

BOARD of SUPERVISORS



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MEMORANDUM

LAND USE AND ECONOMIC DEVELOPMENT COMMITTEE SAN FRANCISCO BOARD OF SUPERVISORS

TO: Supervisor Scott Wiener, Chair
Land Use and Economic Development Committee

FROM: Andrea Ausberry, Assistant Clerk

DATE: May 12, 2014

SUBJECT: **COMMITTEE REPORT, BOARD MEETING**
Tuesday, May 13, 2014

The following file should be presented as a **COMMITTEE REPORT** at the Board meeting, Tuesday, May 13, 2014. This item was acted upon at the Committee Meeting on May 12, 2014, at 1:30 p.m., by the votes indicated.

Item No. 33 **File No. 140319**

Ordinance amending the Public Works Code to establish the requirements for Surface-Mounted Facility Site Permits; to set fees for obtaining such permits; to make the provisions of the Ordinance retroactive; and making environmental findings.

RECOMMENDED AS A COMMITTEE REPORT

Vote: Supervisor Scott Wiener - Aye
Supervisor Jane Kim - Aye
Supervisor Malia Cohen - Aye

c: Board of Supervisors
Angela Calvillo, Clerk of the Board
Rick Caldeira, Deputy Legislative Clerk
Jon Givner, Deputy City Attorney

File No. 140319

Committee Item No. 1

Board Item No. 33

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Land Use and Economic Development Date May 12, 2014


Board of Supervisors Meeting Date May 13, 2014

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Introduction Form |
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Completed by: Andrea Ausberry Date May 9, 2014
 Completed by:  Date 5/13/14

1 [Public Works Code - Surface-Mounted Facility Site Permits]

2
3 **Ordinance amending the Public Works Code to establish the requirements for Surface-**
4 **Mounted Facility Site Permits; to set fees for obtaining such permits; to make the**
5 **provisions of the Ordinance retroactive; and making environmental findings.**
6

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

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

15 Section 1. The Planning Department has determined that the actions contemplated in
16 this ordinance comply with the California Environmental Quality Act (California Public
17 Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the
18 Board of Supervisors in File No. 140319 and is incorporated herein by reference.

19 Section 2. The Public Works Code is hereby amended by adding Article 27, Sections
20 2700 to 2731, to read as follows:

21 **ARTICLE 27. SURFACE-MOUNTED FACILITIES**

22 **SEC. 2700. SURFACE-MOUNTED FACILITY SITE PERMIT.**

23 **(a) Surface-Mounted Facility Site Permit Required. It shall be unlawful for any Person to construct or**
24 **install a Surface-Mounted Facility in any Public Right-of-Ways that are under the jurisdiction of the**
25

1 Department without first obtaining from the Department a Surface-Mounted Facility Site Permit under
2 this Article 27 authorizing such construction or installation.

3 (b) Minimum Permit Requirements. The Department shall require an Applicant for a Surface-
4 Mounted Facility Site Permit to demonstrate to the satisfaction of the Department that:

5 (1) The City has granted Applicant the authority to construct, install, and maintain the
6 proposed Surface-Mounted Facility in the Public Right-of-Ways; and

7 (2) The Director of the Department has approved the proposed location for the Surface-
8 Mounted Facility pursuant to the requirements of this Article 27.

9 (c) Permit Conditions. The Department may include in a Permit such Conditions, in addition to those
10 already set forth in this Article 27 and other Applicable Law, as may be required to govern the
11 construction, installation, removal, or maintenance of Surface-Mounted Facilities in the Public Right-
12 of-Ways, and to protect and benefit the public health, safety, welfare, and convenience.

13 (d) Authority Granted. A Permit shall authorize the Permittee to perform any excavation that is
14 required to install the Surface-Mounted Facility in the Public Right-of-Ways.

15 (e) Exceptions to Permit Requirement. The requirements of this Article 27 shall not apply to the
16 following:

17 (1) The replacement of an existing Surface-Mounted Facility at the same location, provided the
18 replacement Surface-Mounted Facility would be installed on the existing foundation and would be the
19 same size or smaller than the existing Surface-Mounted Facility.

20 (2) The installation of any equipment in the Public Right-of-Ways pursuant to an encroachment
21 permit issued by the Department pursuant to Article 15 of the Public Works Code.

22 (f) Other Provisions Inapplicable. This Article shall govern all actions taken by the City with respect
23 to the approval or denial of an Application for a Surface-Mounted Facility Site Permit under this
24 Article 27. The requirements of San Francisco Business and Tax Code Sections 5, 6, and 26(a) shall

1 not apply to this Article 27 to the extent those provisions are in conflict with the provisions of this
2 Article 27.

3
4 **SEC. 2701. DEPARTMENT ORDERS AND REGULATIONS.**

5 The Department may adopt such orders or regulations as it deems necessary to implement the
6 requirements of this Article 27, or to otherwise preserve and maintain the public health, safety,
7 welfare, and convenience, as are consistent with the requirements of this Article 27 and Applicable
8 Law. In formulating such orders or regulations, the Department shall consult with the Planning
9 Department and the Recreation and Park Department, for the purpose of considering the impacts
10 Surface-Mounted Facilities would have on the Aesthetic Character of the City's streetscapes, Historic
11 Resources, public parks, and open spaces, as well on pedestrian circulation and visibility.

12
13 **SEC 2702. DEFINITIONS.**

14 For purposes of this Article 27, the following definitions shall apply.

15 "Aesthetic Character" means pleasing in appearance in the context of the surrounding area.

16 "Applicable Law" means all applicable federal, state, and City laws, ordinances, codes, rules,
17 regulations and orders, as the same may be amended or adopted from time to time.

18 "Applicant" means any Person intending to submit or submitting an Application for a Surface-
19 Mounted Facility Site Permit under this Article 27, excluding any City department that has exclusive
20 authority over facilities under the jurisdiction of that department.

21 "Application" means an application for a Surface-Mounted Facility Site Permit under this
22 Article 27.

23 "City" means the City and County of San Francisco.

1 "Conditions" means any additional requirements that a City department reviewing an
2 Application for a Surface-Mounted Facility Site Permit has determined are necessary for the
3 Application to meet those requirements of this Article 27 that are within that department's purview.

4 "Department" means the Department of Public Works.

5 "Director" means the Director of Public Works.

6 "Graffiti" means any inscription, word, figure, marking or design that is affixed, marked,
7 scratched, drawn or painted on a Surface-Mounted Facility, whether permanent or temporary, without
8 the consent of the Permittee.

9 "Historic Resource" means a national historic landmark district, listed or eligible national
10 register historic district, listed or eligible California register historic district, San Francisco landmark
11 district, local historic or conservation district, locally significant district, a national historic
12 landmark, California landmark, San Francisco landmark, structure of merit, architecturally
13 significant building, or locally significant building. For the purposes of this Article 27, the term
14 Historic Resource includes a "potential" Historic Resource, which is a structure that the Planning
15 Department's Historic Preservation staff has determined has high eligibility of becoming a Historic
16 Resource. If an Applicant challenges the historic value of a potential Historic Resource, the Applicant
17 must provide sufficient information for the Planning Department to make the determination that the
18 identified potential Historic Resource is not a Historic Resource.

19 "Notice of Intent" means a notice that the Applicant intends to submit an Application for a
20 Surface-Mounted Facility Site Permit.

21 "Permittee" means an Applicant that has obtained a Permit to construct, install, and maintain
22 a Surface-Mounted Facility in the Public Right-of-Ways.

23 "Person" means any natural person, corporation, partnership, any City department, or any
24 governmental agency, including the State of California or United States of America.

1 “Placement Criteria” means the Department’s criteria for locating Surface-Mounted Facilities
2 in the Public Right-of-Ways intended to ensure that a Surface-Mounted Facility does not interfere with
3 the public’s use of the Public Right-of-Ways, which the Department shall establish by order or
4 regulation in consultation with the Planning Department.

5 “Pre-Application Approval Process” means the process forth in Sections 2704 through 2709
6 and 2712 through 2714 through which an Applicant for a Surface-Mounted Facility Site Permit must
7 obtain the Department’s prior approval of the proposed location for the Surface-Mounted Facility to
8 be set forth in an Application.

9 “Preferred Location List” means a list submitted by an Applicant for a Surface-Mounted
10 Facilities Permit identifying the Applicant’s Preferred Locations for a Surface-Mounted Facility.

11 “Preferred Locations” means the locations for a Surface-Mounted Facility that an Applicant
12 determines best suits its needs and that are consistent with the requirements of this Article 27.

13 “Public Right-of-Ways” means the area in, on, upon, above, beneath, within, along, across,
14 under, and over the public streets, sidewalks, roads, lanes, courts, ways, alleys, spaces, and
15 boulevards within the geographic area of the City in which the City now or hereafter holds any
16 property interest, which is dedicated to public use.

17 “Public Works Code” means the City and County of San Francisco Public Works Code.

18 “Surface-Mounted Facility” means any Utility facility (physical element or structure) that is
19 installed, attached, or affixed in the Public Right-of-Ways on a site that is above the surface of the
20 street (except a Utility pole or associated appurtenances) and that requires the Permittee to excavate
21 in order to install the facility in the Public Right-of-Ways. The term Surface-Mounted Facility shall
22 not include bus shelters and associated kiosks.

23 “Surface-Mounted Facility Site Permit” or “Permit” means a permit to install a Surface-
24 Mounted Facility in the Public Right-of-Ways as it has been approved by the Department.

1 "Utility" means any of the following services: electricity, gas, information, sewer, steam,
2 telecommunications, high-speed Internet, voice over Internet protocol, video over Internet protocol,
3 traffic control, cable television, transit, open video, water, or other services that require the provider
4 to install facilities in the Public Right-of-Ways to serve its customers.

5
6 **SEC. 2703. LOCATION APPROVAL.**

7 (a) Required Prior to Application. In order to ensure that Surface-Mounted Facilities are installed in
8 the most suitable locations, an Applicant must first obtain the Department's approval of the proposed
9 location for the Surface-Mounted Facility.

10 (b) Exceptions. If an Applicant demonstrates to the Department that there is only one feasible location
11 for the proposed Surface-Mounted Facility, the Department may by order waive the required Pre-
12 Application Approval Process and authorize the Applicant to submit an Application without a pre-
13 approved location, subject to any reasonable Conditions the Department may place on the proposed
14 Surface-Mounted Facility. By order or regulation, the Department shall establish standards for
15 determining when there is only one feasible location for a proposed Surface-Mounted Facility, but
16 such standards shall be based on technical or physical constraints only.

17
18 **SEC. 2704. PREFERRED LOCATIONS.**

19 (a) Identification of Preferred Locations. The Pre-Application Approval Process shall begin with an
20 Applicant's initial site selection. An Applicant shall conduct a thorough survey of the area where it
21 seeks to install a Surface-Mounted Facility to identify its Preferred Locations for the Surface-Mounted
22 Facility.

23 (b) Criteria for Preferred Locations. In selecting its Preferred Locations, the Applicant should seek to
24 minimize the effect the placement of the Surface-Mounted Facility will have on use of the Public Right-
25 of-Ways by, among other things:

1 (1) Placing the Surface-Mounted Facility in the Public Right-of-Ways so as to maintain an
2 appropriate path of travel along the sidewalk, paying particular attention to the needs of persons with
3 disabilities. To the extent feasible, an Applicant shall locate the Surface-Mounted Facilities on streets
4 where pedestrian travel is minimal.

5 (2) Placing the Surface-Mounted Facility in the Public Right-of-Ways so that the Aesthetic
6 Character of the streetscape will not be unreasonably affected by the installation of the Surface-
7 Mounted Facility. Unless no other location is feasible, the Applicant should avoid using sidewalks

8 that: (A) are narrower than the City's standard sidewalk in the applicable zoning district as set forth
9 in the Better Streets Plan; or (B) have special paving or other special design features.

10 (3) Ensuring that the Surface-Mounted Facility will not obstruct access to other facilities that
11 are installed or the Department knows are to be installed in the Public Right-of-Ways by other entities
12 including City departments and entities providing Utility services.

13 (4) Placing the Surface-Mounted Facility in a location that is consistent with the City's
14 General Plan, Better Streets Plan, and any applicable Neighborhood or Streetscape Plans.

15 (5) Placing the Surface-Mounted Facility in a location that is consistent with the Placement
16 Criteria.

17 (6) Placing the Surface-Mounted Facility in a location that will not unreasonably affect the
18 Aesthetic Character of a City park or open space.

19 (c) Disfavored Locations. The following locations are disfavored, and the Department shall not issue
20 a Surface-Mounted Facility Site Permit in these disfavored locations unless the Applicant can show
21 that no other option is available:

22 (1) On Public Right-of-Ways where all Utility facilities are undergrounded.

23 (2) On Public Right-of-Ways where the City has completed or has plans for major capital
24 improvements, including streetscape and pedestrian safety improvements.

1 (3) On Public Right-of-Ways that are known for having a high level of pedestrian traffic (e.g.
2 Neighborhood Commercial zoning districts).

3 (4) On Public Right-of-Ways that are adjacent to or that will affect the view of a Historic
4 Resource or that are within a Historic Resource in which any existing street furniture contributes to
5 the historic nature of the Historic Resource.

6 (5) On Public Right-of-Ways that the San Francisco General Plan has designated as being
7 most significant to City pattern, defining City form, having an important street view for orientation, or
8 as having views that are rated "excellent" or "good."

9 (6) On Public Right-of-Ways that are adjacent to a City park or open space, unless the
10 Department finds that such locations could be used to minimize the effect on the Aesthetic Character
11 of the City park or open space.

12 (7) On Public Right-of-Ways that are adjacent to a public or private elementary or middle
13 school.

14
15 **SEC. 2705. COMMUNITY INPUT ON PREFERRED LOCATIONS.**

16 (a) Community Meeting Required. The Pre-Application Approval Process shall require participation
17 in a community meeting in which the Applicant shall discuss its Preferred Locations for a Surface-
18 Mounted Facility with local residents and business owners. At the community meeting, the Applicant
19 shall discuss: (1) all feasible locations for the proposed Surface-Mounted Facility, which may include
20 specific locations or zones, but in no case fewer than two Preferred Locations for the proposed
21 Surface-Mounted Facility shall be identified and discussed; (2) any technological limitations to the
22 location of the proposed Surface-Mounted Facility; and (3) the process for the public to object to the
23 Applicant's Preferred Locations.

24 (b) Notice of Meeting. The Applicant shall provide notice of time and place for the community
25 meeting as set forth in Section 2713. The time for the community meeting shall be after regular

1 business hours and the place for the meeting must shall be within the vicinity of the Applicant's
2 Preferred Locations.

3 (c) City Department Participation. The Applicant shall notify the Department and the Planning
4 Department of the time and place for the community meeting. If one of the Preferred Locations is in
5 front of a City park or open space, the Applicant shall also notify the Recreation and Park
6 Department. Where feasible, the Department, the Planning Department, and the Recreation and Park
7 Department shall attend the community meeting.

8 (d) Record of Meeting. The Applicant shall keep a record of all Persons that attended a community
9 meeting and shall prepare and distribute a summary of the meeting to the attendees and the
10 Department.

11 (e) Language Requirement. The Applicant shall ensure that on-call translation services are available
12 for such meeting when required by the Department. Prior to the meeting, the Applicant shall inquire of
13 the Department whether translation services are required, and if so, into which language or languages
14 such translation services shall be offered.

15
16 **SEC. 2706. SUBMISSION OF PREFERRED LOCATION LIST.**

17 As part of the Pre-Application Approval Process, an Applicant may submit a Preferred Location List
18 to the Department within 10 days of the community meeting in which the Applicant shall identify at
19 least two Preferred Locations for the Surface-Mounted Facility and shall specify the Applicant's order
20 of preference for the proposed locations. If there are any technological limitations to the location for
21 the proposed Surface-Mounted Facility in the Public Right-of-Ways, the Applicant shall inform the
22 Department of such constraints in the Preferred Location List.

23
24 **SEC. 2707. DEPARTMENT ACTION ON PREFERRED LOCATION LIST.**

1 (a) Department Review. As part of the Pre-Application Approval Process, the Department shall
2 complete its review of the Preferred Location List within 14 days of receipt from the Applicant. With
3 the concurrence of the Applicant, the Department may extend this review period beyond 14 days.

4 (b) Notice to Applicant. After completion of its review, the Department shall notify the Applicant as
5 follows:

6 (1) Whether the Applicant has satisfied the requirement to conduct a community meeting.

7 (2) Whether one or more of the Applicant's Preferred Locations are acceptable locations for
8 Applicant's proposed Surface-Mounted Facility consistent with the Department's Placement Criteria.

9 (3) Whether the Department agrees with the Applicant's order of preference for its Preferred
10 Locations.

11 (4) Whether the Department's approval of one or more of the Applicant's Preferred Locations
12 shall include any Conditions, unless the Department by order or regulation has established objective
13 criteria that identify and address the impacts that a Surface-Mounted Facility would have on the
14 Public Right-of-Ways so that no Conditions would be required.

15 (5) Whether the Department will require the Applicant to notify the public of the proposed
16 installation of the Surface-Mounted Facility prior to submitting an Application for a Surface-Mounted
17 Facility Site Permit.

18 (6) Whether the Department will propose any additional locations for the Applicant's Surface-
19 Mounted Facility.

20 (c) Referral to Other City Departments.

21 (1) As part of the Pre-Application Approval Process, the Department shall refer every
22 Preferred Location List to the Planning Department for its review. If a Preferred Location List
23 identifies any proposed location that is in front of any City park or open space under the jurisdiction
24 of the Recreation and Park Department, the Department shall refer the Preferred Location List to the
25 Recreation and Park Department.

1 (2) The referral requirements set forth in subsection (c)(1) above, and the review
2 requirements set forth in Sections 2708 and 2709, may be waived for any and all Preferred Location
3 Lists submitted to the Department, provided that: (A) the Department has by order or regulation
4 adopted in association with the Planning Department established objective criteria that identify and
5 address the impacts that a Surface-Mounted Facility would have on the Aesthetic Character of the
6 City's streetscapes, Historic Resources, and pedestrian circulation and visibility; and/or (B) the
7 Department has by order or regulation adopted in association with the Recreation and Park
8 Department established objective criteria that identify and address the impacts that a Surface-
9 Mounted Facility would have on the Aesthetic Character of the City's parks and open spaces.

10
11 **SEC. 2708. PLANNING DEPARTMENT ACTION ON PREFERRED LOCATION LIST.**

12 (a) Planning Department Review. The Planning Department shall review a Preferred Location List to
13 make the determination set forth in subsection (b) below. The Planning Department may also consult
14 with other City departments during its review.

15 (b) Planning Department Determination.

16 (1) The Planning Department shall determine whether the installation of a Surface-Mounted
17 Facility at any or all of the Preferred Locations will unreasonably affect the Aesthetic Character of
18 the streetscape in the immediate vicinity of each of the Preferred Locations or if such installation will
19 adversely affect pedestrian circulation or visibility, or, where applicable, will adversely affect a
20 Historic Resource.

21 (2) The Planning Department's determination that the installation of a Surface-Mounted
22 Facility at any or all of the Preferred Locations will not unreasonably affect the Aesthetic Character
23 of the streetscape, adversely affect pedestrian circulation or visibility, or adversely affect a Historic
24 Resource may include Conditions intended to minimize such effects including, but not limited to, a
25

1 color for the Surface-Mounted Facility and any aesthetic changes to the Surface-Mounted Facility
2 itself or to its installation.

3 (3) The Planning Department's determination may suggest changes to the Applicant's order of
4 preference for the Preferred Locations.

5 (4) The Planning Department's determination may include a recommendation that the
6 Applicant include additional locations for the proposed Surface-Mounted Facility in the Notice of
7 Intent.

8 (5) The Planning Department's determination shall be in writing and shall set forth the
9 reasons therefore. The Planning Department shall transmit its determination to the Department and
10 the Applicant within 14 days of receipt of the Preferred Location List from the Department. With the
11 concurrence of the Applicant, the Planning Department may extend this review period beyond 14
12 days.

13
14 **SEC. 2709. RECREATION AND PARK ACTION ON PREFERRED LOCATION LIST.**

15 (a) Recreation and Park Department Review. The Recreation and Park Department shall review any
16 Preferred Location List that identifies a proposed location for a Surface-Mounted Facility that is in
17 the vicinity front of a City park or open space under its jurisdiction to make the determination set
18 forth in subsection (b) below. The Recreation and Park Department may consult with other City
19 departments during its review.

20 (b) Recreation and Park Department Determination.

21 (1) The Recreation and Park Department shall determine whether the installation of a Surface-
22 Mounted Facility at a Preferred Location that is in the vicinity front of a City park or open space
23 under its jurisdiction will unreasonably affect the Aesthetic Character of such City park or open
24 space.

1 (2) The Recreation and Park Department's determination that the installation of a Surface-
2 Mounted Facility at a Preferred Location that is in the vicinity front of a City park or open space will
3 not unreasonably affect the Aesthetic Character of such City park or open space may include
4 Conditions intended to minimize the effect of the Surface-Mounted Facility on the Aesthetic Character
5 of such City park or open space including, but not limited to, a color for the Surface-Mounted Facility
6 or any aesthetic changes to the Surface-Mounted Facility itself or to its installation.

7 (3) The Recreation and Park Department's determination may suggest changes to the
8 Applicant's order of preference for the Preferred Locations.

9 (4) The Recreation and Park Department's determination may include a recommendation that
10 the Applicant include additional locations for the proposed Surface-Mounted Facility in the Notice of
11 Intent.

12 (5) The Recreation and Park Department's determination shall be in writing and shall set forth
13 the reasons therefore. The Recreation and Park Department shall transmit its determination to the
14 Department and the Applicant within 14 days of receipt of the Preferred Location List from the
15 Department. With the concurrence of the Applicant, the Recreation and Park Department may extend
16 this review period beyond 14 days.

17
18 **SEC. 2710. LANDSCAPING.**

19 **(a) Required for Permit.**

20 (1) The Department shall require every Permittee to install suitable street trees and
21 landscaping in order to minimize any negative effects on the Aesthetic Character of the streetscape
22 resulting from Permittee's construction, installation, and maintenance of the permitted Surface-
23 Mounted Facility. The Department shall determine the number of required street trees and the total
24 area of the landscaped area. Generally, the Department shall require the installation of at least one
25

1 street tree and sidewalk landscaping of approximately 100 square feet with each permitted Surface-
2 Mounted Facility.

3 (2) In any instance in which the Department cannot require the Permittee to install either
4 appropriate street trees or landscaping in the vicinity of the permitted Surface-Mounted Facility,
5 including on the basis of inadequate sidewalk width, interference with utilities, or other reasons
6 regarding the public health, safety, or welfare, the Department shall instead require the Permittee to
7 make an "in-lieu" payment into the Department's "Adopt-A-Tree" fund. This payment shall be in the
8 amount specified in Public Works Code §§ 802(h) and 807(f) for the installation of one street tree in
9 addition to a payment of \$7,500 for sidewalk landscaping, and shall be payable prior to the
10 Department's issuance of the Permit. These in-lieu fees may be adjusted to reflect changes in the
11 relevant Consumer Price Index, subject to the requirements of Section 2729(e).

12 (b) Care and Maintenance of Street Trees and Landscaping. The Permittee shall be responsible for
13 the care and maintenance of any street trees and landscaping required to be installed in the Public
14 Right-of-Ways under this Section. In this regard, the Permittee shall assume the duty of a "property
15 owner" as set forth in Public Works Code § 805(a).

16 (c) No Separate Permit Required. The street tree and landscaping requirements set forth subsection
17 (a) above shall be incorporated into the Surface-Mounted Facility Site Permit issued by the
18 Department under this Article 27. No separate permit will be required under Section 810B of the
19 Public Works Code.

20
21 **SEC. 2711. MURALS.**

22 (a) Required for Permit. Any Person or group of Persons may propose to the Department and the
23 Permittee that the permitted Surface-Mounted Facility be used for a mural that is appropriate for the
24 location. The Permittee Department shall require every Permittee to work with any Person or
25 group of Persons selected by the San Francisco Arts Commission in consultation with the

1 Department and the Permittee to facilitate the installation of the mural at Permittee's sole expense
2 and at no cost to the City. No mural shall be allowed unless it is approved by the San Francisco Arts
3 Commission. No mural may contain any product advertising of any kind. The Department may
4 establish by order or regulation the process for placing a mural on a permitted Surface-Mounted
5 Facility.

6 (b) Maintenance. The Permittee shall at Permittee's expense work with the Person or Persons that
7 installed the mural to ensure that the mural is properly maintained. The requirements of this
8 subsection shall be in addition to Permittee's responsibilities under this Article 27 to maintain any
9 permitted Surface-Mounted Facilities and remove any Graffiti from its permitted Surface-Mounted
10 Facilities.

11
12 **SEC. 2712. NOTICE OF INTENT TO SUBMIT APPLICATION.**

13 (a) Submission to the Department. As part of the Pre-Application Approval Process, within 1 day
14 after the Preferred Location List has been reviewed and approved by all applicable City departments,
15 the Applicant may submit a Notice of Intent to the Department for its review. An Applicant may
16 request additional time to submit a Notice of Intent.

17 (b) Form and Contents. The Notice of Intent shall be in the form approved by the Department by
18 order or regulation, but at a minimum shall contain the information required in Section 2713(c)(1)-(9).

19 (c) Department Approval. If the Department determines that a Notice of Intent is complete, the
20 Department will approve the Notice of Intent and authorize the Applicant to post and mail the Notice
21 of Intent as required in Section 2713.

22 (d) Completion Requirements. The Notice of Intent shall not be complete unless the Department
23 determines that the Applicant has complied with the following requirements:

24 (1) The Applicant has satisfactorily conducted the community meeting required in Section
25 2705.

1 (2) The Applicant has submitted to the Department plans showing all of the sizes and shapes of
2 the cabinets proposed to be used for its Surface-Mounted Facilities, including the dimensions of any
3 ancillary equipment. For Applicants that conduct business in jurisdictions other than San Francisco,
4 the Applicant shall certify that the cabinets proposed for San Francisco are no larger than the
5 smallest used in any other jurisdiction for similar services.

6 (3) If the Applicant is seeking approval of a larger cabinet on an existing Surface-Mounted
7 Facility site, the Applicant has sufficiently demonstrated to the Department the reasons the larger
8 cabinet is necessary.

9 (4) The Applicant has surveyed the vicinity of the Preferred Locations for its Surface-Mounted
10 Facility to identify locations outside of the Public Right-of-Ways (including City-owned property) that
11 may be appropriate for the installation of the Surface-Mounted Facility and the Applicant has made
12 reasonable efforts to determine whether the owners of any and all suitable properties would be willing
13 to allow the Applicant to use their property for Applicant's proposed Surface-Mounted Facility. For
14 purposes of this subsection, the term "reasonable efforts" includes offering the owners of any suitable
15 property reasonable market rate compensation for the use of the property for the Applicant's
16 Surface-Mounted Facility. The Department shall by order or regulation establish guidelines defining
17 what consists of "reasonable efforts;" and "market rate compensation."

18 (5) The Applicant attempted to place the Surface-Mounted Facility (or parts thereof)
19 underground where such underground placement is technologically or economically feasible. An
20 Applicant may satisfy the requirement contained in this subsection by demonstrating to the satisfaction
21 of the Director that it is not technologically or economically feasible for the Applicant to place the
22 Surface-Mounted Facility (or parts thereof) underground. At a minimum, the Applicant shall
23 demonstrate to the Director that it conducted a thorough search for adequate underground technology
24 and provide a report from a licensed engineer certifying the information.

1 (6) Where it is not technologically or economically feasible to underground the entire Surface-
2 Mounted Facility, the Applicant has: (A) agreed (A) to underground part of the Surface-Mounted
3 Facility; (B) limited to limit the height and footprint of the Surface-Mounted Facility to the maximum
4 extent feasible; (C) either to used stainless steel or to painted the Surface-Mounted Facility the color
5 used for City structures in the vicinity unless otherwise specified by the Department and added a
6 Graffiti-proof coating; (D) to screened the Surface-Mounted Facility by landscaping the Public Right-
7 of-Ways in the area around the Surface-Mounted Facility or camouflaging the Surface-Mounted
8 Facility where requested by any City department; and (E) to comply complied with any Conditions
9 imposed by any City department that reviewed the Applicant's Preferred Location List.

10 (7) The Applicant has explored reasonable opportunities to co-locate the Surface-Mounted
11 Facility with any other Surface-Mounted Facility installed or to be installed in the Public Right-of-
12 Ways by other entities including City departments.

13 (8) The Applicant has explored reasonable opportunities for its Surface-Mounted Facility to
14 serve a dual function such as a bench or other amenity. The Department shall have the authority to
15 require that a Surface-Mounted Facility serve a dual function, where the Department determines that
16 such dual function is technologically and economically feasible.

17 (9) The Applicant has notified the Department whether the Applicant could remove an existing
18 Surface-Mounted Facility from the Public Right-of-Ways because it would no longer be used or useful
19 to the Applicant once the proposed Surface-Mounted Facility has been installed.

20 (10) The Applicant has submitted a plan to the Department, in a format specified by the
21 Department, showing all of the Surface-Mounted Facilities the Applicant expects to install in the City
22 within five years of the Application date. Any Applicant that does not anticipate installing any other
23 Surface-Mounted Facilities in the next five years may satisfy this requirement by submitting a
24 statement to that effect instead of a five-year plan.

1 (11) The Department has determined that at least two of the Applicant's Preferred Locations
2 for the Surface-Mounted Facility are acceptable or the Notice of Intent will include additional
3 proposed locations identified by the Department or another City department that reviewed the
4 Applicant's Preferred Location List, unless the Department has determined that there is only one
5 feasible location for the proposed Surface-Mounted Facility.

6
7 **SEC. 2713. PUBLIC NOTICE OF NOTICE OF INTENT TO SUBMIT APPLICATION.**

8 ~~(a) Public Notice Required. As part of the Pre-Application Approval Process, the Department shall~~
9 ~~require an Applicant to notify the public that the Applicant has submitted a Notice of Intent to the~~
10 ~~Department.~~

11 (b) Notice Requirements.

12 (1) The Applicant shall send a copy of the Notice of Intent to all Persons owning or occupying
13 any property located within 300 feet along either side of the fronting streets of any of the Preferred
14 Locations for the Surface-Mounted Facility.

15 (2) The Applicant shall post a copy of the Notice of Intent in conspicuous places along the
16 Public Right-of-Ways within 300 feet of either side of the fronting streets of any of Applicant's
17 Preferred Locations for the Surface-Mounted Facility.

18 (3) The Applicant shall send a copy of the Notice of Intent to any neighborhood planning
19 association identified by the Planning Department for any neighborhood within 300 feet of any of the
20 Applicant's Preferred Locations for the Surface-Mounted Facilityies.

21 (c) Form of Notice of Intent. The Notice of Intent shall be in a form to be approved by the Department
22 by order or regulation. At a minimum, the Notice of Intent shall contain the following information:

23 (1) The fronting address for each of the Preferred Locations and photo-simulations of the
24 Surface-Mounted Facility at each of the Preferred Locations. Such photo-simulations shall accurately
25 depict the proposed Surface-Mounted Facility and any proposed street trees or landscaping.

1 (2) The Applicant's order of preference for the Preferred Locations.

2 (3) A brief description of the nature of the use of the proposed Surface-Mounted Facility and
3 the consequences of not installing the facility.

4 (4) Any assessment made of the Applicant's Preferred Locations by the Planning Department
5 and/or Recreation and Park Department.

6 (5) Any Conditions on the installation of the proposed Surface-Mounted Facility at each of the
7 Preferred Locations imposed by any City department that reviewed the Applicant's Preferred Location
8 List (including a statement indicating whether the Applicant has accepted the Conditions).

9 (6) Any additional proposed locations for the Surface-Mounted Facility identified by any City
10 department that reviewed the Applicant's Preferred Location List (including a statement indicating
11 whether the Applicant has accepted the proposed locations).

12 (7) The procedure for protesting any or all of the Preferred Locations for the Surface-
13 Mounted Facility contained in the Notice of Intent.

14 (8) The Applicant's contact information for obtaining information related to the Notice of
15 Intent and/or the technical requirements for the proposed Surface-Mounted Facility.

16 (9) A statement that more information about the proposed Notice of Intent can be obtained
17 from the Applicant and more information about submitting a protest can be obtained from the
18 Department.

19 (10) Language Requirement. The Department may require an Applicant to translate the Notice
20 of Intent into such language(s) that the Department determines are appropriate based on the locations
21 for the proposed Surface-Mounted Facility contained in the Notice of Intent. Prior to issuing the
22 Notice of Intent, the Applicant shall inquire of the Department as to whether translation is required,
23 and if so, into which language or languages such translation shall be offered.

24 (d) Filing with the Department. The Applicant shall file with the Department proof that the Applicant
25 has complied with the notice requirements contained herein.

1
2 **SEC. 2714. PROTEST OF APPLICANT'S PREFERRED LOCATIONS.**

3 (a) Protest Allowed. As part of the Pre-Application Approval Process, the Department shall allow any
4 Person affected by a proposed Surface-Mounted Facility to protest an Applicant's Preferred Locations
5 for a Surface-Mounted Facility.

6 (b) Protest Procedure. A protest must be in writing and must be submitted to the Department within
7 10 days of the date the Notice of Intent was mailed and posted as required under Section 2713.

8 ~~(c) Hearing Required. If a protest is timely submitted, the Department shall hold a hearing. The~~
9 ~~Department shall set a date for the hearing for no more than 20 days after the Department's receipt of~~
10 ~~the protest.~~

11 (d) Notice of Hearing Date. The Department shall send written notice to any Person submitting a
12 protest, to the Applicant, and to any City department that reviewed the Preferred Location List of the
13 date the Department has set for the hearing at least 7 days before the date set for the hearing. The
14 Department shall follow its regular procedures for notifying the general public of the date set for the
15 hearing.

16 (e) Hearing Officer. The Department shall appoint a hearing officer to conduct a public hearing on a
17 protest.

18 (f) Hearing Record. The hearing record shall include:

19 (1) Records of any community meetings held to discuss the Preferred Location List;

20 (2) The Preferred Location List;

21 (3) Any written determination from the Department, the Planning Department, or the
22 Recreation and Park Department (as applicable), including any Conditions and/or additional
23 proposed locations identified by such City department;

24 (4) Any further written evidence from any City department submitted either prior to or during
25 the hearing;

1 (5) Any written submissions from the Applicant, any Person submitting a protest, or any other
2 interested Person submitted either prior to or during the hearing; and

3 (6) Any oral testimony from any City department, the Applicant, any Person submitting a
4 protest, or any interested Person taken during the hearing.

5 (g) Hearing Officer's Report.

6 (1) The hearing officer shall issue a written report and recommendation within 5 days of the
7 close of evidence.

8 (2) The hearing officer shall include in the report a summary of the evidence and a
9 recommendation to the Director.

10 (3) The hearing officer may recommend that the Director approve one of the Applicant's
11 Preferred Locations, and will base such a recommendation upon the following matters only:

12 (A) Which of the Preferred Locations best complies with this Article 27.

13 (B) Whether the Department's approval of the Preferred Location should include any of
14 the Conditions recommended by a City department.

15 (C) Whether any of the additional proposed locations recommended by a City
16 department would better comply with this Article 27 than any of the Applicant's Preferred Locations.

17 (4) The hearing officer may recommend that the Director deny all of the Applicant's Preferred
18 Locations for the proposed Surface-Mounted Facility should the hearing officer determine that:

19 (A) None of the Applicant's Preferred Locations complies with this Article 27; or

20 (B) The Applicant will not accept the Conditions recommended by a City department
21 that the hearing officer determines are necessary to comply with this Article 27; or

22 (C) The Applicant will not agree to install the Surface-Mounted Facility in one of the
23 additional proposed locations recommended by a City department.

1 (h) Director's Decision. The Director shall issue a written decision adopting, modifying, or rejecting
2 the hearing officer's written report and recommendation within 5 days of the Director's receipt of the
3 hearing officer's report.

4
5 **SEC. 2715. APPLICATION PROCESS FOR SURFACE-MOUNTED FACILITY SITE PERMIT.**

6 (a) Application. An Application for a Surface-Mounted Facility Site Permit shall contain such
7 information as the Department shall determine is necessary by order or regulation.

8 (b) Time for Application.

9 (1) If, pursuant to Section 2703(b), the Department did not require the Applicant to follow the
10 Pre-Application Approval Process, an Application may be submitted immediately upon the
11 Department's determination there is only one feasible location for the proposed Surface-Mounted
12 Facility.

13 (2) If the Pre-Application Approval Process has been completed, an Application may be
14 submitted to the Department as further described below:

15 (A) If a timely protest to a Notice of Intent was not submitted, immediately upon the
16 expiration of the protest period.

17 (B) If a timely protest to a Notice of Intent was submitted, immediately upon receipt of
18 the Director's decision issued after the hearing.

19 (c) Completion Notice.

20 (1) Upon receipt of an Application, the Department shall first determine whether the
21 Application is complete. The Department will notify the Applicant within 3 days whether the
22 Application is complete.

23 (2) An Application is not complete if the Applicant does not specify that the location for the
24 proposed Surface-Mounted Facility has been approved by the Department, or that the Department has
25 waived the required Pre-Application Approval Process pursuant to Section 2703(b), and that the

1 Applicant will comply with all of the Conditions of approval imposed by any City department or in a
2 Director's decision issued after a hearing.

3 (d) Reasons for Denial.

4 (1) If, pursuant to Section 2703(b), the Department waived the Pre-Application Approval
5 Process for its proposed location for a Surface-Mounted Facility, the Department may deny an
6 Application at the Applicant's selected location if the Applicant rejects any of the Conditions proposed
7 by any City department that reviewed the Application

8 (2) If a timely protest was not submitted, the Department may deny an Application at the
9 location identified in the Notice of Intent if the Applicant rejects any of the Conditions proposed by
10 any City department that reviewed the Application.

11 (3) If a timely protest was submitted, the Department shall deny an Application if the Director
12 has not approved a location for the proposed Surface-Mounted Facility or if the Applicant rejects any
13 of the Conditions set forth in the Director's decision.

14 (e) Approval of Location.

15 (1) If, pursuant to Section 2703(b), the Department waived the Pre-Application Approval
16 Process for its proposed location for a Surface-Mounted Facility, the Department shall approve the
17 location identified by the Applicant.

18 (2) If no protest was submitted, the Department shall evaluate the proposed Preferred
19 Locations in the order ranked by the Applicant.

20 (3) If a protest was submitted, the Department shall approve the proposed location contained
21 in the Director's decision.

22 (f) Final Determination. The Department shall finally approve or deny an Application at the
23 Applicant's selected location within 2 days after the Department's determination that the Application
24 is complete.

1 **SEC. 2716. NOTICE OF FINAL DETERMINATION.**

2 (a) Notice by Mail.

3 (1) The Department shall promptly mail a notice of final determination regarding an
4 Application for a Surface-Mounted Facility Site Permit to both the Applicant and to any neighborhood
5 association identified by the Planning Department for any neighborhood within 300 feet of the
6 approved Surface-Mounted Facility.

7 (2) If a protest to a Notice of Intent was submitted, in addition to the Applicant and the relevant
8 neighborhood associations identified in subsection (a)(12) above, the Department shall also promptly
9 mail a notice of final determination regarding an Application to any Person who either filed a protest,
10 submitted evidence, or attended at the hearing, provided that person's name and address are known to
11 the Department.

12 (b) Posting of Notice. The Department shall require the Applicant to promptly post notice of a
13 Department final determination regarding an Application in conspicuous places throughout the block
14 face where the approved Surface-Mounted Facility will be located.

15 (c) Contents of Notice. A notice of final determination regarding an Application shall contain such
16 information as the Department reasonably requires.

17 (d) Compliance with Notice Requirement. The Department may require the Applicant to provide the
18 Department with such evidence as the Department may require of the Applicant's compliance with the
19 notice requirements of this Section.

20
21 **SEC. 2717. APPEALS.**

22 (a) Appealable Determinations. The Department's approval or denial of an Application for a Surface-
23 Mounted Facility Site Permit may be appealed to the Board of Appeals.

24 (b) Board of Appeals Review. Upon such appeal, the Board of Appeals shall determine whether the
25 final determination was correct under the provisions of this Article 27.

1
2 **SEC. 2718. EXCAVATION REQUIREMENTS.**

3 The requirements of Subarticles V and VI of Article 2.4 of the Public Works Code, and any
4 Department order or regulation related to Article 2.4, shall apply to any excavation required to install
5 a Surface-Mounted Facility in the Public Right-of-Ways. The Department may invoke the procedures
6 contained in Subarticle VII of Article 2.4 of the Public Works Code to enforce any violations of the
7 requirements of Subarticles V and VI.

8
9 **SEC. 2719. COMPLIANCE.**

10 Any Surface-Mounted Facility installed in the Public Right-of-Ways pursuant to a Surface-
11 Mounted Facility Site Permit issued under this Article 27 shall be installed in a manner that complies
12 with the terms and conditions of the Permit and this Article 27.

13
14 **SEC. 2720. NOTICE OF COMPLETION AND INSPECTION.**

15 (a) Notice of Completion. A Permittee shall notify the Department immediately upon completion of
16 the installation of a Surface-Mounted Facility.

17 (b) Inspection. The Department shall inspect a Surface-Mounted Facility installed in the Public Right-
18 of-Ways within a reasonable time after a Permittee provides the Department with a notice of
19 completion required under subsection (a) above. The Department shall determine during the
20 inspection whether the installation is in accordance with the requirements of the Surface-Mounted
21 Facility Site Permit.

22
23 **SEC 2721. ADDITIONAL PERMIT REQUIREMENTS.**

24 (a) Permittee's Use of the Public Right-of-Ways. A Permittee's use of the Public Right-of-Ways to
25 construct, install, and maintain a Surface-Mounted Facility shall be subordinate to any prior lawful

1 occupancy and the continuing right of the City to use and occupy the Public Right-of-Ways, or any
2 part thereof, exclusively or concurrently with any other Person or Persons, and further subject to the
3 public easement for streets and any and all other deeds, easements, dedications, conditions,
4 covenants, restrictions, encumbrances, franchises and claims of title which may affect the Public
5 Right-of-Ways.

6 (b) Removal or Relocation. When made necessary by any work to be performed under the
7 governmental authority of the City (including but not limited to any lawful change of grade, alignment
8 or width of any street, or construction of City facilities of any kind), or when necessary to protect the
9 public health, safety or welfare, a Permittee shall at its own cost and expense temporarily or
10 permanently remove, relocate, adjust, and/or support a Surface-Mounted Facility or any part thereof,
11 to such other locations in the Public Right-of-Ways, in such manner as appropriate and as may be
12 approved by the City in writing and in advance, or otherwise required by the City. The City may not
13 unreasonably withhold its approval of any plan for removal, relocation, adjustment, and/or support of
14 a Surface-Mounted Facility ordered pursuant to this Section. Such removal, relocation, adjustment,
15 and/or support shall be completed within the time and manner prescribed by the City; however, where
16 feasible the City may require the Permittee to follow the procedures set forth in this Article 27 to
17 obtain a new site for the Surface-Mounted Facility.

18 (c) Public Right-of-Ways Restoration. Whenever the Department requires a Permittee to remove,
19 relocate, adjust, and/or support a Surface-Mounted Facility to ensure the public health, safety or
20 welfare the Permittee shall, after such work is complete, at its own cost and expense, promptly restore
21 the Public Right-of-Ways in accordance with Applicable Law. If a Permittee fails to restore the Public
22 Right-of-Ways in accordance with Applicable Law, the Department shall have the option to perform or
23 cause to be performed such restoration in such manner as the Director deems expedient and
24 appropriate on behalf of the Permittee and charge the actual costs incurred including, but not limited
25 to administrative costs, to the Permittee.

1 (d) City Costs Reimbursement. If a Permittee does not remove, relocate, adjust, and/or support a
2 Surface-Mounted Facility in the manner and time prescribed by the Department, the Department shall
3 take all reasonable, necessary, and appropriate action, including removing the Surface-Mounted
4 Facility, and may charge the Permittee the reasonable costs actually incurred including, but not
5 limited to, administrative costs. Upon the receipt of a demand for payment by the Department, the
6 Permittee shall reimburse the City for any costs incurred by the Department to remove a Surface-
7 Mounted Facility or to restore the Public Right-of-Ways or the costs may be deducted from the
8 Permittee's deposit under Section 2725.

9
10 **SEC. 2722. POST-INSTALLATION OBLIGATIONS.**

11 (a) Required Signage. A Permittee shall place a sign on a permitted Surface-Mounted Facility that
12 shall contain the Permittee's name and provide a telephone number for people to call to notify the
13 Permittee that there is damage to or Graffiti on a Surface-Mounted Facility or that associated
14 landscaping is in need of maintenance. A telephone call to that number will be considered notice to
15 the Permittee. Such sign shall be displayed in a conspicuous manner and shall be maintained and/or
16 replaced as necessary.

17 (b) Surface-Mounted Facility Maintenance. A Permittee shall be solely responsible for maintaining a
18 Surface-Mounted Facility installed in the Public Right-of-Ways in a clean and safe condition. A
19 Permittee shall repair any damage to a Surface-Mounted Facility within 30 days after discovering or
20 being notified of such damage to a Surface-Mounted Facility.

21 (c) Landscaping Maintenance. A Permittee shall be solely responsible for the maintenance of any
22 installed landscaping or street tree installed by the Permittee as a Condition of the Department's
23 issuance of a Surface-Mounted Facility Site Permit for so long as the permitted Surface-Mounted
24 Facility remains at the location. Such landscaping shall be kept in a state of good visual quality, with
25 any dead or diseased material promptly removed and replaced. The Permittee shall remove aAny

1 litter accumulating within the landscaped area shall be removed within 72 hours after discovering
2 or being notified of such litter accumulation.

3 (d) Graffiti Removal. A Permittee shall be solely responsible for the removal of any Graffiti from
4 Surface-Mounted Facility installed in the Public Right-of-Ways. A Permittee shall remove all Graffiti
5 from a Surface-Mounted Facility within 72 hours after discovering or being notified that there is
6 Graffiti on a Surface-Mounted Facility.

7 (e) Inspection Required. A Permittee shall regularly inspect each Surface-Mounted Facility installed
8 in the Public Right-of-Ways to determine whether any of its Surface-Mounted Facilities are damaged,
9 in need a landscaping maintenance, or have been tagged with Graffiti.

10 (f) Records. A Permittee shall maintain written records of all inspections, repairs to, and maintenance
11 of any permitted Surface-Mounted Facilities in the Public Right-of-Ways in such form as may be
12 required by the Department. The Department may require that a copy of these written records be sent
13 to the Department on a regular basis.

14
15 **SEC. 2723. VIOLATIONS.**

16 (a) Notice of Deficiency. If the Department determines, either after an inspection required under
17 Section 2720(b) or at any other time, that a Surface-Mounted Facility is not in compliance with the
18 Surface-Mounted Facility Site Permit, this Article 27, or other Applicable Law, the Department shall
19 issue a notice of deficiency and require the Permittee to take corrective action to bring the Surface-
20 Mounted Facility into compliance.

21 (b) Department Remedies.

22 (1) If a Permittee fails to take corrective action with respect to a Surface-Mounted Facility
23 within a reasonable time after receiving a notice of deficiency the Department shall:

24 (A) Take all reasonable, necessary, and appropriate action to remedy a Permittee's
25 non-compliance; or

1 (B) Charge to a Permittee the reasonable costs that the Department has actually
2 incurred including, but not limited to, administrative costs. Upon the receipt of a demand for payment
3 from the Department, the Permittee shall immediately reimburse the Department for any such costs
4 incurred by the Department or the costs may be deducted from the Permittee's deposit under Section
5 2725.; and

6 (C) Cease its review of any pending Application submitted by the Permittee and deny
7 the Application.

8 (2) In the event the required corrective action includes Graffiti-removal, the Department may
9 issue a fine of up \$1,000 per day that the Permittee fails to take the corrective action. Upon the
10 receipt of such a fine from the Department, the Permittee shall pay the fine immediately or the fine
11 may be deducted from the Permittee's deposit under Section 2725.

12 (3) In addition to the foregoing, if the Department determines that a Permittee has repeatedly
13 failed to take corrective action with respect to a Surface-Mounted Facility after receiving a notice of
14 deficiency, the Department may require the Permittee to remove the non-compliant Surface-Mounted
15 Facility from the Public Right-of-Ways.

16
17 **SEC. 2724. ABANDONMENT.**

18 (a) Notice of Abandonment. A Permittee shall notify the Department, or the Department may
19 determine and notify a Permittee, that a permitted Surface-Mounted Facility has been abandoned. In
20 such event, a Permittee shall promptly remove the abandoned Surface-Mounted Facility as required
21 by the Department and at Permittee's expense.

22 (b) Certification of Continued Use. Should the Department have reason to believe a permitted
23 Surface-Mounted Facility has been abandoned, the Department may request that a Permittee certify
24 that the permitted Surface-Mounted Facility is still in use. If the Permittee fails to respond to the
25

1 Department's request within 60 days, the Department may determine that the permitted Surface-
2 Mounted Facility has been abandoned.

3 (c) Remedy for Non-Compliance. If a Permittee fails to remove an abandoned Surface-Mounted
4 Facility within a reasonable period of time after notifying the Department or receiving a notice of
5 abandonment, the Department shall take all reasonable, necessary, and appropriate action to remedy
6 the Permittee's failure to comply with the notice (including removing the Surface-Mounted Facility)
7 and may charge to the Permittee the reasonable costs the City has actually incurred including, but not
8 limited to, administrative costs.

9
10 **SEC. 2725. DEPOSIT.**

11 Each Permittee shall submit and maintain with the Department a bond, cash deposit, or other
12 security acceptable to the Department securing the faithful performance of the obligations of the
13 Permittee and its agents under any and all Surface-Mounted Facility Site Permits issued to the
14 Permittee under this Article 27. The deposit shall be in the sum of \$25,000 in favor of the
15 "Department of Public Works, City and County of San Francisco." If, in accordance with this Article
16 27, the Director deducts any amounts from such a deposit, the Permittee must restore the full amount
17 of the deposit prior to the Department's issuance of a subsequent Permit. The Department shall
18 return the remainder of the deposit to the Permittee should Permittee cease to operate any Surface-
19 Mounted Facilities in the Public Right-of-Ways.

20
21 **SEC. 2726. LIABILITY.**

22 As a condition of a Surface-Mounted Facility Site Permit, each Permittee agrees on behalf of
23 itself and any agents, successors, or assigns to be wholly responsible for the construction, installation,
24 and maintenance of any permitted Surface-Mounted Facility and any required street trees or
25 landscaping. Each Permittee and its agents are jointly and severally liable for all consequences of

1 such construction, installation, and maintenance of a Surface-Mounted Facility and any required
2 street trees or landscaping. The issuance of any Permit, inspection, repair suggestion, approval, or
3 acquiescence of any Person affiliated with the City shall not excuse any Permittee or its agents from
4 such responsibility or liability.

5 **SEC. 2727. INDEMNIFICATION AND DEFENSE OF CITY.**

6 (a) Indemnification of City. As a condition of a Surface-Mounted Facility Site Permit, each Permittee
7 agrees on behalf of itself and its agents, successors, or assigns, to indemnify, defend, protect, and hold
8 harmless the City from and against any and all claims of any kind allegedly arising directly or
9 indirectly from the following:

10 (1) Any act, omission, or negligence of a Permittee or its any agents, successors, or assigns
11 while engaged in the construction, installation, or maintenance of any Surface-Mounted Facility
12 authorized by a Permit, or while in or about the Public Right-of-Ways that are subject to the Permit,
13 for any reason connected in any way whatsoever with the performance of the work authorized by the
14 Permit, or allegedly resulting directly or indirectly from the construction, installation, or maintenance
15 of any Surface-Mounted Facility authorized under the Permit or any required street trees or
16 landscaping;

17 (2) Any accident, damage, death, or injury to any of a Permittee's contractors or
18 subcontractors, or any officers, agents, or employees of either of them, while engaged in the
19 performance of the construction, installation, or maintenance of any Surface-Mounted Facility
20 authorized by a Permit or any required street trees or landscaping, or while in or about the Public
21 Right-of-Ways that are subject to the Permit, for any reason connected with the performance of the
22 work authorized by the Permit, including from exposure to radio frequency emissions;

23 (3) Any accident, damage, death, or injury to any Person or accident, damage, or injury to any
24 real or personal property in, upon, or in any way allegedly connected with the construction,
25 installation, or maintenance of any Surface-Mounted Facility authorized by a Permit or any required

1 street trees or landscaping, or while in or about the Public Right-of-Ways that are subject to the
2 Permit, from any causes or claims arising at any time, including any causes or claims arising from
3 exposure to radio frequency emissions; and

4 (4) Any release or discharge, or threatened release or discharge, of any hazardous material
5 caused or allowed by a Permittee or its agents about, in, on, or under the Public Right-of-Ways.

6 (b) Defense of City. Each Permittee agrees that, upon the request of the City, the Permittee, at no cost
7 or expense to the City, shall indemnify, defend, and hold harmless the City against any claims as set

8 forth in subsection (a) above, regardless of the alleged negligence of City or any other party, except

9 only for claims resulting directly from the sole negligence or willful misconduct of the City. Each

10 Permittee specifically acknowledges and agrees that it has an immediate and independent obligation

11 to defend the City from any claims that actually or potentially fall within the indemnity provision, even

12 if the allegations are or may be groundless, false, or fraudulent, which obligation arises at the time

13 such claim is tendered to the Permittee or its agent by the City and continues at all times thereafter.

14 Each Permittee further agrees that the City shall have a cause of action for indemnity against the

15 Permittee for any costs the City may be required to pay as a result of defending or satisfying any

16 claims that arise from or in connection with a Permit, except only for claims resulting directly from

17 the sole negligence or willful misconduct of the City. Each Permittee further agrees that the

18 indemnification obligations assumed under a Permit shall survive expiration of the Permit or

19 completion of installation of any Surface-Mounted Facility authorized by the Permit.

20 (c) Additional Requirements. The Department may specify in a Permit such additional

21 indemnification requirements as are necessary to protect the City from risks of liability associated

22 with the Permittee's construction, installation, and maintenance of a Surface-Mounted Facility or any

23 required street trees or landscaping.

24
25 **SEC. 2728. INSURANCE.**

1 (a) Minimum Insurance Coverages. The Department shall require that each Permittee maintain in full
2 force and effect, throughout the term of a Surface-Mounted Facility Site Permit, an insurance policy
3 or policies issued by an insurance company or companies satisfactory to the City's Risk Manager.
4 Such policy or policies shall, at a minimum, afford insurance covering all of the Permittee's
5 operations, vehicles, and employees, as follows:

6 (1) Workers' compensation, in statutory amounts, with employers' liability limits not less than
7 \$1,000,000 each accident, injury, or illness.

8 (2) Commercial general liability insurance with limits not less than \$1,000,000 each
9 occurrence combined single limit for bodily injury and property damage, including contractual
10 liability, personal injury, products and completed operations.

11 (3) Commercial automobile liability insurance with limits not less than \$1,000,000 each
12 occurrence combined single limit for bodily injury and property damage, including owned, non-owned
13 and hired auto coverage, as applicable.

14 (4) Contractors' pollution liability insurance, on an occurrence form, with limits not less than
15 \$1,000,000 each occurrence combined single limit for bodily injury and property damage and any
16 deductible not to exceed \$25,000 each occurrence.

17 (b) Other Insurance Requirements.

18 (1) Said The policy or policies required by subsection (a) shall include the City and its
19 officers and employees jointly and severally as additional insureds, shall apply as primary insurance,
20 shall stipulate that no other insurance effected by the City will be called on to contribute to a loss
21 covered thereunder, and shall provide for severability of interests.

22 (2) Said The policy or policies required by subsection (a) shall provide that an act or
23 omission of one insured, which would void or otherwise reduce coverage, shall not reduce or void the
24 coverage as to any other insured. Said policy or policies shall afford full coverage for any claims
25

1 based on acts, omissions, injury, or damage which occurred or arose, or the onset of which occurred
2 or arose, in whole or in part, during the policy period.

3 (3) ~~Said~~ The policy or policies required by subsection (a) shall be endorsed to provide 30
4 days advance written notice of cancellation or any material change to the Department.

5 (4) Should any of the required insurance be provided under a claims-made form, a Permittee
6 shall maintain such coverage continuously.

7 (5) Should any of the required insurance be provided under a form of coverage that includes a
8 general annual aggregate limit or provides that claims investigation or legal defense costs be included
9 in such general annual aggregate limit, such general aggregate limit shall be double the occurrence
10 or claims limits specified in subsection (a) above.

11 (c) Indemnity Obligation. Such insurance shall in no way relieve or decrease a Permittee's or its
12 agent's' obligation to indemnify the City under Section 2727.

13 (d) Proof of Insurance. Before the Department will issues a Permit, a Permittee shall furnish to the
14 Department certificates of insurance and additional insured policy endorsements with insurers that
15 are authorized to do business in the State of California and that are satisfactory to the City evidencing
16 all coverages set forth in subsection (a) above.

17 (e) Self-Insurance. Where a Permittee is self-insured, and such insurance is no less broad and affords
18 no less protection to the City than the requirements specified in subsection (a) above, the Department,
19 in consultation with the City's Risk Manager, may accept such insurance as satisfying the
20 requirements of subsection (a) above. Evidence of such self-insurance shall be provided in the
21 manner required by the City's Risk Manager.

22
23 **SEC. 2729. CITY DEPARTMENT FEES AND COSTS.**

24 (a) In General. City departments shall impose fees for their review of an Application for a Surface-
25 Mounted Facility Site Permit, which for purposes of this Section includes their review of an

1 Applicant's Preferred Location List. The purpose of these fees is to enable City departments to
2 recover their costs related to reviewing an Application or Preferred Location List.

3 (b) Fees for Review of Preferred Location Lists.

4 (1) The Department shall require a non-refundable fee of \$150 for the Department's review of
5 the Preferred Location List.

6 (2) The Planning Department shall require a non-refundable fee of \$286 for the Planning
7 Department's review of each location on the Preferred Location List.

8 (3) The Recreation and Park Department shall require a non-refundable fee of \$396 for the
9 Recreation and Park Department's review of a Preferred Location List.

10 (4) In the event a hearing is required following an Applicant's submission of a Preferred
11 Location List to the Department, the Applicant shall pay Department a non-refundable hearing fee of
12 \$150 for each hearing.

13 (c) Application Fee. Each Applicant shall pay to the Department a non-refundable Application fee of
14 \$150.

15 (d) Inspection Fee. Each Permittee shall pay the Department a non-refundable time and materials
16 inspection fee not to exceed \$500 to inspect a permitted Surface-Mounted Service Facility as required
17 under Section 2720(b).

18 (e) Adjustment of Fees for CPI. Beginning with fiscal year 2015-2016, the fees established herein may
19 be adjusted each year, without further action by the Board of Supervisors, to reflect changes in the
20 relevant Consumer Price Index ("CPI") (as determined by the Controller). No later than April 15th
21 of each year, the Director shall submit the current fee schedule to the Controller, who shall apply the
22 CPI adjustment to produce a new fee schedule for the following year. No later than May 15th of each
23 year, the Controller shall file a report with the Board of Supervisors reporting the new fee and
24 certifying that the fees produce sufficient revenue to support the costs of providing the services for

1 which the for a Surface-Mounted Facility Site Permit fee is charged, and that the fees do not produce
2 revenue that exceeds the costs of providing the services for which each Permit fee is charged.

3 (f) Discretion to Require Additional Fees. In instances where the review of a Preferred Location List
4 or Application is or will be unusually costly to the Department or to other City departments, the
5 Director, in his or her discretion, may, after consulting with other applicable City departments,
6 agencies, boards, or commissions, require an Applicant to pay a sum in excess of the amounts charged
7 pursuant to this Section. This additional sum shall be sufficient to recover actual costs incurred by the

8 Department and/or other City departments, agencies, boards, or commissions, in connection with an
9 Application and shall be charged on a time and materials basis. Whenever additional fees are
10 charged, the Director, upon request, shall provide to the Applicant in writing the basis for the
11 additional fees and an estimate of the additional fees.

12 (g) Deposit of Fees. All fees paid to the Department for Surface-Mounted Facility Site Permits shall
13 be deposited in the Public Works Excavation Fund established by San Francisco Administrative
14 Code Section 10.100-230. All other fees shall go directly to the appropriate City department.

15 (h) Reimbursement of City Costs. A City department may determine that it requires the services of a
16 technical expert in order to evaluate an Application, which for purposes of this Section includes
17 the City department's review of an Applicant's Preferred Location List. In such case, the
18 Department shall not approve the Application unless the Applicant agrees to reimburse the applicable
19 City department for the reasonable costs incurred by that department for the services of a technical
20 expert.

21
22 **SEC. 2730. DEPARTMENT MEETINGS AND TECHNOLOGICAL ADVANCEMENTS.**

23 (a) Department Meetings. Once a year, the Department will convene a meeting with Persons who
24 submitted Applications for Surface-Mounted Facility Site Permits in the past two years to discuss
25 issues related to the permitting and construction of Surface-Mounted Facilities in the Public Right-of-

1 Ways. The Department shall also invite to the meeting other interested Persons including, but not
2 limited to, any equipment vendors, technology experts, and design professionals that the Department
3 knows or has reason to know have expertise or interest in the equipment or cabinets used for Surface-
4 Mounted Facilities or the requirements of this Article 27. The Department will also post a public
5 notice of the meetings. At such meetings, the Department will discuss technological advancements,
6 Graffiti and blight abatement, and the efficacy of community outreach conducted by the Applicants.
7 (b) Technological Advancements. Should the Department determine that advances in technology have
8 made it both economically and technologically feasible for Permittees to place existing Surface-
9 Mounted Facilities underground, the Department shall require that any Surface-Mounted Facility the
10 Department permitted under this Article be placed underground unless the Department determines
11 that doing so would be either infeasible or undesirable. The Department shall notify a Permittee of
12 this determination in writing and shall provide the Permittee with reasonable time to comply with the
13 undergrounding requirement.

14
15 **SEC. 2731. SEVERABILITY.**

16 If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Article 27
17 or any part thereof, is for any reason held to be unconstitutional, invalid, or ineffective by any court of
18 competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining
19 portions of this Article 27 or any part thereof. The Board of Supervisors hereby declares that it would
20 have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof,
21 irrespective of the fact that any one or more sections, subsections, subdivision paragraphs, sentences,
22 clauses, or phrases be declared unconstitutional, invalid or ineffective.

23
24 Section 3. Effective Date. This ordinance shall become effective 30 days after
25 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the

1 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
2 of Supervisors overrides the Mayor's veto of the ordinance.

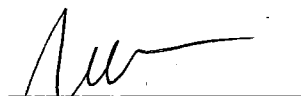
3 Section 4. Retroactivity. The Board of Supervisor intends that the requirements of this
4 ordinance shall be retroactive. Any permit under Article 2.4 of the Public Works Code that is
5 not final on the effective date of this ordinance shall be subject to the requirements of this
6 ordinance. For purposes of this ordinance, a permit shall not be final if the permit is subject to
7 a pending appeal before the Board of Appeals.

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

14 Section 6. Department of Public Works Implementation. The Department of Public
15 Works shall adopt an order or regulation implementing the requirements of Article 27 of the
16 Public Works Code within 60 days of the effective date of this ordinance.

17
18
19 APPROVED AS TO FORM:
20 DENNIS J. HERRERA, City Attorney

21
22 By:



23 William K. Sanders
24 Deputy City Attorney

25 n:\egana\as2014\1400340\00923766.docx

LEGISLATIVE DIGEST

[Public Works Code - Surface-Mounted Facility Site Permits.]

Ordinance amending the Public Works Code to establish the requirements for Surface-Mounted Facility Site Permits; to set fees for obtaining such permits; to make the provisions of the Ordinance retroactive; and making environmental findings.

Existing Law

Article 2.4 of the Public Works Code presently requires any person installing a surface-mounted facility ("SMF") in the public rights-of-way to obtain an excavation permit from the Department of Public Works ("DPW"). ~~SMFs are above-ground utility facilities that are installed in the public rights-of-way both by private entities that are public utilities (e.g., AT&T, Comcast, PG&E) and certain City departments (e.g., the Municipal Transportation Agency).~~

Amendments to Current Law

Article 27 of the Public Works Code would establish a separate SMF permit, which would be required to install an SMF in the public rights-of-way (instead of an excavation permit). In addition, Article 27 would establish a pre-permitting process, whereby applicants for SMF permits would work with DPW, the Planning Department, the Recreation and Park Department, and local residents, business owners, and community groups to determine the best site for the proposed SMF. While Article 27 envisions a cooperative process, it also allows local residents to protest a proposed location for an SMF. Article 27 would also establish excavation, inspection, and compliance requirements, and permit fees.

Background Information

To provide services to City residents and businesses, many public utilities and City departments install facilities in the public rights-of-way. It is not always possible for these entities to install their facilities underground. The installation of SMFs in the public rights-of-way, however, can impede travel on public streets, inconvenience property owners and local residents, create visual blight, or otherwise impact the use of the public rights-of-way by the public.

Further, the City's Better Streets Plan recognizes that well-organized utility design and placement can, among other things: (i) minimize streetscape clutter and help achieve a cohesive streetscape design; (ii) maximize space for plantings; (iii) improve utility efficiency of

utilities and integrate alignment with stormwater facilities, street furnishings, and street lighting; and (iv) improve pedestrian safety, and quality of life.¹

For these reasons, the City needs to participate in the siting process to ensure that SMFs are installed in locations that meet the needs of both the applicants and persons living, working in, and generally using the streets in the vicinity of the proposed locations for the SMFs.

The City has been actively engaged in the SMF siting process for nearly nine years now. Following a series of meetings with stakeholders, on August 17, 2005 DPW adopted Director's Order 175,556 to establish a pre-permitting process for SMFs in the public rights-of-way ("Order"). Under the Order, before DPW will issue an excavation permit for an SMF the applicant must follow the process contained in the Order to locate the best site for the proposed SMF. DPW has approved some 325 SMF locations using the process contained in the Order, with most of the permits being issued to AT&T and the Municipal Transportation Agency.

The location siting provisions contained in Article 27 are modeled on the Order. To the extent there are differences between the requirements of Article 27 and the Order those differences represent the City's efforts to improve the process based on DPW's nearly nine years of experience with the process contained in the Order.

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¹ A copy of the Better Streets Plan can be found on the City's website at: <http://www.sf-planning.org/ftp/BetterStreets/index.htm>

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

April 14, 2014

File No. 140319

Sarah Jones
Environmental Review Officer
Planning Department
1650 Mission Street, 4th Floor
San Francisco, CA 94103

Dear Ms. Jones:

On April 1, 2014, Supervisor Wiener introduced the following legislation:

File No. 140319

Ordinance amending the Public Works Code to establish the requirements for Surface-Mounted Facility Site Permits; to set fees for obtaining such permits; to make the provisions of the Ordinance retroactive; and making environmental findings.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, appearing to read "A. Ausberry".

By: Andrea Ausberry, Assistant Clerk
Land Use & Economic Development Committee

Attachment

c: Nannie Turrell, Environmental Planning
Jeanie Poling, Environmental Planning

*Not a project under CEQA Guidelines
Sections 15060(c) and 15378,
because there is no direct
or indirect physical change in
the environment. Individual
projects will be reviewed
when they are submitted to
the Planning Department.
Nannie Turrell 4/16/2014*

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Mohammed Nuru, Director, Department of Public Works
Phil Ginsburg, General Manager, Recreation and Parks Department
Naomi Kelly, City Administrator, Office of the City Administrator

FROM: Angela Ausberry, Assistant Clerk, Land Use & Economic Development Committee
Board of Supervisors

DATE: April 14, 2014

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Economic Development Committee has received the following proposed legislation, introduced by Supervisor Wiener on April 1, 2014:

File No. 140319

Ordinance amending the Public Works Code to establish the requirements for Surface-Mounted Facility Site Permits; to set fees for obtaining such permits; to make the provisions of the Ordinance retroactive; and making environmental findings.

If you have any additional 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.

c: Frank Lee, Department of Public Works
Sarah Ballard, Recreation and Parks Department
Margaret McArthur, Recreation and Parks Department

May 12, 2014 BOS-LUC
BOS File No. 140319
Comments/Requests

1. Sec. 2700 (Surface-mounted Facility Site Permit) (a)(2)(e)(1) to be revised (*italics inserted*) to read:

“The replacement of an existing Surface-Mounted Facility at the same location , provided the replacement Surface-Mounted Facility for the same utility use would be installed on the existing foundation and would be the same size or smaller than the existing Surface-Mounted Facility.”

2. Sec. 2704 (Preferred Locations) (b)(6)(c)(7) to be revised (italics) to read:

“On Public Right-of-Ways that are adjacent to a public or private ~~elementary or middle pre-~~high school” or that have a ‘SCHOOL’ traffic sign.”

3. Sec. 2713 (Public Notice of Notice of Intent to Submit Application) (b)(3)(c)(1) to be revised (*italics inserted*) to read:

“The fronting physical address including Assessor’s Block and Lot information for each of the Preferred Locations and photo-simulations of the Surface-Mounted Facility at each of the preferred Locations...”

(Currently, AT&T uses “internal billing” addresses which have nothing to do w/ actual physical address in front of which the box is planned for installation.)



SAN FRANCISCO CHAMBER OF COMMERCE

BOS-11
cpag
LV clerk

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

2014 MAY - 8 PM 3:00

AK

May 8, 2014

The Honorable Scott Wiener
San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Drive, Suite 244
San Francisco, CA 94102

RE: Further Analysis Needed: File # 140319, Surface-Mounted Facility Site Permits

Dear Supervisor Wiener.

The San Francisco Chamber of Commerce, representing over 1,500 local businesses, has reviewed your legislation (#140319, Surface-Mounted Facility Site Permits) that requires a host of additional conditions be placed on utilities seeking permits to install surface mounted facilities (SMF) in the public rights-of-way. These conditions include *on each new above-ground SMF*: planting trees and landscaping; enabling murals to be painted; maintenance of trees/landscaping and artwork on a daily-basis and in perpetuity; assuming liability of the public rights-of-way; and expanded public choice of SMF locations, among others.

The Chamber believes there should be a reasonable process for public input on SMF above-ground locations that enables modern systems to be installed in a timely fashion, giving San Francisco residents and businesses the technology we need in the 21st century. However, it appears that the conditions imposed by this legislation are designed to discourage any new equipment being installed in the public rights-of-way despite state law that allows it.

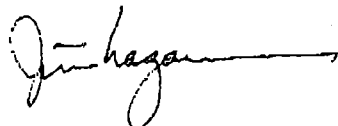
The conditions set forth in this legislation will significantly increase costs to city departments that will assume additional responsibilities for permitting and oversight under the ordinance (Planning, DPW and RPD). Costs to utility companies seeking permits will increase substantially due to the additional conditions imposed by the ordinance, including planting and maintaining landscaping and artwork (or alternately paying in lieu fees), which will also result in significant delays that drive costs up further. All San Francisco businesses that increasingly depend on high-speed internet and other utility services will also incur additional expenses as the legislation will delay or prevent new boxes containing upgraded system hardware from being installed across the city. This will reduce competition and the availability of up-to-date high-speed utility delivery, driving costs up even more.

This legislation as drafted should be evaluated by the Budget Analyst and the City Controller to ascertain the extent of these economic impacts both on city departments as well as on local businesses. It should

also be heard by the Board of Supervisor's Budget and Finance Committee before going back to the Land Use Committee for a vote.

The San Francisco Chamber of Commerce urges you and the Board to delay this piece of legislation until the full economic impacts to both the city and San Francisco businesses are assessed and evaluated.

Sincerely,



Jim Lazarus
Senior Vice President of Public Policy

cc: Clerk of the Board of Supervisors; please distribute to all Supervisors; San Francisco Controller Ted Egan; Mohammed Nuru, Department of Public Works; Phil Ginsburg, Recreation and Park Department



David J. Miller, General Attorney
525 Market Street, Suite 2018
San Francisco, CA 94105

140319
T: (415) 778-1393
F: (281) 664-9478
davidjmill@att.com

May 1, 2014

Supervisor Scott Wiener
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689

Via Electronic (Scott.Wiener@sfgov.org) and U.S. Mail

Re: Proposed Surface-Mounted Facilities Ordinance

Dear Supervisor Wiener,

Thank you for the opportunity to voice AT&T California's concerns regarding the ordinance introduced on April 1, 2014 to add Article 27 to the Public Works Code, entitled "Surface-Mounted Facilities" (hereinafter, "Proposed SMF Ordinance"). As you know, AT&T California is in the process of upgrading its infrastructure in San Francisco to offer U-verse® broadband, video and voice services. With the recently-announced roll-out of AT&T's U-verse with GigaPower,SM these services may be enhanced further to deliver broadband speeds up to 1 Gigabit per second.

As discussed below, AT&T California has significant concerns with the Proposed SMF Ordinance. If passed, the Ordinance would be an unlawful infringement of AT&T California's rights to use the public rights-of-way ("ROW"), and would raise a significant barrier to the continued upgrade of AT&T's communications infrastructure. Section 7901 of the Public Utilities Code grants telephone corporations such as AT&T California the right to,

construct . . . telephone lines along and upon any public road or highway, along or across any of the waters or lands within this State, and may erect poles, posts, piers, or abutments for supporting the insulators, wires, and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road or highway or interrupt the navigation of the waters.

Municipalities only "have the right to exercise reasonable control as to the time, place, and manner in which roads, highways, and waterways are accessed."¹

Section 7901 creates "vested rights that cannot be taken away by state or city without compensation."² These vested rights are protected by the federal and California constitutions and "cannot be taken away by the state, even though the legislature should repeal the section, or by the people through a constitutional provision."³ Pursuant to the Digital Infrastructure and Video Competition Act of 2006 ("DIVCA"), these same rights

¹ Public Utilities Code Section 7901.1(a).

² *Western Union Tel. Co. v. Hopkins*, 160 Cal. 106, 120 (1911) (addressing former Civil Code Section 536, the predecessor to Section 7901).

³ *Postal Tel. Cable Co. v. R.R. Comm'n*, 200 Cal. 463, 472 (1927).

apply to holders of state video franchises,⁴ such as AT&T California. Moreover, DIVCA provides that encroachment permits filed by state video franchise holders must be acted upon within 60 days of the submission of a complete application.⁵

Among the problems with the ordinance, the following provisions and characteristics of the Proposed SMF Ordinance would deprive AT&T California of its vested rights under California law, and deter AT&T from further investing in its communications infrastructure in San Francisco:

1. The proposed process would take far longer than 60 days, even under ideal conditions. The proposal would be more burdensome and time-consuming than the current process, which has taken, on average, approximately 220 days to complete. The pretense of labeling a significant portion of the required process as "pre-application" is a transparent and unlawful attempt to circumvent the 60 day requirement. Allowing the 60 day requirement to be sidestepped so easily would render it meaningless.
2. Even after the identification of multiple possible locations, proposed Section 2714(g)(4) would allow the Department of Public Works ("DPW") to *outright deny* access to the right-of-way, in direct contravention of Section 7901.
3. The proposed ordinance would deny AT&T California its vested right to use the ROW by forcing it to use private property instead of the ROW (see, e.g., Section 2712(d)(4)).
4. The proposed requirements regarding landscaping, street trees, murals and maintenance in perpetuity, as well as the applicable "in lieu" fees (Sections 2710 and 2711), impose unreasonable and unlawful costs on AT&T California's use of its vested ROW rights.
5. The requirement that AT&T California permit its infrastructure to be "used for a mural" (Section 2711(a)) would damage AT&T property, and thus amount to a taking without compensation.
6. Imposing the costs of relocation (Section 2721(a),(b)), indemnification (Section 2727), insurance (Section 2728), undergrounding (Section 2730(b)), dual function (Section 2712(d)(8)), litter removal (Section 2722(c)), graffiti removal (Section 2722(d)), inspection (Section 2722(e)), recordkeeping (Section 2722(f)) and arbitrary fees (Section 2729) would place an unreasonable burden on AT&T California's use of the ROW, and impose impermissible fees for use of the ROW. (See Gov't Code Section 50030; AG Opinion No. 52-56, July 2, 1953.) Moreover, the relocation requirements exceed municipal authority to require relocation at a utility's expense. (See, e.g., *Pasadena Metro Blue Line Const. Authority v. Pacific Bell Tel. Co.*, 140 Cal.App.4th 658, 664 (2006).)

⁴ See Public Utilities Code Section 5885(a).

⁵ Public Utilities Code Section 5885(c).

7. The Proposed SMF Ordinance would declare, often based on vague and subjective criteria, vast portions of the City to be "disfavored," including areas (a) that are undergrounded, (b) with completed or planned "major capital improvements," (c) "known for having a high level of pedestrian traffic," (d) "adjacent to or that will affect the view of" a historic or potentially historic site, (e) "significant to City pattern," (f) "defining City form," (g) "having an important street view for orientation," (h) having "excellent" or "good" views, (i) adjacent to a park or open space, and (j) adjacent to an elementary or middle school. (See Section 2704(c).) AT&T California would be prohibited from placing a surface mounted facility in all of these areas, unless it could "show that *no other option is available.*" (*Id.* (emphasis added).) By state law and California Supreme Court precedent, AT&T California has a *vested right* to use the ROW; it cannot be prohibited from using vast portions of the ROW, except as a "last resort."
8. The requirement that AT&T California take on the responsibilities of a "property owner" (Section 2710(b)(1)), presumably without any of the rights of a "property owner," would impose unreasonable costs and obligations on use of the ROW.
9. The attempt to require use of a "licensed engineer" (Section 2712(d)(5)) is contrary to state law. (See, Bus. & Prof Code Section 6746 *et seq.*)
10. Finally, the denial of all pending applications for certain deficiencies (Section 2723(b)(1)(C)), and the potential imposition of a \$1,000 per day fine on AT&T California for graffiti illegally placed by others (Section 2723(b)(2)), constitute overbroad and excessive regulation of the ROW.

Each of these provisions independently violates AT&T California's rights under state law. Cumulatively, the Proposed SMF Ordinance evidences a broad disregard for state law, and a taking, without compensation, of AT&T California's vested right to the ROW. AT&T California strongly urges significant amendment of the Proposed SMF Ordinance to address the issues identified above and bring the proposal into compliance with California law.

Sincerely,



David J. Miller

cc: Andres Power, Legislative Aide (Andres.Power@sfgov.org)
Marc Blakeman, Regional Vice President-External Affairs (blakeman@att.com)
Tedi Vriheas, Director-External Affairs (tedi@att.com)

Member, Board of Supervisors
District 8




Orig: LU Comm. Clerk
C: COB, Leg. Dep
City and County of San Francisco

SCOTT WIENER
威善高

DATE: May 6th, 2014

TO: Angela Calvillo
Clerk of the Board of Supervisors

FROM: Supervisor Scott Wiener 
Chairperson, Land Use and Economic Development Committee

RE: Land Use and Economic Development Committee
COMMITTEE REPORT

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
MAY -6 AM 10:19

Pursuant to Board Rule 4.20, as Chair of the Land Use and Economic Development Committee, I have deemed the following matter is of an urgent nature and request it be considered by the full Board on Tuesday, May 13th, 2014, as a Committee Report:

140319 Public Works Code – Surface-Mounted Facility Site Permits

Ordinance amending the Public Works Code to establish the requirements for Surface-Mounted Facility Site Permits; to set fees for obtaining such permits; to make the provisions of the Ordinance retroactive; and making environmental findings.

This matter will be heard in the Land Use and Economic Development Committee on Monday, May 12th, 2014, at 1:30 p.m.

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

NOTICE OF PUBLIC HEARING

LAND USE AND ECONOMIC DEVELOPMENT COMMITTEE

SAN FRANCISCO BOARD OF SUPERVISORS

NOTICE IS HEREBY GIVEN THAT the Land Use and Economic Development Committee will hold a public hearing to consider the following proposal and said public hearing will be held as follows, at which time all interested parties may attend and be heard:

- Date:** **Monday, May 5, 2014 and Monday, May 12, 2014**
(The Chair will take public comment and entertain a motion to continue to 5/12/14, for final action by the Committee)
- Time:** **1:30 p.m.**
- Location:** **Committee Room 263, located at City Hall
1 Dr. Carlton B. Goodlett Place, San Francisco, CA**
- Subject:** **File No. 140319.** Ordinance amending the Public Works Code to establish the requirements for Surface-Mounted Facility Site Permits; to set fees for obtaining such permits; to make the provisions of the Ordinance retroactive; and making environmental findings.

If the legislation passes, it would establish a number of fees charged to obtain a Surface-Mounted Facility Site Permit. If DPW cannot require installation of appropriate landscaping in the vicinity of the Surface-Mounted Facility, an in-lieu fee shall be charged in the amount specified in Public Works Code, Sections 802(h) and 807(f), for the installation of one tree, which would be deposited into DPW's "Adopt-A-Tree" fund, in addition to a \$7,500 sidewalk landscaping payment fee. An in-lieu fee shall be charged in the amount specified for the cost of one mural, along with subsequent graffiti protection and maintenance, which would be deposited into DPW's "StreetSmARTS" program. The mural fee shall be reimbursed to the permittee if a mural is added to the Surface-Mounted Facility. The following fees shall be charged to reimburse administrative costs to City departments for review of an application or preferred location list: 1) a non-refundable fee for review of preferred location list: \$150 for DPW's review, \$286 for the Planning Department's review of each location, and \$396 for the Recreation and Park Department's review; 2) if applicable, the applicant shall pay a non-refundable hearing fee of \$150 for each hearing; 3) a non-refundable application fee of \$150; and 4) a non-refundable inspection fee not-to-exceed \$500. Fees established may be adjusted each year to reflect changes in the relevant Consumer Price Index (CPI) as determined by the Controller. Beginning in FY2015-2016, additional fees may be charged to recover actual costs incurred by DPW, and shall be charged on a time and materials basis.

In accordance with Administrative Code, Section 67.7-1, persons who are unable to attend the hearing on this matter may submit written comments to the City prior to the time the hearing begins. These comments will be made a part of the official public record and shall be brought to the attention of the Members of the Committee. Written comments should be addressed to Angela Calvillo, Clerk of the Board, Room 244, City Hall, 1 Dr. Carlton Goodlett Place, San Francisco CA 94102. Information relating to the proposed fee is available in the Office of the Clerk of the Board and agenda information relating to this matter will be available for public review on Friday, May 2, 2014 and Friday, May 9, 2014.

A handwritten signature in black ink, appearing to read "Angela Calvillo".

Angela Calvillo, Clerk of the Board

DATED: April 24, 2014

PUBLISHED/POSTED: April 28, 2014 & May 4, 2014

Ausberry, Andrea

From: Caldeira, Rick (BOS)
Sent: Thursday, April 17, 2014 4:36 PM
To: Ausberry, Andrea
Subject: Fwd: Sup. Breed wishes to cosponsor 140319

Please process

Begin forwarded message:

From: "Johnston, Conor (BOS)" <conor.johnston@sfgov.org>
Date: April 17, 2014 at 4:01:35 PM PDT
To: "Caldeira, Rick (BOS)" <rick.caldeira@sfgov.org>
Cc: "Power, Andres" <andres.power@sfgov.org>, Kearstin Krehbiel <kearstin@sfbeautiful.org>
Subject: Sup. Breed wishes to cosponsor 140319

Rick,

Please add Sup. Breed as a cosponsor to:

140319 [Public Works Code - Surface-Mounted Facility Site Permits]

Sponsor: Wiener

Ordinance amending the Public Works Code to establish the requirements for Surface-Mounted Facility Site Permits; to set fees for obtaining such permits; to make the provisions of the Ordinance retroactive; and making environmental findings. 4/1/14; ASSIGNED UNDER 30 DAY RULE to the Land Use and Economic Development Committee. 4/14/14; REFERRED TO DEPARTMENT.

Thanks.

Conor Johnston
Office of Supervisor London Breed
415-554-6783

Sign up for Supervisor Breed's Newsletter [here](#)
or visit www.londonbreed.org

Introduction Form

By a Member of the Board of Supervisors or the Mayor

Time stamp
or meeting date

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

- 1. For reference to Committee.
An ordinance, resolution, motion, or charter amendment.
- 2. Request for next printed agenda without reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning "Supervisor [] inquires"
- 5. City Attorney request.
- 6. Call File No. [] from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No. [140319]
- 9. Request for Closed Session (attach written motion).
- 10. Board to Sit as A Committee of the Whole.
- 11. Question(s) submitted for Mayoral Appearance before the BOS on []

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission Youth Commission Ethics Commission
- Planning Commission Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative

Sponsor(s):

Supervisors Wiener, Breed and Chiu

Subject:

Public Works Code - Surface-Mounted Facility Site Permits

The text is listed below or attached:

Ordinance amending the Public Works Code to establish the requirements for Surface-Mounted Facility Site Permits; to set fees for obtaining such permits; to make the provisions of the ordinance retroactive; and making environmental findings.

Signature of Sponsoring Supervisor: *Scott Wiener*

For Clerk's Use Only: