal with the Clerk of the Board of
3 Supervisors.

4 (2) Appeals of the approval, denial or revocation of all other permits may be appealed
5 by filing a notice of appeal with the Board of Appeals.

6 (3) 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 Board of Supervisors or the
11 Board of Appeals. 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) Pending decision by the Board of Supervisors, the Board of Appeals or the
16 Building Inspection Commission, the permit decision by the Director shall be suspended.

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

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

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

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

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

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

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

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

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

14 (d) Underground storage tanks.

15 (3) For purposes of Subsection (k)(2), the term "site permit" also shall mean "building
16 permit."

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

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1 (5) Notwithstanding Subsection (k)(2), if a minor sidewalk encroachment permit is necessary
2 for the development of a project including residential units, all of which are affordable to low or
3 moderate income households as defined by the United States Housing and Urban Development
4 Department, then such project shall be exempt from payment of the public right-of-way occupancy
5 assessment fee.

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

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

10 (78) Notwithstanding this Subsection (k), the public right-of-way assessment fee for
11 underground vaults shall be as specified in Section 2.1.1 et seq.

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

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

By: _____
John D. Malamut
Deputy City Attorney