

BOARD of SUPERVISORS



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## MEMORANDUM

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Date: May 19, 2023  
To: Planning Department / Commission  
From: Brent Jalipa, Clerk of the Budget and Finance Committee  
Subject: Board of Supervisors Legislation Referral - File No. 230570  
Public Works Code - Waiver of Annual Occupancy Assessment Fee - Seal Rock Inn

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- California Environmental Quality Act (CEQA) Determination  
(*California Public Resources Code, Sections 21000 et seq.*)
  - Ordinance / Resolution
  - Ballot Measure
  
- Amendment to the Planning Code, including the following Findings:  
(*Planning Code, Section 302(b): 90 days for Planning Commission review*)
  - General Plan     Planning Code, Section 101.1     Planning Code, Section 302
  
- Amendment to the Administrative Code, involving Land Use/Planning  
(*Board Rule 3.23: 30 days for possible Planning Department review*)
  
- General Plan Referral for Non-Planning Code Amendments  
(*Charter, Section 4.105, and Administrative Code, Section 2A.53*)  
(Required for legislation concerning the acquisition, vacation, sale, or change in use of City property; subdivision of land; construction, improvement, extension, widening, narrowing, removal, or relocation of public ways, transportation routes, ground, open space, buildings, or structures; plans for public housing and publicly-assisted private housing; redevelopment plans; development agreements; the annual capital expenditure plan and six-year capital improvement program; and any capital improvement project or long-term financing proposal such as general obligation or revenue bonds.)
  
- Historic Preservation Commission
  - Landmark (*Planning Code, Section 1004.3*)
  - Cultural Districts (*Charter, Section 4.135 & Board Rule 3.23*)
  - Mills Act Contract (*Government Code, Section 50280*)
  - Designation for Significant/Contributory Buildings (*Planning Code, Article 11*)

Please send the Planning Department/Commission recommendation/determination to Brent Jalipa at [Brent.Jalipa@sfgov.org](mailto:Brent.Jalipa@sfgov.org).

1 [Public Works Code - Waiver of Annual Occupancy Assessment Fee - Seal Rock Inn]

2

3 **Ordinance waiving the public right-of-way occupancy assessment fee under Public**  
 4 **Works Code, Section 786.7, for a major encroachment permit associated with the Seal**  
 5 **Rock Inn at 545 Point Lobos Avenue; modifying a condition of Seal Rock Inn’s major**  
 6 **encroachment permit; and affirming the Planning Department’s determination under**  
 7 **the California Environmental Quality Act.**

8

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

12

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

14

15 Section 1. Findings.

16

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

21

b) The Seal Rock Inn is located at 545 Point Lobos Avenue next to the quiet, scenic  
 22 surroundings of Sutro Heights Park. During the COVID-19 pandemic, the restaurant at the  
 23 Seal Rock Inn shut down due to a lack of patronage at the hotel, causing the neighborhood to  
 24 lose the restaurant’s welcoming, family-friendly environment, great food, and spectacular

25

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1 views. The patio of this restaurant and planting on the opposite side of the hotel entrance are  
2 encroachments on the Point Lobos Avenue public right-of-way.

3 c) The Seal Rock Inn is critical to the economic vitality of the scenic Sutro Heights  
4 area, and without the restaurant the area is empty and desolate.

5 d) Re-opening the Seal Rock Inn restaurant is essential to revitalizing the area,  
6 bringing the Sutro Heights area back to life, and attracting new visitors to this destination near  
7 the Golden Gate National Recreation Area, the Cliff House, and Golden Gate Park.

8 e) In 1961, the Board of Supervisors adopted Resolution No. 631-61, which granted a  
9 major encroachment permit to the Seal Rock Inn (Public Works Permit 19MSE-00476) for use  
10 of the sidewalk area on Point Lobos Avenue. This Resolution is on file with the Clerk of the  
11 Board of Supervisors in File No. 759-60 and incorporated herein by reference. The permit  
12 covers what now is an enclosed dining area/terrace with a glass windbreak and other  
13 encroachments, including a retaining wall and landscaping.

14 f) Public Works Code Section 786.7 imposes an annual public right-of-way occupancy  
15 assessment fee on major encroachments based on the square footage of area occupied. The  
16 annual fee for the Seal Rock Inn major encroachment is approximately \$3,700.00.

17 g) On February 28, 2023, the Board of Supervisors adopted Resolution No. 089-23 to  
18 facilitate the revitalization of this valuable City destination by declaring its intent to waive the  
19 major encroachment annual occupancy assessment permit fee among other actions, so that  
20 the restaurant may open for business, unencumbered by payment of the annual fee. A copy  
21 of said Resolution is on file with the Clerk of the Board of Supervisors in File No. 230174, and  
22 is incorporated herein by reference.

23  
24 Section 2. Waiver of Annual Public Right-of-Way Occupancy Assessment Fee and  
25 Modification of Encroachment Permit Condition for Seal Rock Inn.

1 a) In recognition of the benefits to the community of the Seal Rock Inn’s publicly  
2 accessible patio and its landscaped area, the annual assessment fee set forth in Public Works  
3 Code Section 786.7 (estimated at approximately \$3,700 per year) is hereby waived to partially  
4 offset the costs of re-opening the restaurant and its publicly accessible patio. This waiver  
5 applies to any outstanding annual assessment fee and all future annual assessment fee  
6 payments under Public Works Code Section 786.7.

7 (b) In addition, the Board of Supervisors hereby modifies the major encroachment  
8 permit conditions to delete the condition requiring abatement of the commercial appearance of  
9 the encroachment. The Board of Supervisors finds that this condition no longer reflects  
10 current City policy regarding food service use encroachments on the public right-of-way.  
11

12 Section 3. Effective Date. This ordinance shall become effective 30 days after  
13 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
14 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
15 of Supervisors overrides the Mayor’s veto of the ordinance.  
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17 APPROVED AS TO FORM:  
18 DAVID CHIU, City Attorney

19 By: /s/ John D. Malamut  
20 JOHN D. MALAMUT  
21 Deputy City Attorney

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**LEGISLATIVE DIGEST**

[Public Works Code - Waiver of Annual Occupancy Assessment Fee - Seal Rock Inn]

**Ordinance waiving the public right-of-way occupancy assessment fee under Public Works Code, Section 786.7 for a major encroachment permit associated with the Seal Rock Inn at 545 Point Lobos Avenue; modifying a condition of Seal Rock Inn’s major encroachment permit; and affirming the Planning Department’s determination under the California Environmental Quality Act.**

Existing Law

In 1961, the Board of Supervisors (the “Board”) adopted Resolution No. 631-61 that granted a major encroachment permit to the Seal Rock Inn at 545 Point Lobos Avenue to occupy portions of the sidewalk area. Subsequently, the Board adopted Public Works Code Section 786.7 that imposes an annual public right-of-way occupancy assessment fee on major encroachments based on the square footage of area occupied. The annual fee for the Seal Rock Inn major encroachment, which includes a restaurant patio and planting area, is approximately \$3,700.00. On February 28, 2023, the Board adopted Resolution No. 089-23 to facilitate the revitalization of this valuable City destination by declaring its intent to waive the major encroachment annual occupancy assessment permit fee, among other actions.

Amendments to Current Law

The uncodified ordinance would waive all past and future annual occupancy assessment fees under Public Works Code Section 786.7 for the Seal Rock Inn major encroachment permit. The legislation also would modify a permit condition to remove a requirement that prohibits the commercial appearance of the encroachment.

## Introduction Form

*(by a Member of the Board of Supervisors or the Mayor)*

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee (Ordinance, Resolution, Motion or Charter Amendment)
- 2. Request for next printed agenda (For Adoption Without Committee Reference)  
*(Routine, non-controversial and/or commendatory matters only)*
- 3. Request for Hearing on a subject matter at Committee
- 4. Request for Letter beginning with "Supervisor  inquires..."
- 5. City Attorney Request
- 6. Call File No.  from Committee.
- 7. Budget and Legislative Analyst Request (attached written Motion)
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the Board on

The proposed legislation should be forwarded to the following (please check all appropriate boxes):

- Small Business Commission     Youth Commission     Ethics Commission  
 Planning Commission     Building Inspection Commission     Human Resources Department

General Plan Referral sent to the Planning Department (proposed legislation subject to Charter 4.105 & Admin 2A.53):

- Yes                       No

*(Note: For Imperative Agenda items (a Resolution not on the printed agenda), use the Imperative Agenda Form.)*

Sponsor(s):

Chan

Subject:

[Public Works Code - Waiver of Annual Occupancy Assessment Fee - Seal Rock Inn]

Long Title or text listed:

Ordinance waiving the public right-of-way occupancy assessment fee under Public Works Code to 786.7 for a major encroachment permit associated with the Seal Rock Inn at 545 Point Lobos Avenue; modifying a condition of Seal Rock Inn's major encroachment permit; and affirming the Planning Department's determination under the California Environmental Quality Act.

Signature of Sponsoring Supervisor:

