

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

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

6 Note: Additions are *single-underline italics Times New Roman*;
7 deletions are *strikethrough italics Times New Roman*.
8 Board amendment additions are double underlined.
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 *Clerk of the Board of*
18 ~~*Supervisors*~~*Board of Permit Appeals*. In the alternative, when the encroachment is related to
19 building construction, rehabilitation or maintenance, any person may appeal the
20 encroachment permit decision to the Building Inspection Commission. A person waives his or
21 her right to appeal to the Building Inspection Commission encroachment permit decisions
22 relating to building construction, rehabilitation or maintenance by instead filing the appeal with
23 the *Clerk of the Board of Supervisors*~~*Board of Permit Appeals*~~. No encroachment permit decision
24 may be appealed to both bodies.

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

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

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

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

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

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

5 (l) The Board of ~~Supervisors~~ Permit Appeals or the Building Inspection Commission may
6 affirm, reverse or modify any permit decision made by the Director of Public Works under the
7 provisions of this Section. The decision by the Board of ~~Supervisors~~ Permit Appeals or the
8 Building Inspection Commission is final.

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

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

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

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

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

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

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

21 (d) Underground storage tanks.

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

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

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

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

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

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