

BOARD of SUPERVISORS



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MEMORANDUM

TO: Carla Short, Interim Director, Public Works
Joaquín Torres, Assessor Recorder, Office of the Assessor Recorder
Ralph Remington, Director of Cultural Affairs, Arts Commission

FROM: Erica Major, Assistant Clerk, Land Use and Transportation Committee

DATE: June 30, 2023

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Melgar on June 27, 2023.

File No. 230768

Ordinance amending the Public Works Code to streamline and authorize the approval of certain neighborhood amenities in sidewalks and other public right-of-ways within the Department of Public Works' jurisdiction, to reduce the fees for certain minor encroachments, and to clarify the permitting, revocation, and restoration requirements for all minor encroachment permits; and affirming the Planning Department's determination under the California Environmental Quality Act.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: Erica.Major@sfgov.org.

cc: David Steinberg, Public Works
Ian Schneider, Public Works
John Thomas, Public Works
Lena Liu, Public Works
Kurt Fuchs, Office of the Assessor Recorder
Holly Lung, Office of the Assessor Recorder
Alyssa Ventre, Arts Commission
Mary Chou, Arts Commission
Joanne Lee, Arts Commission

[Public Works Code - Authorizing and Permitting Neighborhood Amenities]

Ordinance amending the Public Works Code to streamline and authorize the approval of certain neighborhood amenities in sidewalks and other public right-of-ways within the Department of Public Works’ jurisdiction, to reduce the fees for certain minor encroachments, and to clarify the permitting, revocation, and restoration requirements for all minor encroachment permits; and affirming the Planning Department’s determination under the California Environmental Quality Act.

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

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

Section 1. Environmental Findings.

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

Section 2. General Findings.

(a) Public spaces in San Francisco are integral to the economic, cultural, spiritual, and social health of the City. The Department of Public Works (“Department”), commonly referred to as San Francisco Public Works, is the steward of the public right-of-way and its mission is

1 to clean, "green," and enhance the public right-of-way for residents, businesses, workers and
2 visitors. To implement this work to the greatest effect, the Department cooperates and
3 collaborates extensively with community benefit districts, community groups, merchant
4 associations, and neighborhood nonprofit organizations.

5 (b) Particularly as neighborhoods recover from the COVID-19 pandemic, various
6 stakeholders have expressed interest in innovative and creative ways to activate and enhance
7 public spaces and the public right-of-way more efficiently, effectively, and affordably.

8 (c) This ordinance seeks to establish an accessible, user-friendly, and affordable
9 approach to reviewing and approving neighborhood beautification efforts that employ sidewalk
10 and street amenities that benefit neighborhoods and commercial corridors, beautify or
11 enhance the public right-of-way, and are accessible to the public.

12 Section 3. The Public Works Code is hereby amended by revising Article 2.1, Section
13 2.1.1, and Article 15, Sections 723, 723.1, and 723.2, to read as follows:

14
15 SEC. 2.1.1. FEES.

16 * * * *

17 (h) Minor Sidewalk Encroachment Permits (also known as ~~a~~ Minor Encroachment
18 Permits) pursuant to Section 723.2

19 (i) Standard Minor Encroachment Permit: \$938.39 permit fee, and, if applicable
20 pursuant to Section 723.2(~~nm~~), the annual public right-of-way occupancy assessment fee;

21 (ii) Underground Storage Tank Abandonment: \$275.80 permit fee; ~~and~~

22 (iii) Underground Vault, which shall be comprised of (A) a permit fee of \$973.80
23 and (B) an annual public right-of-way occupancy assessment fee of \$12.58 per square foot of
24 occupied space;

25 (iv) Inspection Fee: \$314 conformity and safety inspection fee; and

1 (v) Permits for Tier 1 and 2 Love Our Neighborhood Projects pursuant to Section 723.1:
2 75% of permit application fees shall be waived until June 30, 2025 for a permit applicant that is a
3 community-based organization, nonprofit organization, community benefits district, or merchants
4 association.

5 * * * *

6 (j) Street Encroachment Permit (also known as a Major Encroachment Permit)
7 pursuant to Section 786:

8 (i) \$3,643.66 permit fee and the annual public right-of-way occupancy
9 assessment fee in Section 786.7; and

10 (ii) Permits for Tier 3 Love Our Neighborhood Projects pursuant to Section 723.1: 35%
11 of permit application fees shall be waived until June 30, 2025 for a permit applicant that is a
12 community-based organization, nonprofit organization, community benefits district, or merchants
13 association.

14 * * * *

15
16 **SEC. 723. OBSTRUCTION OF AND ENCROACHMENT UPON PUBLIC RIGHT-OF-**
17 **WAY PROHIBITED.**

18 (a) It shall be unlawful for any person, firm or corporation, without permission from the
19 Department of Public Works (the “Department”), to pile, cap or otherwise obstruct or place
20 obstructions or encroachments upon, above, or below, any public right-of-way, whether the
21 same be graded or not. “Public right-of-way” shall mean the area across, along, beneath, in,
22 on, over, under, upon, and within the dedicated public alleys, boulevards, courts, lanes,
23 roadways, sidewalks, spaces, streets, and ways within the City, as they now exist or hereafter
24 will exist and which are or will be under the permitting jurisdiction of the Department of Public
25 ~~Works.~~ The placement of any obstructions or encroachments upon, above, or below any public right-

of-way shall comply with the Americans With Disabilities Act and the California Disabled Persons Act, California Civil Code Section 54 et seq., and the Unruh Civil Rights Act, California Civil Code Section 51 et seq.

(b) Any violation of this Section 723 shall be deemed a public nuisance subject to enforcement actions pursuant to Administrative Code Chapter 100, which is hereby incorporated in its entirety, Administrative Code Chapter 80, and Police Code Section 39-1, and other Public Works regulations, procedures, and actions adopted by order.

* * * *

SEC. 723.1. NEIGHBORHOOD AMENITY PERMIT~~SIDEWALK BARRIERS.~~

(a) Neighborhood Amenities. The neighborhood amenities described in this Section 723.1, which are intended to facilitate residents' and civic organizations' promotion of neighborhood love, pride, and enjoyment, shall be permitted according to Section 723.2 or Section 786 based on the requirements and approvals in Section 723.1(c).

(b) Definitions.

"Department" means the Department of Public Works.

"Front Yard Bench" means a seat that can accommodate more than one person that complies with the requirements set forth in the Department's regulations.

"Front Yard Library" means an enclosed bookshelf that does not exceed 24 inches in height, 25 inches in length, and 11 inches in depth and which is mounted on the sidewalk and is used for the sole purpose of displaying and sharing books with the public.

"Front Yard Planter" means an enclosed vessel used for planting vegetation that complies with the requirements of Public Works Orders regarding planters including but not limited to Department of Public Works Order 179,231 titled "ESTABLISHING GUIDELINES FOR THE PLACEMENT OF SIDEWALK LANDSCAPE CONTAINERS ON THE SIDEWALK THAT ARE LESS THAN 36 INCHES

1 IN HEIGHT,” as the Department may modify from time to time. Front Yard Planters do not include
2 bioretention planters.

3 “Seasonal Sidewalk Lighting” means raised lighting powered by electricity from one building
4 that is placed over a sidewalk at or above the height of 12 feet above the sidewalk surface and adjacent
5 to one building address for a duration not to exceed sixty (60) uninterrupted days. Seasonal Sidewalk
6 Lighting does not include any lighting that is placed on or which extends over the roadway.

7 “Sidewalk Mural” means a picture or design affixed to a sidewalk. No Sidewalk Mural may
8 contain or constitute advertising of any kind.

9 “Tier 1 Love Our Neighborhood Project” or “Tier 1 Project” means any of the following
10 amenities installed, attached, constructed, placed, or otherwise caused to be located on a sidewalk
11 within the jurisdiction of the Department: a Front Yard Bench, a Front Yard Library, or a Front Yard
12 Planter.

13 “Tier 2 Love Our Neighborhood Project” or “Tier 2 Project” means a Sidewalk Mural drawn
14 on or affixed to a sidewalk within the jurisdiction of the Department, a mural drawn on or affixed to a
15 retaining wall or bridge within the right-of-way jurisdiction of the Department, or Seasonal Sidewalk
16 Lighting suspended across a sidewalk within the jurisdiction of the Department.

17 “Tier 3 Love Our Neighborhood Project” or “Tier 3 Project” means any of the following
18 amenities installed, attached, constructed, placed, or otherwise caused to be located on or over a
19 sidewalk or other public right-of-way within the jurisdiction of the Department: a sculpture, a tiled
20 stairway, a fog catcher, an irrigation system , stringed lighting suspended across a roadway in a
21 commercial corridor, and decorative street lighting. These terms shall have the meanings defined in the
22 Public Works Code and/or the Department’s orders and regulations.

23 **(c) Requirements and Approvals.**

24 (1) Tier 1 Love Our Neighborhood Projects. Tier 1 Projects may be authorized
25 according to the registration and compliance requirements in Section 723.2(b)(2) and the applicable

1 Department orders and regulations. The Director or the Director's designee, in their discretion, shall
2 determine whether a project constitutes a Tier 1 Project.

3 (2) Tier 2 Love Our Neighborhood Projects. Tier 2 Projects may be permitted
4 according to the permit application and compliance requirements in Section 723.2(b)(3) and the
5 applicable Department orders and regulations. The Director or the Director's designee, in their
6 discretion, shall determine whether a project constitutes a Tier 2 Project.

7 (3) Tier 3 Love Our Neighborhood Projects. Tier 3 Projects may be permitted according
8 to the permit application and compliance requirements in Section 786 and the applicable Department
9 orders and regulations. The Director or the Director's designee, in their discretion, shall determine
10 whether a project constitutes a Tier 3 Project.

11 ~~The Department of Public Works may grant permission, revocable at the will of the Director of~~
12 ~~Public Works, to owners of property abutting any court, alley or narrow street to install and maintain~~
13 ~~barriers of an approved design, spacing and location in the sidewalk fronting their property where~~
14 ~~necessary to control illegal vehicular parking or driving in sidewalk areas.~~

15 ~~The owner of the abutting property, or his authorized agent applying for a permit to install and~~
16 ~~maintain sidewalk barriers shall agree to hold harmless the City and County of San Francisco, its~~
17 ~~officers, agents, and employees, from any damage or injury caused by reason of the installation or~~
18 ~~maintenance of the barriers in the sidewalk, and the owner or owners or subsequent owner or owners~~
19 ~~of the respective property shall be solely liable for any damage or loss occasioned by any act or neglect~~
20 ~~in respect to the installation or maintenance of the barriers in the sidewalk.~~

21 ~~Before the issuance of the permit, the applicant therefor shall be required to pay to the said~~
22 ~~Department, as an inspection fee, the sum of \$100 for each 25 feet, or fractional part thereof, of the~~
23 ~~sidewalk frontage of the property.~~

24 ~~A copy of each permit issued under the provisions of this Section shall be recorded in the office~~
25 ~~of the Recorder of the City and County of San Francisco.~~

1 ~~The Board of Supervisors shall have the right of approval and/or revocation of any permit for~~
2 ~~the installation and maintenance of barriers on public sidewalks.~~

3
4 **SEC. 723.2. MINOR SIDEWALK ENCROACHMENTS.**

5 (a) **Minor Encroachments.** The Director of the Department of Public Works ("Department")
6 may grant permission, revocable at the Director's ~~his or her~~ will in accordance with subsection (f),
7 to an owner of property abutting any court, alley, or street to install and maintain minor
8 encroachments such as fences, retaining walls, steps or stairways, barriers to control illegal
9 vehicular parking or driving in sidewalk and public right-of-way areas and other minor structures in
10 the sidewalk fronting such property where such encroachments are desirable or convenient in
11 conjunction with the owner's use and enjoyment of the property, or required for the safety,
12 convenience, and comfort of the public using the sidewalk. Pipelines or other portions of an
13 alternate water source system constructed within the public right-of-way for the purposes set
14 forth in Article 12C of the Health Code and in accordance with Health Code Section 12C.6 are
15 minor encroachments subject to the requirements of this Section 723.2. Tier 1 Projects and Tier
16 2 Projects, as defined in Section 723.1(a), are minor encroachments subject to the requirements of
17 Section 723.2.

18 (b) **Requirements and Conditions.**

19 (1) General. Minor ~~Such~~ encroachments shall not occupy more than 10% ~~percent~~
20 of the area of the sidewalk fronting the property nor more than 25% ~~percent~~ of the width of the
21 sidewalk (together, "Dimensional Requirements"), unless the Director ~~of Public Works~~ determines
22 that such restrictions are not applicable due to the nature of the encroachment. The Director
23 ~~may shall require further restrictions or modifications and impose such~~ requirements and conditions
24 ~~as he or she~~ the Director deems necessary or appropriate to protect the public peace, safety, health,
25 and welfare of pedestrians and other users of the sidewalks, public right-of-way, and public property

1 ("Conditions of Approval"). To memorialize the Conditions of Approval, the Director may require the
2 permittee to enter into a written agreement that is recorded in the Office of the Assessor-Recorder. No
3 advertisement shall be permitted on the encroachments.

4 (2) Tier 1 Love Our Neighborhood Projects.

5 (i) Registration Requirement. The owner of real property, or the owner's
6 authorized agent, shall not be required to obtain a permit prior to the placement of the Tier 1 Project,
7 as defined in Section 723.1, in the sidewalk adjacent to the owner's real property provided that the
8 sidewalk is within the Department's jurisdiction, the Tier 1 Project satisfies all of the applicable
9 requirements for the Tier 1 Project as set forth in the Department's regulations, and the owner
10 registers the Tier 1 Project with the Department in a manner prescribed by the Department. Upon the
11 owner's registration of the Tier 1 Project and acknowledgment of the owner's liability for any injury or
12 Claims, as defined in Section 723.2(e)(1), caused by the Tier 1 Project, the Tier 1 Project shall be
13 presumed to be authorized to be placed on the sidewalk within the Department's jurisdiction as long as
14 the sidewalk preserves the greater of a minimum path of travel of four feet after the installation or
15 placement of the Tier 1 Project or, with respect to sidewalks that are a minimum of twelve feet wide, a
16 minimum path of travel of six feet after the installation or placement of the Tier 1 Project.

17 (ii) Conditional Exemptions from Certain Requirements. The owner of real
18 property adjacent to a properly registered Tier 1 Project shall not be required to obtain a permit, pay
19 the permit fee and right-of-way occupancy fee set forth in Section 2.1.1(l), or furnish evidence of an
20 insurance policy set forth in subsection (e)(2) for the Tier 1 Project at the time of registration and may
21 install or place the encroachment upon the sidewalk following registration.

22 (iii) Safety Inspection. Any person may request that the Department perform a
23 safety inspection of a Tier 1 Project at a specified street address for any reason including, but not
24 limited to, due to concerns that the encroachment fails to comply with an applicable requirement or
25 such encroachment poses a threat to public health, safety, or welfare. The Department, in its sole

1 discretion, may elect to perform an inspection of the encroachment, and may require that the owner of
2 the real property adjacent to the encroachment modify or remove the encroachment for the purposes of
3 public safety, health, or welfare. In addition, if the Department allows the encroachment to remain in
4 place, the Department may require the owner of the real property adjacent to encroachment to pay a
5 safety inspection fee and/or submit a minor encroachment permit application and comply with the
6 requirements of this Section 723.2 including but not limited to obtaining a permit, paying the permit fee
7 and right-of-way occupancy fee set forth in Section 2.1.1(l), and furnishing evidence of an insurance
8 policy set forth in subsection (e)(2).

9 (3) Tier 2 Love Our Neighborhood Projects.

10 (i) Minor Encroachment Permits Required. Tier 2 Projects shall be required to
11 obtain a minor encroachment permit as provided in this Section 723.2. Prior to submitting a minor
12 encroachment permit application for a mural, the permit applicant must obtain all necessary approvals
13 from the Arts Commission and the Civic Design Review Committee.

14 (ii) Neighborhood Endorsements and Consent for Murals; Compliance With
15 Department Specifications. A permit applicant proposing to paint or affix a mural on a sidewalk,
16 retaining wall, or bridge, shall submit a signed declaration identifying the steward of the mural who
17 will be responsible for maintaining, repairing, and removing the mural; evidence of the consent of the
18 owner or authorized agent of all units of real property adjacent to the proposed mural location; and
19 endorsement letters from the owner or authorized agent of the majority of real property units within
20 1,000 feet of the proposed mural location. All murals shall comply with all requirements and
21 specifications determined by the Department including but not limited to requirements pertaining to
22 slip resistance, dimensions, and durability and removability of media and materials.

23 (c) Permit Issuance. In considering the issuance of permits under ~~the provisions of this~~
24 Section 723.2, the Director of ~~Public Works~~ shall give due regard to the location, neighborhood
25 pattern, anticipated pedestrian traffic, and access requirements of the Fire Department, and to

1 the convenience and necessities of the owners, occupants, or tenants of offices, stores, or
2 shops in the vicinity.

3 (d) **Adjacent Property Owner's Liability; Mural Steward's Liability.** Other than with respect
4 to a mural for which a mural steward shall be solely and fully liable for any injury or Claims as defined
5 in Section 723.2(e)(1), the owner of real property adjacent to a minor encroachment shall be solely and
6 fully liable for any injury or Claims resulting from the minor encroachment, shall bear all costs of such
7 injury or Claims, shall pay all costs incurred by the City for any review and inspections of the
8 encroachment, and, if ordered by the Department to do so, and shall be required to modify and/or
9 remove the minor encroachment and restore the sidewalk or other public right-of-way to a condition
10 acceptable to the Director in the Director's sole discretion. For murals for which the steward is not
11 the owner of the real property adjacent to the mural, the steward shall be solely and fully liable for any
12 injury or Claims, as defined in Section 723.2(e), resulting from the mural, shall bear all costs of such
13 injury or Claims, shall pay all costs incurred by the City for any review and inspections of the mural,
14 and, if ordered by the Department to do so, and shall be required to modify and/or remove the mural
15 and restore the sidewalk or other public right-of-way to a condition acceptable to the Director in the
16 Director's sole discretion.

17 (e) **Indemnification, Security, and Insurance Requirements.**

18 (1) For minor encroachment permits issued pursuant to Section 723.2, the owner of the
19 real property or the owner's authorized agent applying for a permit under the provisions of ~~this~~
20 Section 723.2 shall agree to hold harmless, defend, and indemnify the City and County of San
21 Francisco, including, without limitation, each of its commissions, departments, ~~its~~ officers, agents,
22 and employees, from and against ~~any damage or injury~~ all losses, liabilities, expenses, actions,
23 claims, demands, injuries, damages, fines, penalties, suits, costs, or judgments, including, without
24 limitation, attorneys' fees and costs (collectively, "Claims"), caused by reason of the installation or
25 maintenance of the encroachment in the sidewalk, and the owner or owners or subsequent

1 owner or owners of the respective real property shall be solely liable for any ~~damage or loss~~
2 Claims occasioned by any act or neglect in respect to the installation or maintenance of the
3 encroachments in the sidewalk.

4 (2) The Director may require the recipient of a minor encroachment permit or the owner
5 of real property with an authorized minor encroachment to furnish a bond, or other form of security
6 that is acceptable to the Director, in an amount required to complete the installation of the
7 encroachment remove the encroachments, and restore the public right-of-way to a condition
8 satisfactory to the Director based on a cost that the City Engineer determines. The permittee shall
9 provide evidence to the Department that the bond or other security is operative on an annual basis.

10 (3) For an encroachment with construction costs equal to or greater than \$10,000, the
11 Director may require the recipient of a minor encroachment permit or the owner of real property
12 adjacent to an authorized minor encroachment to furnish evidence of an insurance policy that is
13 satisfactory to the City's Risk Manager. Such insurance shall in no way relieve or decrease a
14 permittee's or its agents' obligation to indemnify the City under this subsection (d).

15 (fe) **Recordation.** Each permit issued under the provisions of this Section 723.2 shall not
16 become effective until the permit has been signed by the owner or the owner's authorized
17 agent and a copy thereof has been recorded in the office of the Assessor-Recorder of the City
18 ~~and County of San Francisco.~~

19 (g) **Revocation.**

20 (1) The Director is authorized to initiate proceedings to revoke the permit or
21 authorization of a minor encroachment upon the Director's determination that a permittee or owner of
22 real property adjacent to the minor encroachment has failed to comply with the any of the Conditions
23 of Approval; that a minor encroachment, whether or not it is associated with an issued permit, poses a
24 threat to public safety, health, or welfare; or that all or a portion of the public right-of-way on which a
25 minor encroachment is located is required for a different public purpose. To initiate revocation

1 proceedings, the Director shall provide the permittee, the adjacent property owner, and the steward, if
2 applicable, with written notification of the time and date of a public hearing to consider the grounds for
3 revoking, modifying, or suspending the minor encroachment permit or, as may be applicable, the City's
4 authorization of an encroachment without issuance of a permit. This notification may include
5 requirements that would apply to restoration of the public right-of-way as set forth in Section
6 723.2(q)(2). Following the public hearing, the Director may issue an order revoking or modifying the
7 minor encroachment permit and/or authorization of a minor encroachment for good cause. If the
8 failure to comply with the Conditions of Approval poses an imminent threat to public safety, health, or
9 welfare, the Director shall immediately suspend the minor encroachment permit or authorization of a
10 minor encroachment pending a final decision to revoke or modify the minor encroachment permit or
11 authorization of a minor encroachment. The Director's modification, revocation, or suspension of a
12 minor encroachment permit or authorization of a minor encroachment may be appealed under
13 subsection (g).

14 (2) Following the revocation of a minor encroachment permit or authorization of a minor
15 encroachment, the former permittee, the owner of real property formerly authorized to place a Tier 1
16 Project on the sidewalk adjacent to the owner's real property, or the mural steward, as may be
17 applicable, shall restore the public right-of-way to a condition satisfactory to the Director at the sole
18 and absolute expense of the former permittee, the owner of real property formerly authorized to place a
19 Tier 1 Project on the sidewalk adjacent to the owner's real property, or the mural steward, as may be
20 applicable.

21 (h) **Appeals.** Within 15 days following the Director's approval, denial, or revocation of a
22 minor encroachment permit or revocation of the authorization of a minor encroachment by the
23 Director, any person may file a notice of appeal as follows:

24 (1) Appeals of the revocation of the authorization of a minor encroachment or the
25 revocation or denial of a permit issued by the Director for the following encroachments that

1 impede or otherwise impact the Central Subway Corridor, as defined in Section 723.3(a)(3) of
2 this Code;² subsidewalk encroachments below the public right-of-way, or other
3 encroachments in, on, and/or below the public right-of-way may be appealed to the Board of
4 Supervisors (the "Board") by filing a notice of appeal with the Clerk of the Board of
5 Supervisors.

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

8 (3) In the alternative, when the encroachment is related to building construction,
9 rehabilitation, or maintenance, any person may appeal the encroachment permit decision to
10 the Building Inspection Commission. A person waives ~~his or her~~ their right to appeal to the
11 Building Inspection Commission encroachment permit decisions relating to building
12 construction, rehabilitation, or maintenance by instead filing the appeal with the Board ~~of~~
13 ~~Supervisors~~ or the Board of Appeals. No encroachment permit decision may be appealed to
14 both bodies.

15 (~~if~~) For purposes of this Section 723.2, an encroachment permit is related to building
16 construction, rehabilitation, or maintenance when the object of the encroachment permit
17 affects the applicant's ability to construct, repair, or maintain the building.

18 (~~if~~) Pending decision by the Board ~~of Supervisors~~, the Board of Appeals, or the
19 Building Inspection Commission, the Director's permit decision to approve, deny, or revoke a
20 minor encroachment permit or to revoke the authorization of a minor encroachment ~~by the Director~~
21 shall be suspended.

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

1 (li) Nothing in this Section 723.2 shall be construed as authorizing the Director of
2 ~~Public Works~~ to grant a permit for any encroachment which the Director ~~he or she~~ determines to
3 be inimical to the health, welfare, safety, and best interest of the general public, or in violation
4 of the Charter or laws of the City ~~and County of San Francisco~~ or laws of the State of California.

5 (mj) The Board ~~of Supervisors~~, the Board of Appeals, or the Building Inspection
6 Commission may affirm, reverse, or modify any permit decision made by the Director ~~of Public~~
7 ~~Works~~ under the provisions of this Section 723.2. The decision by the Board ~~of Supervisors~~, the
8 Board of Appeals, or the Building Inspection Commission is final.

9 (nk) Unless otherwise provided in this Section 723.2, the Department ~~Board of Supervisors~~
10 ~~reserves the right to exact~~ shall collect a public right-of-way occupancy assessment fee for the
11 use of the sidewalk or other public right-of-way space permitted under the provisions of this
12 Section 723.2.

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

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

21 (A) Encroachments in, on, above, or below the public right-of-way that are
22 affixed or appurtenant to any building whose owner obtained a site permit for new
23 construction on or after August 29, 2005. This subsection (nk)(2)(A) also shall apply to any
24 commercial, industrial, or mixed-use building whose owner obtained a site permit for new
25 construction prior to August 29, 2005; provided, however, that such building is not located in

1 any Neighborhood Commercial District as designated in Planning Code Article 7 and that the
2 encroachment associated with such building was installed or encroachment permit obtained
3 prior to August 29, 2005. This subsection (nk)(2)(A) shall specifically include, but not be
4 limited to, doors that open over the public right-of-way and subsidewalk basements; provided,
5 however, that this subsection shall exclude encroachments for shoring and tiebacks. This
6 subsection (nk)(2)(A) shall not apply to a building that has been converted from a commercial,
7 industrial, or mixed-use building into a building containing only residential use.

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

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

18 (D) Underground storage tanks.

19 (3) For purposes of subsection (nk)(2), the term "site permit" also shall mean
20 "building permit."

21 (4) Notwithstanding subsection (nk)(2), no public right-of-way occupancy
22 assessment fee shall be charged against the owner of an historic or architecturally significant
23 building who has installed or seeks a permit to install a minor sidewalk encroachment for the
24 sole purpose of in-order to conforming with an applicable Municipal Code requirement; provided,
25 however that this exception shall not apply if the encroachment is a sub-sidewalk basement.

1 For purposes of this subsection (n)(4), an historic or architecturally significant building shall be
2 a building so designated pursuant to Planning Code Article 10 or specifically identified as an
3 architecturally significant building on the Planning Department's database or on a list
4 maintained by the Planning Department.

5 (5) Notwithstanding subsection (n)(2), no public right-of-way occupancy
6 assessment fee shall be charged against the owner of a property for elements installed as a
7 requirement under Planning Code Section 138.1.

8 (6) Notwithstanding subsection (n)(2), if a minor ~~sidewalk~~ encroachment permit is
9 necessary for the development of a project including residential units, all of which are
10 affordable to low- or moderate-income households as defined by the United States Housing
11 and Urban Development Department, then such project shall be exempt from payment of the
12 public right-of-way occupancy assessment fee.

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

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

17 (9) Notwithstanding this subsection (n), the public right-of-way assessment fee
18 for underground vaults shall be as specified in Section 2.1.1 et seq.

19 (10) Notwithstanding subsection (n)(2), no public right-of-way occupancy
20 assessment fee shall be charged for pipelines or other portions of an alternate water source
21 system constructed within the public right-of-way for the purposes set forth in Article 12C of
22 the Health Code and in accordance with Health Code Section 12C.6.

23 (11) Notwithstanding subsection (n)(2), no public right-of-way occupancy
24 assessment fee shall be charged to an owner of property that obtains a minor encroachment
25

1 permit to construct and maintain a floodwater management project that is located in public
2 rights of way and funded with San Francisco Public Utilities Commission grant funds.

3 (12) Notwithstanding subsection (nk)(2), no public right-of-way occupancy assessment fee
4 shall be charged for a Tier 1 Project.

5 (o) Notwithstanding the fees specified ~~herein~~ in this Section 723.2, if a project involves
6 voluntary seismic retrofit upgrades to soft-story, wood-frame buildings, as defined by the
7 Director of the Department of Building Inspection, such project applicant shall be exempt from
8 the proportionate share of fees specified under this Section 723.2 and Sections 2.1.1 et seq.
9 that is related to such retrofit work.

10 (p) The Director may issue regulations setting forth standard design, safety, and operating
11 requirements for minor encroachment permits (“Regulations”). The Director may, in the Director’s
12 discretion, require an encroachment agreement that provides additional detail on the permittee’s rights
13 and obligations under a minor encroachment permit, including maintenance of the encroachment, and
14 establishes the regulatory relationship between Public Works and the permittee for implementation of
15 the permit.

16 Section 4. Effective and Operative Dates.

17 (a) Effective Date. This ordinance shall become effective 30 days after enactment.
18 Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance
19 unsigned or does not sign the ordinance within ten days of receiving it, or the Board of
20 Supervisors overrides the Mayor’s veto of the ordinance.

21 (b) Operative Date. The fee waiver provisions of this ordinance amending Section
22 2.1.1 of the Public Works Code shall become operative on the date that the Controller
23 certifies, in writing, to the Director of the Department of Public Works that either (1) the Board
24 of Supervisors has enacted an ordinance appropriating monies necessary to fund the fee
25 waivers established by this ordinance, (2) the Board of Supervisors has authorized

1 expenditures under Article XIII of Administrative Code Chapter 10 necessary to fund such fee
2 waivers, or a combination of options (1) and (2).

3 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
4 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
5 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
6 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
7 additions, and Board amendment deletions in accordance with the "Note" that appears under
8 the official title of the ordinance.

9
10 APPROVED AS TO FORM:
11 DAVID CHIU, City Attorney

12 By: /s/ Christopher Tom
13 CHRISTOPHER T. TOM
14 Deputy City Attorney

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LEGISLATIVE DIGEST

[Public Works Code - Authorizing and Permitting Neighborhood Amenities]

Ordinance amending the Public Works Code to streamline and authorize the approval of certain neighborhood amenities in sidewalks and other public right-of-ways within the Department of Public Works' jurisdiction, to reduce the fees for certain minor encroachments, and to clarify the permitting, revocation, and restoration requirements for all minor encroachment permits; and affirming the Planning Department's determination under the California Environmental Quality Act.

Existing Law

Presently, obstructions or encroachments upon the public right-of-way within the regulatory jurisdiction of the Department of Public Works ("Department") require a permit or other authorization from the Department.

Amendments to Current Law

This ordinance would amend Sections 723, 723.1, 723.2, and 2.1.1 of the Public Works Code to facilitate the improvement and beautification of the public right-of-way through fee reductions and streamlined authorization for certain neighborhood amenities that constitute a "Love Our Neighborhood Project," as described below.

- *Public Works Code Section 723.* States expressly that the placement of any obstructions or encroachments upon, above, or below any public right-of-way must comply with the Americans With Disabilities Act and the California Disabled Persons Act, Civil Code Section 54 et seq., and the Unruh Civil Rights Act, Civil Code Section 51 et seq.
- *Public Works Code Section 723.1.* Establishes three tiers of neighborhood amenity projects intended to facilitate residents' and civic organizations' promotion of neighborhood love, pride, and enjoyment, each a "Love Our Neighborhood Project."
 - o "Tier 1 Projects" consist of Front Yard Benches, Front Yard Libraries, and Front Yard Planters, as defined in the ordinance.
 - o "Tier 2 Projects" consist of murals drawn on or affixed to sidewalks, retaining walls, or bridges within the right-of-way jurisdiction of the Department, and Seasonal Sidewalk Lighting suspended across sidewalks within the jurisdiction of the Department.
 - o "Tier 3 Projects" consist of sculptures, tiled stairways, fog catchers, irrigation systems, stringed lighting suspended across roadways in commercial corridors,

and decorative street lighting, as defined in the Public Works Code and/or the Department's regulations.

- *Public Works Code Section 723.2.*
 - o Provides that Tier 1 Projects may be authorized according to the registration and compliance requirements; these Tier 1 Projects would not be required to obtain a minor encroachment permit initially, but could be subject to other requirements or modifications following a compliance and safety inspection that any person may request for any reason including, but not limited to, due to concerns that the encroachment fails to comply with an applicable requirement or such encroachment poses a threat to public health, safety, or welfare. The Department may elect to perform an inspection of the encroachment, and may require the modification or removal of the encroachment for the purposes of public safety, health, or welfare.
 - o Provides that Tier 2 Projects may be permitted according to the minor encroachment permit application and compliance requirements in the Public Works Code and the applicable Department orders and regulations.
 - o Provides that Tier 3 Projects may be permitted according to the major encroachment permit application and compliance requirements in the Public Works Code and the applicable Department orders and regulations.
 - o Establishes indemnification requirements, procedures for revoking the minor encroachment permits and authorizations, and additional clarifications.
- *Public Works Code Section 2.1.1.*
 - o Subsection (h)(v) establishes a reduced minor encroachment permit application fee that waives 75% of the otherwise applicable application fee for Tier 1 and 2 Projects for a permit applicant that is a community-based organization, nonprofit organizations, community benefits district, or merchants association. The fee reduction would remain in effect until June 30, 2025.
 - o Subsection (j) establishes a reduced major encroachment permit application fee that waives 35% of the otherwise applicable application fee for Tier 3 Projects for a permit applicant that is a community-based organization, nonprofit organizations, community benefits district, or merchants association. The fee reduction would remain in effect until June 30, 2025; the fee reduction would not apply to public right-of-way occupancy assessment fees.
 - o Subsection (h)(iv) establishes a fee to inspect the safety and conformity of minor encroachments to the Department's standards and specifications.

Background Information

The Department of Public Works, commonly referred to as San Francisco Public Works, is the steward of the public right-of-way in the City and County of San Francisco and its mission is to clean, “green,” and enhance the public right-of-way for residents, businesses, workers and visitors. Particularly as neighborhoods recover from the COVID-19 pandemic, various stakeholders have expressed interest in innovative and creative ways to activate and enhance public spaces and the public right-of-way more efficiently, effectively, and affordably. This ordinance seeks to establish an accessible, user-friendly, and affordable approach to reviewing and approving neighborhood beautification efforts that employ sidewalk and street amenities that benefit neighborhoods and commercial corridors, beautify or enhance the public right-of-way, and are accessible to the public.

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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):

Subject:

Long Title or text listed:

Signature of Sponsoring Supervisor: