

1 [Public Works Code – Appellate body for minor sidewalk encroachments.]

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3 **Ordinance amending Public Works Code Section 723.2 to change the appellate body**  
4 **for Minor Sidewalk Encroachment Permits for subsidewalk encroachments from the**  
5 **Board of Appeals to the Board of Supervisors.**

6 NOTE: Additions are *single-underline italics Times New Roman*;  
7 deletions are ~~*strike-through italics Times New Roman*~~.  
8 Board amendment additions are double-underlined;  
9 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 Board of Appeals.~~ as  
18 follows:

19 (1) Appeals of the revocation or denial of a permit issued by the Director for the following  
20 encroachments that impede or otherwise impact the Central Subway Corridor, as defined in Section  
21 723.3(3) of this Code: subsidewalk encroachments below the public right-of-way or other  
22 encroachments in, on, and/or below the public right-of-way may be appealed to the Board of  
23 Supervisors by filing a notice to appeal with the Clerk of the Board of Supervisors.

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

1           (3) In the alternative, when the encroachment is related to building construction,  
2 rehabilitation or maintenance, any person may appeal the encroachment permit decision to  
3 the Building Inspection Commission. A person waives his or her right to appeal to the Building  
4 Inspection Commission encroachment permit decisions relating to building construction,  
5 rehabilitation or maintenance by instead filing the appeal with the Board of Supervisors or the  
6 Board of Appeals. No encroachment permit decision may be appealed to both bodies.

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

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

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

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

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

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

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

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

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

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

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

6 (d) Underground storage tanks.

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

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

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

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

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

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

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By:

STEPHANIE J. STUART  
Deputy City Attorney