

1 [Health, Public Works Codes - Mandatory Use of Alternate Water Supplies In New  
2 Construction]

3 **Ordinance amending Health Code, Article 12C, to require that new buildings of 250,000**  
4 **square feet or more of gross floor area be constructed, operated, and maintained using**  
5 **available alternate water sources for toilet and urinal flushing and irrigation; that new**  
6 **buildings of 40,000 square feet or more of gross floor area prepare water budget**  
7 **calculations; and that subdivision approval requirements include compliance with**  
8 **Article 12C; amending the Public Works Code to provide that pipelines and other**  
9 **facilities constructed in accordance with Article 12C and located in public rights-of-way**  
10 **are subject to approval as minor encroachments and exempt from payment of public**  
11 **right-of-way occupancy assessment fees; and affirming the Planning Department's**  
12 **determination under the California Environmental Quality Act.**

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

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

21 Section 1. The Planning Department has determined that the actions contemplated in  
22 this ordinance comply with the California Environmental Quality Act (California Public  
23 Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the  
24 Board of Supervisors in File No. \_\_\_\_ and is incorporated herein by reference. The Board  
25 affirms this determination.

1 Section 2. Article 12C of the Health Code is hereby amended by revising and  
2 renumbering Sections 850-861 as follows (with new section numbers in parentheses): 850  
3 (12C.1), 851 (12C.2), 852 (12C.3), 853 (12C.5), 854 (12C.6), 855 (12C.7), 856 (12C.8), 857  
4 (12C.9), 858 (12C.10), 859 (12C.11), 860 (12C.12), and 861 (12C.13), and adding new  
5 Section 12C.4, to read as follows:

6 **SEC. ~~850~~12C.1. PURPOSE AND FINDINGS.**

7 The Board of Supervisors finds that:

8 (a) All California water users are responsible for making effective use of the  
9 available water resources.

10 (b) The development of alternate water source systems will assist in meeting future  
11 water requirements of the City and lessen the impacts of new developments on the City's  
12 sewer system.

13 (c) Establishing a regulatory structure that provides administrative efficiency and a  
14 streamlined project approval process will assist developers who opt to design, install, operate,  
15 and maintain alternate water source systems.

16 (d) Adoption of ~~this ordinance~~ Article 12C by the Board of Supervisors and adoption of  
17 rules and regulations by the Department of Public Health will help achieve the City's goals for  
18 water supply use and preservation by:

19 (1) Promoting the values and benefits of non-potable water use while recognizing  
20 the need to invest water and other resources as efficiently as possible;

21 (2) Encouraging the use of non-potable water for non-potable applications; and

22 (3) Replacing potable water use for toilet and urinal flushing and irrigation to the  
23 maximum extent possible with alternative water sources.

24 (e) It shall be City policy that within five years of the effective date of Ordinance No. \_\_\_\_\_,  
25 adding this subsection (e) to Article 12C, the City shall use only non-potable water for the purpose of

1 irrigating and cleaning parks, streets and other public spaces. Within two years of the effective date of  
2 that ordinance, the City Administrator, in consultation as appropriate with other City departments,  
3 boards, and commissions, including, among others, the Recreation and Park Department, Department  
4 of Public Works, Port of San Francisco, San Francisco International Airport, Department of Real  
5 Estate, and Capital Planning Committee, shall study what will be required to accomplish this policy,  
6 including associated costs, and report the results of the study to the Mayor and Board of Supervisors.  
7 Upon receiving this study, the Board of Supervisors intends to evaluate any changes to the law and  
8 Capital Plan needed to implement this policy.

9 **SEC. ~~851~~12C.2. DEFINITIONS.**

10 The terms used in this Article 12C have the meaning set forth below:

11 **Alternate Water Source:** a source of non-potable water that includes Graywater,  
12 on-site treated non-potable water, Rainwater, and any other source approved by the Director.

13 **Black Water:** wastewater containing bodily or other biological wastes, as from  
14 toilets, dishwashers, kitchen sinks, and utility sinks.

15 **City:** the City and County of San Francisco.

16 **Development Project:** Construction of new buildings. Development Projects are Large  
17 Development Projects and Small Development Projects.

18 **Director:** the Director of ~~Public~~ Health or any individual designated by the Director to  
19 act on his or her behalf.

20 **District:** a group of two or more parcels that share Alternate Water Sources.

21 **First Certificate of Occupancy:** either a temporary certificate of occupancy or a  
22 Certificate of Final Completion and Occupancy as defined in San Francisco Building Code  
23 Section 109A, whichever is issued first.

24 **Foundation Drainage:** nuisance groundwater that is extracted to maintain a  
25 building's or facility's structural integrity and would otherwise be discharged to the City's sewer

1 system. Foundation Drainage does not include non-potable groundwater extracted for a  
2 beneficial use that is subject to City groundwater well regulations.

3 **General Manager:** the General Manager of the San Francisco Public Utilities  
4 Commission, or any individual designated by the General Manager to act on his or her behalf.

5 **Graywater:** untreated wastewater that has not been contaminated by any toilet  
6 discharge, has not been affected by infectious, contaminated, or unhealthy bodily wastes, and  
7 does not present a threat from contamination by unhealthful processing, manufacturing, or  
8 operating wastes. "Graywater" includes, but is not limited to, wastewater from bathtubs,  
9 showers, bathroom sinks, lavatories, clothes washing machines, and laundry tubs, but does  
10 not include wastewater from kitchen sinks or dishwashers.

11 **Large Development Project:** Construction of a new building with total gross floor area of  
12 250,000 square feet or more:

13 a) located within the boundaries of the Reclaimed Water Use Map designated in accordance  
14 with Sections 1203 and 1209 of the Public Works Code and subject to a site permit or building permit  
15 that is final and effective after November 1, 2015; or

16 b) located outside the boundaries of the Reclaimed Water Use Map designated in accordance  
17 with Sections 1203 and 1209 of the Public Works Code and subject to a site permit or building permit  
18 that is final and effective after November 1, 2016.

19 Large Development Projects are not limited to buildings constructed by individuals or non-  
20 governmental entities but, to the extent allowed by law, also include buildings constructed and  
21 operated by any local, state, or federal government entity, including the City and County of San  
22 Francisco.

23 **Large Development Project Applicant:** The person or entity applying for authorization to  
24 construct and operate a Large Development Project.

1           **Multi-Family Residential Building:** A building that contains three or more dwelling  
2 units.

3           **Non-potable Water:** Non-potable water collected from alternate water sources,  
4 treated, and intended to be used on the Project Applicant's site or ~~D~~istrict parcels and is  
5 suitable for direct beneficial use.

6           **Non-potable Water Engineering Report:** Report submitted by ~~P~~project ~~A~~applicant to  
7 the Director describing the alternate water source system in accordance with the rules and  
8 regulations adopted by the Department of ~~P~~ublic Health.

9           **Non-residential:** A building that contains occupancies other than dwelling units.

10          **NSF 350 System:** Any treatment system certified by NSF International to meet  
11 NSF/ANSI Standard 350 for Onsite Residential and Commercial Reuse Treatment Systems,  
12 as amended from time to time.

13          **Permittee:** owner or operator of an on-site treated ~~N~~on-potable ~~W~~ater system.

14          **Project Applicant:** the person or entity applying for authorization to install and use  
15 an ~~A~~lternate ~~W~~ater ~~S~~ource project.

16          **Rainwater:** precipitation collected from roof surfaces or other manmade,  
17 aboveground collection surfaces.

18          **Small Development Project:** Construction of a new building with a total gross floor area of  
19 40,000 square feet or more, but less than 250,000 square feet. Small Development Projects are not  
20 limited to buildings constructed by individuals or non-governmental entities but, to the extent allowed  
21 by law, also include buildings constructed and operated by any local, state, or federal government  
22 entity, including the City and County of San Francisco.

23          **Small Development Project Applicant:** The person or entity applying for authorization to  
24 construct and operate a Small Development Project.

1           **Small Residential Building:** A building that contains no more than two dwelling  
2 units.

3           **Stormwater:** Precipitation collected from at-grade or below grade surfaces.

4           **Water Budget:** The calculation of the potential volume of onsite alternate water supplies and  
5 demands of a Development Project and any other building subject to this Article 12C.

6           **Water Budget Calculator:** The water use calculation application approved by the General  
7 Manager that provides for the assessment of a proposed onsite water system, alternate water sources,  
8 and the end uses of the alternate water source.

9           **Water Budget Documentation:** An in-depth assessment of the Pproject Aapplicant's  
10 non-potable water use, including survey information, water meter readings, water service  
11 billing information, Aalternate Wwater Ssource schematic drawings, or any other information  
12 deemed necessary by the General Manager.

13           **SEC. 85212C.3. APPLICABILITY.**

14           This Article 12C shall apply to the installation and operation of the Aalternate Wwater  
15 Ssource systems at Large Development Projects, and to the voluntary installation and operation of  
16 the alternate water source systems at sites containing multi-family and non-residential buildings  
17 that are not Large Development Projects. This Article does not apply to:

18           (a) Systems at small residential occupancies.

19           (b) Graywater systems where Ggraywater is collected solely for subsurface irrigation  
20 and does not require disinfection, as determined by the Director.

21           (c) Rainwater systems where Rrainwater is collected solely for subsurface irrigation,  
22 drip irrigation, or non-sprinkled surface applications and does not require disinfection, as  
23 determined by the Director.

1                    **SEC. 12C.4. DEVELOPMENT PROJECT REQUIREMENTS.**

2                    (a) Large Development Projects shall be constructed, operated, and maintained in compliance  
3 with the following:

4                    (1) All toilet and urinal flushing and irrigation demands shall be met through the  
5 collection and reuse of available onsite Rainwater, Graywater, and Foundation Drainage, to the extent  
6 required by application of the Water Budget Documentation developed for each Development Project.

7                    (2) A Large Development Project Applicant shall use the Water Budget Calculator, as  
8 provided by the General Manager's rules, to prepare a Water Budget assessing the amount of  
9 Rainwater, Graywater, and Foundation Drainage produced on site, and the planned toilet and urinal  
10 flushing and irrigation demands.

11                    (3) If, based on the Water Budget Documentation, the available supply from onsite  
12 sources exceeds the demands for toilet and urinal flushing and irrigation, 100% of those demands shall  
13 be met by using the available onsite sources. If, based on the Water Budget Documentation, the  
14 available supply from onsite sources is less than the demands for toilet and urinal flushing and  
15 irrigation, 100% of the available onsite supply shall be used to meet the demands for toilet and urinal  
16 flushing and irrigation. Available Black Water or Stormwater supplies may be used instead of, or in  
17 addition to Rainwater, Graywater, and Foundation Drainage to meet the requirements of this  
18 subsection.

19                    (4) Small Development Project Applicants shall use the Water Budget Calculator, as  
20 provided by the General Manager's rules, to prepare a Water Budget assessing the amount of  
21 Rainwater, Graywater, and Foundation Drainage produced on site, and the planned toilet and urinal  
22 flushing and irrigation demands.

23                    (5) City departments shall not issue an encroachment permit, a site permit, or plumbing  
24 permit for a Large Development Project or a Small Development Project, or approve a Non-potable  
25 Water Engineering Report, prior to the General Manager's determination that the Water Budget

1 Documentation has been prepared in accordance with the General Manager's rules for Water Budget  
2 calculations.

3 (b) Subdivision Approvals.

4 (1) Parcel Map or Tentative Subdivision Map Conditions. The Director of Public Works  
5 shall not approve a tentative subdivision map or a parcel map for any property unless a condition is  
6 imposed requiring compliance with this Article 12C to serve the potential uses of the property covered  
7 by the parcel map or tentative subdivision map, as specified in the provisions of this Article.

8 (2) Subdivision Regulations. The Director of Public Works shall adopt regulations  
9 consistent with, and in furtherance of this Article 12C.

10 (3) Final Maps. The Director of Public Works shall not endorse and file a final map for  
11 property within the boundaries of the City without first determining that:

12 (A) The subdivider has complied with the conditions imposed on the tentative  
13 subdivision map or parcel map, pursuant to this Article 12C; and

14 (B) For any such conditions not fully satisfied prior to the recordation of the  
15 final map, the subdivider has signed a certificate of agreement and/or improvement agreement, to  
16 ensure compliance with such conditions.

17 (4) This Subsection (b) shall not apply to tentative subdivision maps or parcel maps  
18 submitted solely for the purposes of condominium conversion, as defined in Subdivision Code Section  
19 1308(d).

20 **SEC. ~~853~~12C.5. REGULATION OF ALTERNATE WATER SOURCES.**

21 (a) Any person or entity who installs and operates an A~~alternate~~ W~~water~~ S~~source~~  
22 system shall comply with this Article 12C, the rules and regulations adopted by the  
23 Department of Public Health, and all applicable local, state, and federal laws.

24 (b) Within 90 days after passage of this ordinance, the Director shall issue rules and  
25 regulations regarding the operation of A~~alternate~~ W~~water~~ S~~source~~ systems necessary to



1 effectuate the purposes of the Article and to protect public health and safety. These  
2 regulations shall address, at a minimum:

- 3 (1) Water quality criteria;
- 4 (2) Monitoring and reporting content and frequencies; and
- 5 (3) Operation and maintenance requirements.

6 (c) The Director shall review applications for Alternative Water Sources systems  
7 and may issue or deny such applications, in accordance with applicable laws and regulations.

8 (d) The Department of Building Inspection shall review plans and issue or deny  
9 plumbing permits for the construction, installation, or modification of alternate water source  
10 systems, in accordance with applicable laws and regulations.

11 **SEC. 85412C.6. PROJECT APPLICANT AND/OR PERMITTEE DESIGN AND**  
12 **CONSTRUCTION REQUIREMENTS.**

13 (a) Prior to initiating installation of any Alternate Water Source project, Project  
14 Applicants shall submit to the Director an application for permits to operate Alternate Water  
15 Source systems. Such applications shall comply with the requirements of this Article 12C and  
16 any regulations the Director has issued. Project Applicants shall pay a non-refundable permit  
17 application fee to cover the costs of investigation and processing the application and issuing  
18 the permit. Each project application submitted to the Director shall include a Non-potable  
19 Water Engineering Report that provides project information the Director determines to be  
20 necessary for complete review of the proposed project. City departments may not approve or  
21 issue permits for any site installing an Alternate Water Source system unless and until the  
22 Director has approved the Non-potable Water Engineering Report.

23 The Non-potable Water Engineering Report for District systems must include  
24 information on the permanent legal agreements between property owners, and provide  
25

1 documentation that each party is a willing and responsible participant in the District Non-  
2 potable Water use.

3 (b) **System Design.** All buildings using Non-potable Water from Alternate  
4 Water Source systems shall include:

5 (1) A flow meter on the non-potable distribution system to account for Non-  
6 potable Water use;

7 (2) A reduced pressure backflow assembly (RP) within 25 feet of the downstream  
8 side of the point of connection or meter to protect the City's public water and/or recycled water  
9 system;

10 (3) Signage that state law and the Department of Public Health's rules and  
11 regulations require;

12 (4) Cross connection control in accordance with California Code of Regulations  
13 Titles 17 and 22 and the San Francisco Public Utilities Commission's Cross Connection  
14 Control Program;

15 (5) Any other requirements the Director determines are necessary to protect  
16 public health.

17 ~~(c) *Water Budget Documentation. Upon submitting a project application to the Director, a*~~  
18 ~~*project applicant shall also submit Water Budget Documentation to the General Manager for review.*~~  
19 ~~*Water Budget Documentation shall include a description and location of the proposed alternate water*~~  
20 ~~*source system, the project's water budget, and other applicable information as determined by the*~~  
21 ~~*General Manager. City departments may not issue an encroachment permit, a site permit or plumbing*~~  
22 ~~*permit, or approve a Non-potable Water Engineering Report unless and until the General Manager has*~~  
23 ~~*reviewed the Water Budget Documentation.*~~

24 ~~(d)~~(c) **Plumbing Permit.** A Project Applicant shall obtain from the Department of  
25 Building Inspection an appropriate plumbing permit and any other building or installation

1 permit required to construct, install, alter, an alternate water source system. Each parcel  
2 within a ~~D~~istrict shall obtain appropriate plumbing and any other building or installation  
3 permits required.

4 ~~(e)~~(d) **Encroachment Permit.** A ~~P~~project ~~A~~applicant shall obtain from the  
5 Department of Public Works appropriate authorization for placement of any pipelines or other  
6 portions of an alternate water source system within the public right-of-way.

7 ~~(f)~~(e) **Construction Certification Letter.** ~~P~~project ~~A~~applicants shall certify to the  
8 Director that alternate water source system construction is complete and consistent with the  
9 approved Non-potable Water Engineering Report in accordance with the provisions of this  
10 Article 12C and any implementing rules and regulations. City departments may not approve or  
11 issue a ~~F~~irst ~~C~~ertificate of ~~O~~ccupancy or approval for any ~~A~~alternate ~~W~~ater ~~S~~ource system  
12 until the Director has reviewed and verified the Construction Certification Letter.

13 **SEC. ~~855~~12C.7. FEES.**

14 (a) The non-refundable application fees for alternative source water system permits  
15 are:

16	(1) Rainwater	\$1,544.00
17	(2) NSF 350 systems	\$2,688.00
18	(3) Foundation Drainage	\$5,032.00
19	(4) Graywater	\$5,032.00
20	(5) Black <del>W</del> ater	\$9,034.00
21	(6) Transfer of any permit	\$229.00
22	(7) District Scale, the applicable amount	\$191.00 per hour for plan review and/or
23	above, plus	on site inspection.

24  
25

1 (b) The fees set forth in this Section 12C.7 may be adjusted each year, without  
2 further action by the Board of Supervisors.

3 Not later than April 1, the Director shall report to the Controller the revenues  
4 generated by the fees for the prior fiscal year and the prior fiscal year's costs of operation, as  
5 well as any other information that the Controller determines appropriate to the performance of  
6 the duties set forth in this Section.

7 Not later than May 15, the Controller shall determine whether the current fees  
8 produce, or are projected to produce, revenues sufficient to support the costs of providing the  
9 services for which the fees are assessed and that the fees will not produce revenue that  
10 significantly exceed more than the costs of providing the services for which the fees are  
11 assessed.

12 The Controller shall if necessary, adjust the fees upward or downward for the  
13 upcoming fiscal year as appropriate to ensure that the program recovers the costs of  
14 operation without producing revenue which is significantly more than such costs. The adjusted  
15 rates shall become operative on July 1.

16 (c) Every permit holder shall also pay an annual license fee as provided in the  
17 Business and Taxation ~~Regulations~~ Code Section 249.24.

18 **SEC. ~~856~~12C.8. OPERATING REQUIREMENTS.**

19 When the Director determines the applicant has satisfied all the requirements of this  
20 Article 12C, the Director may issue an operations permit for an ~~Alternative Water Source~~  
21 system. Permittees shall timely submit all water quality monitoring information required by the  
22 provisions of this Article ~~12C~~ and the Department of Public Health's rules and regulations.  
23 Permittees shall conduct ongoing backflow prevention and cross connection testing in  
24 accordance with this Article, the rules and regulations of the Department of Public Health, and  
25 all applicable local, state, and federal laws.

1           **SEC. ~~857~~12C.9. NON-POTABLE WATER USE AUDITS.**

2           When required by the General Manager, the Permittee or property owner, shall  
3           conduct a Non-potable Water use audit describing the extent of Non-potable Water use in  
4           accordance with requirements provided by the General Manager.

5           **SEC. ~~858~~12C.10. SALE OR TRANSFER OF PERMITS.**

6           (a) Permittees shall notify the Director of any intent to sell or transfer the building or  
7           facility containing an Alternate Water Source system 30 days prior to the sale or transfer of  
8           property, in accordance with regulations adopted by the Director.

9           (b) Any subsequent owner shall submit documentation to the Director establishing  
10          their ability to own, operate and maintain the Alternate Water Source system in accordance  
11          with this Article 12C, the rules and regulations adopted by the Department of Public Health,  
12          and all applicable local, state, and federal laws, within 90 days of transfer of the property and  
13          prior to commencement of operations of the Alternate Water ~~supply~~ Source system.

14          (c) The Director may approve or deny the transfer of the permit to operate to any  
15          subsequent owner, in accordance with the requirements of theis Article 12C and applicable  
16          regulations.

17          **SEC. ~~859~~12C.11. INSPECTION AND NOTICES OF VIOLATION.**

18          The Director may inspect any Alternate Water Source system subject to the  
19          requirements of this Article 12C to determine compliance with the provisions of this Article and  
20          applicable regulations.

21          **SEC. ~~860~~12C.12. VIOLATION AND PENALTIES.**

22          The Director may impose administrative penalties on any Permittee, or person  
23          otherwise subject to the requirements of this Article 12C; who violates any provision of this  
24          Article or any applicable rule or regulation shall be subject to enforcement in accordance with  
25

1 Chapter 100 of the ~~San Francisco~~ Administrative Code with respect to administrative penalties,  
2 and may pursue any other available legal remedies for such violations.

3 **SEC. ~~86~~12C.13. REVOCATION AND SUSPENSION OF PERMIT.**

4 The Director may order a ~~P~~ermittee to cease operation of an ~~A~~lternate ~~W~~ater  
5 ~~S~~ource system, or may revoke or suspend the permit to operate if the Director determines  
6 that:

- 7 (a) The manager, operator or any employee has violated any provision of *this* Article  
8 12C or any regulation issued pursuant to this Article;
- 9 (b) The ~~A~~lternate ~~W~~ater ~~S~~ource system is being operated or maintained in a  
10 manner threatening the public health or health of patrons and/or residents; or
- 11 (c) The owner or operator has refused to allow any duly authorized City official to  
12 inspect the premises or the operations of the ~~A~~lternate ~~W~~ater ~~S~~ource system.

13  
14 Section 3. The Public Works Code is hereby amended by revising Section 723.2 to  
15 read as follows:

16 **SEC. 723.2. MINOR SIDEWALK ENCROACHMENTS.**

17 (a) The Director of Public Works may grant permission, revocable at his or her will,  
18 to an owner of property abutting any court, alley or street to install and maintain minor  
19 encroachments such as fences, retaining walls, steps or stairways and other minor structures  
20 in the sidewalk fronting such property where such encroachments are desirable or convenient  
21 in conjunction with the owner's use and enjoyment of the property, or required for the safety,  
22 convenience and comfort of the public using the sidewalk. Pipelines or other portions of an  
23 alternate water source system constructed within the public right-of-way for the purposes set forth in  
24 Article 12C of the Health Code and in accordance with Health Code Section 12C.6 are minor  
25 encroachments subject to the requirements of this Section 723.2.

1           (b) Such encroachments shall not occupy more than 10 percent of the area of the  
2 sidewalk fronting the property nor more than 25 percent of the width of the sidewalk, unless  
3 the Director of Public Works determines that such restrictions are not applicable due to the  
4 nature of the encroachment. The Director may require further restrictions or modifications and  
5 impose such conditions as he or she deems necessary. No advertisement shall be permitted  
6 on the encroachments.

7           (c) In considering the issuance of permits under the provisions of this Section 723.2,  
8 the Director of Public Works shall give due regard to the location, neighborhood pattern,  
9 anticipated pedestrian traffic, access requirements of the Fire Department, and to the  
10 convenience and necessities of the owners, occupants or tenants of offices, stores or shops in  
11 the vicinity.

12           (d) The owner of the real property or the owner's authorized agent applying for a  
13 permit under the provisions of this Section 723.2 shall agree to hold harmless the City and  
14 County of San Francisco, its officers, agents, and employees, from any damage or injury  
15 caused by reason of the installation or maintenance of the encroachment in the sidewalk, and  
16 the owner or owners or subsequent owner or owners of the respective real property shall be  
17 solely liable for any damage or loss occasioned by any act or neglect in respect to the  
18 installation or maintenance of the encroachments in the sidewalk.

19           (e) Each permit issued under the provisions of this Section 723.2 shall not become  
20 effective until the permit has been signed by the owner or the owner's authorized agent and a  
21 copy thereof has been recorded in the office of the Recorder of the City and County of San  
22 Francisco. Within 15 days following the approval, denial or revocation of a permit by the  
23 Director, any person may file a notice of appeal as follows:

24           (1) Appeals of the revocation or denial of a permit issued by the Director for the  
25 following encroachments that impede or otherwise impact the Central Subway Corridor, as

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

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

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

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

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

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

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



1 (j) The Board of Supervisors, the Board of Appeals or the Building Inspection  
2 Commission may affirm, reverse or modify any permit decision made by the Director of Public  
3 Works under the provisions of this Section 723.2. The decision by the Board of Supervisors,  
4 the Board of Appeals or the Building Inspection Commission is final.

5 (k) The Board of Supervisors reserves the right to exact a public right-of-way  
6 occupancy assessment fee for the use of the sidewalk or other public right-of-way space  
7 permitted under the provisions of this Section 723.2.

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

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

16 (~~A~~) Encroachments in, on, above, or below the public right-of-way that  
17 are affixed or appurtenant to any building whose owner obtained a site permit for new  
18 construction on or after August 29, 2005. This ~~s~~Subsection (k)(2)(~~A~~) also shall apply to any  
19 commercial, industrial, or mixed-use building whose owner obtained a site permit for new  
20 construction prior to August 29, 2005; provided, however, that such building is not located in  
21 any Neighborhood Commercial District as designated in Planning Code Article 7 and that the  
22 encroachment associated with such building was installed or encroachment permit obtained  
23 prior to August 29, 2005. This ~~s~~Subsection (~~k~~)(2)(~~A~~) shall specifically include, but not be limited  
24 to, doors that open over the public right-of-way and subsidewalk basements; provided,  
25 however, that this ~~s~~Subsection shall exclude encroachments for shoring and tiebacks. This

1 ~~Subsection (k)(2)(A)~~ shall not apply to a building that has been converted from a commercial,  
2 industrial, or mixed-use building into building containing only residential use.

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

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

13 ~~(D)~~ Underground storage tanks.

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

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

1           (5) Notwithstanding ~~s~~Subsection (k)(2), no public right-of-way occupancy  
2 assessment fee shall be charged against the owner of a property for elements installed as a  
3 requirement under Planning Code Section 138.1.

4           (~~65A~~) Notwithstanding ~~s~~Subsection (k)(2), if a minor sidewalk encroachment  
5 permit is necessary for the development of a project including residential units, all of which are  
6 affordable to low or moderate income households as defined by the United States Housing  
7 and Urban Development Department, then such project shall be exempt from payment of the  
8 public right-of-way occupancy assessment fee.

9           (~~76~~) The public right-of-way occupancy assessment fee shall be subject to the  
10 review and adjustment procedures as forth in Sections 2.1.1 et seq.

11           (~~87~~) The public right-of-way occupancy assessment fee shall not be charged to  
12 any federal, state, or local governmental agencies, commissions, or departments.

13           (~~98~~) Notwithstanding this ~~s~~Subsection (~~k~~), the public right-of-way assessment  
14 fee for underground vaults shall be as specified in Section 2.1.1 et seq.

15           *(10) Notwithstanding this subsection (k)(2), no public right-of-way occupancy*  
16 *assessment fee shall be charged for pipelines or other portions of an alternate water source system*  
17 *constructed within the public right-of-way for the purposes set forth in Article 12C of the Health Code*  
18 *and in accordance with Health Code Section 12C.6.*

19           (l) Notwithstanding the fees specified herein, if a project involves voluntary seismic  
20 retrofit upgrades to soft-story, wood-frame buildings, as defined by the Director of the  
21 Department of Building Inspection, such project applicant shall be exempt from the  
22 proportionate share of fees specified under this Section 723.2 and Sections 2.1.1 et seq. that is  
23 related to such retrofit work.

1 Section 4. Effective Date. This ordinance shall become effective 30 days after  
2 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
3 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
4 of Supervisors overrides the Mayor's veto of the ordinance.

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

12  
13 APPROVED AS TO FORM:  
14 DENNIS J. HERRERA, City Attorney

15 By: \_\_\_\_\_  
16 John Roddy  
17 Deputy City Attorney

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