

1 [Sidewalk revitalization program.]

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3 **Ordinance amending Public Works Code Section 706 to deem unsafe sidewalk**
4 **conditions a public nuisance and establish a permit and inspection fee waiver for**
5 **participation in the City's sidewalk revitalization program and amending Section 707.1**
6 **to clarify provisions that treat the abatement costs for sidewalk remediation as a**
7 **special tax assessment.**

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

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

13 Section 1. Findings.

14 (a) Citywide there are 5,298 square blocks of sidewalks. The Department of Public
15 Works (DPW) estimates that 85% sidewalks are the responsibility of the fronting private
16 property owners to maintain in a safe condition.

17 (b) Currently, the Department of Public Works responds to citizen complaints
18 related to damaged sidewalks and does not proactively inspect or initiate repairs. The current
19 sidewalk inspection program is staffed with 4 inspectors and 1 supervisor who respond to
20 2,900 calls per year.

21 (c) Public Works Code Section 706 authorizes DPW to notify property owners that
22 fronting sidewalks are in disrepair and require that the owners abate the problem condition
23 within 30 days. If the owner fails to comply, DPW is authorized to complete the repairs and
24 bill the owner for all incurred costs. If the owner fails to pay the City's costs, the Department
25 initiates a process to impose a judgment lien on the private property. A judgment lien is not
paid until there is a change of title of the private property.

1 (d) While Public Works Code Section 707.1 provides an alternate lien process for
2 sidewalk repair costs that allows City to impose outstanding costs as a tax lien, such
3 provisions have not been updated to satisfy the requirements for such a lien process as set
4 out in the California Government Code.

5 (e) Under the present program, the City's sidewalk continue to deteriorate as most
6 sidewalk inspections and repairs are complaint-driven; repairs through the existing abatement
7 program are time consuming; the annual backlog of needed sidewalk repairs continues to
8 expand; and the inspection, repair, abatement, and revenue collection processes are
9 inadequate, cumbersome, and administratively expensive.

10 (f) In addition, claims for injury due to sidewalk damage present a significant liability
11 to the City; yet, total projects costs to repair all City- and privately-maintained sidewalks are
12 \$176 million.

13 (g) In light of the problems presented above, the Mayor and DPW have
14 collaborated on a pilot program for sidewalk revitalization in fiscal year 2006-07. This
15 program is proactive and premised on a 50-year cycle to repair all public- and privately-
16 maintained sidewalks identified for repair in coordination with City agencies and private
17 property owners. Under this program DPW will: (i) inform property owners about the new
18 sidewalk revitalization program in a targeted neighborhood area; (ii) inspect sidewalks and
19 notify property owners of needed repairs in that area and offer an established price for which
20 the City will perform the repairs; (iii) hold public hearings to finalize required repairs and
21 establish a date certain for completion; (iv) implement sidewalk construction and repair from
22 an outside contractor if property owners elect to participate in the sidewalk repair program;
23 and (v) bill property owners either by direct payment or through property tax.

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1 (h) This legislation along with companion legislation for a supplemental
2 appropriation will enable the City to implement this pilot program in an efficient and cost-
3 effective manner. Such companion legislation is on file with the Clerk of the Board of
4 Supervisors in File No. _____ and is incorporated herein by reference. DPW
5 estimates that within the first two years of the new program, DPW, on an annual basis, will
6 fully recover private property owner repair costs based on direct payments and property tax
7 receipts. Further, if the program is successful, DPW will propose expanding it in its fiscal year
8 2007-08 budget.

9 (i) As part of the City's sidewalk revitalization program, the Mayor's Office of
10 Housing will establish a sidewalk repair grant program. Such grants will be available to
11 qualifying low-income households consisting of 1, 2, or 3-unit residences and may offset some
12 or all of the charges for sidewalk repairs that the City's performs under the sidewalk
13 revitalization program. It is anticipated that the grant program will be modeled on the Mayor's
14 Office of Housing Utility Undergrounding Grant Program. The Mayor's Office of Housing will
15 coordinate with DPW to inform property owners of the criteria for qualifying households,
16 applications procedures and materials to request grants, and other information on the grant
17 program.

18 (j) This legislation is necessary to establish the legal framework to implement the
19 sidewalk revitalization program.

20 Section 2. The San Francisco Public Works Code is hereby amended by amending
21 Section 706, to read as follows:

22 SEC. 706. OWNERS OF FRONTAGE RESPONSIBLE FOR REPAIR— LIABILITY
23 FOR UNSAFE CONDITIONS.

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1 (a) It shall be the duty of the owners of lots or portions of lots immediately adjacent to
2 any portion of a public street, avenue, alley, lane, court or place to maintain the sidewalks and
3 sidewalk area, including any parking strip, parkway, automobile runway and curb, fronting or
4 adjacent to their property in good repair and condition. This duty shall include removal of any
5 unpermitted structure, including but not limited to unpermitted public pay telephones installed
6 in the sidewalk adjacent to the property. Any person who suffers injury or property damage as
7 a legal result of the failure of the owner to so maintain the sidewalks and sidewalk areas shall
8 have a cause of action for such injury or property damage against such property owner. The
9 City and County of San Francisco shall have a cause of action for indemnity against such
10 property owner for any damages it may be required to pay as satisfaction of any judgment or
11 settlement of any claim that results from injury to persons or property as a legal result of the
12 failure of the owner to maintain the sidewalks and sidewalk areas in accordance with this
13 Section. Failure of the owner to maintain the sidewalks and sidewalk areas as set forth in this Section
14 also shall constitute a public nuisance.

15 (b) Sidewalk Revitalization Program. A property owner may elect to participate in the
16 City's sidewalk revitalization program for fiscal year 2006-07 or any year thereafter during which the
17 program is renewed by providing written authorization to the Department to undertake repairs to the
18 sidewalk fronting the subject property. If the property owner elects to participate in this program, the
19 Department shall waive all permit and inspection fees related to the sidewalk repair.

20 Section 3. The San Francisco Public Works Code is hereby amended by amending
21 Section 707.1, to read as follows:

22 SEC. 707.1. ALTERNATE METHOD OF ENFORCEMENT AND COLLECTION OF
23 LIEN.

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1 (a) The provisions of this Section are intended to provide an alternate method for
2 enforcement and collection of the lien described in Section ~~707~~ 706.4 et seq. of this Article and
3 are adopted in accordance with the terms and conditions of California Government Code Section
4 38773.5 governing special assessment liens for public nuisance abatement.

5 (b) The Director of Public Works may file with the Clerk of the Board of Supervisors
6 an itemized report of the work done and the expense thereof along with his recommendation
7 that said expense be collected at the same time and in the same manner as ordinary City and
8 County taxes. Said expense shall be the cost of the work plus ~~10~~ 12 percent thereof to cover
9 the cost of City administration. Upon the filing of said report and recommendation, the Clerk
10 of the Board of Supervisors shall fix a date and time for hearing thereon which shall be
11 endorsed upon a copy of said report and recommendation. At least 10 days before the date of
12 the hearing, said endorsed copy shall be posted on the property subject to said lien at least 10
13 days before the date of hearing and notice of the hearing shall be sent by certified mail to the property
14 owner if the property owner's identify can be determined from the County Assessor's/Recorder's office
15 records. The mailed notice shall specify that the that the property mat be sold after three years by the
16 tax collector for unpaid delinquent assessments.

17 (1) The costs referenced in this Section may include the costs incurred by any other
18 City department, including the City Attorney's Office, expended in furtherance of the work done or
19 related to any action, administrative proceeding, or special proceeding to abate the public nuisance as
20 defined in Section 706.

21 (2) In any action, administrative proceeding, or special proceeding to abate the
22 public nuisance, the prevailing party may seek recovery of attorneys' fees; provided, however, that
23 recovery of such fees is available only if the City, at the initiation of the individual action or
24 proceeding, elects to seek recovery of its own attorney's fees. Further, in no action, administrative
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1 proceeding, or special proceeding shall an award of attorneys' fees to a prevailing party exceed the
2 amount of reasonable attorneys' fees incurred by the city in the action or proceeding.

3 (c) At the time fixed for hearing and considering said report and recommendation,
4 the Board of Supervisors shall hear the same, together with any objections which may be
5 raised by any property owner liable to be assessed for the expense described in said report
6 and recommendation, and thereupon may make such modifications in the report and
7 recommendation as the Board deems necessary, after which by motion or resolution said
8 report and recommendation shall be confirmed. The expense of repairing, constructing or
9 replacing sidewalk, driveway, curb or gutter, as confirmed by the Board of Supervisors, shall
10 constitute a special assessment against the parcel or parcels of land fronting such sidewalk,
11 driveway, curb or gutter, and shall constitute a lien of said property for the amount of the
12 assessment. After confirmation of said report and recommendation, a copy thereof shall be
13 transmitted to the Assessor and to the Tax Collector of the City and County, whereupon it
14 shall be the duty of said officers to add the amount of said assessment to the next regular bill
15 for taxes levied against said parcel or parcels of land for municipal purposes, and thereafter
16 said amount shall be collected at the same time and in the same manner as ordinary City and
17 County taxes are collected, and shall be subject to the same penalties and the same
18 procedure under foreclosure and sale in case of delinquency as provided for ordinary taxes of
19 the City and County of San Francisco. Notwithstanding the above, if any real property to which the
20 cost of abatement relates has been transferred or conveyed to a bona fide purchaser for value, or if a
21 lien of a bona fide encumbrancer for value has been created and attached thereon, prior to the date of
22 which the first installment of the taxes would become delinquent, then the cost of abatement shall not
23 result in a lien against the real property but instead shall be transferred to the unsecured roll for
24 collection.

1 (d) Notices or instruments relating to the abatement proceeding or special assessment shall
2 be entitled to recordation

3 (e) All monies received in payment of said lien against the property shall be credited
4 to the fund provided for in Section ~~707~~ 706.8 of this Article after reimbursement to other City
5 departments for their incurred costs related to the abatement.

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

10 By: _____
11 John D. Malamut
12 Deputy City Attorney

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