

**REVISED LEGISLATIVE DIGEST**

(7/18/2017, Amended in Board)

[Public Works Code - Requirements for Surface-Mounted Facility Site Permits]

**Ordinance amending the Public Works Code to modify the exceptions to the Surface-Mounted Facility Site Permit requirement; to allow a permittee to choose to pay an “in-lieu” fee instead of installing a street tree; to allow a permittee to choose to pay an “in-lieu” fee instead of permitting the installation of a mural on its Surface-Mounted Facility; to repeal the requirements that a permittee install landscaping or pay an “in-lieu” fee and maintain the required landscaping; to repeal the requirement that an applicant for a Surface-Mounted Facility Site Permit make reasonable efforts to locate the facility on private property before submitting an application; to require Public Works to submit a report to the Board of Supervisors every two years on the number of applications for Surface-Mounted Facility Site Permits submitted and issued and on maintenance and graffiti abatement activities at existing Surface-Mounted Facilities; and to amend the requirement that a permittee maintain any required street tree.**

Existing Law

Under Article 27 of the Public Works Code, any person installing a Surface-Mounted Facility (“SMF”) in the public right-of-way must obtain a Surface-Mounted Facility Site Permit from Public Works. Article 27 contains certain specified application requirements and permitting conditions for SMFs.

Amendments to Current Law

The proposed ordinance would amend the following sections of Article 27:

- Section 2700(e) (2) would be amended to allow a permittee to make modest changes to the height or volume of an existing SMF on the same foundation without obtaining a new permit.
- Section 2710 would be amended to: (a) repeal the requirement that a permit include a condition that the permittee install landscaping around the permitted SMF and maintain the landscaping; (b) allow an applicant to choose to pay an “in-lieu” fee instead of installing a street tree; and (c) to amend the street tree maintenance requirement to be consistent with San Francisco Charter § 16.129 (added by Proposition E).
- Section 2711 would be amended to allow an applicant to choose to pay an “in-lieu” fee instead of permitting the installation of a mural on its SMF.

- Section 2712 would be amended to: (a) repeal the requirement that an applicant make reasonable efforts to install an SMF on private property; and (b) delete the reference to landscaping.
- Section 2713 would be amended to: (a) delete the reference to landscaping; and (b) in part implement the amendments to Sections 2710 and 2711.
- Section 2722 would be amended to delete the landscaping maintenance requirement.
- Section 2726 would be amended to delete the reference to landscaping.
- Section 2727 would be amended to delete the reference to landscaping.

The ordinance would also require Public Works to submit a report to the Board of Supervisors every two years on the number of applications for Surface-Mounted Facility Site Permits submitted and issued and on maintenance and graffiti abatement activities at existing Surface-Mounted Facilities.

#### Background Information

The City has been actively engaged in the SMF siting process since 2005 when the Department of Public Works adopted Director's Order 175,556 to establish a pre-permitting process for SMFs in the public rights-of-way ("Order"). In 2014, the Board of Supervisors replaced the Order by adopting Article 27 of the Public Works Code.

The street tree and mural requirements are being amended to allow the applicant to choose to pay "in-lieu" fees instead of installing a street tree and permitting the installation of a mural. The City could then use these funds for planting new street trees and landscaping and graffiti abatement. At present, the Bureau of Urban Forestry chooses whether to require the permittee to plant a street tree or pay an "in-lieu" fee. A mural would only be required if neighborhood residents came forward with a plan to create and install one.

The requirement that a permittee maintain any required street tree is being amended in light of section 16.129 to the San Francisco Charter, which the voters approved in Proposition E during the November 2016 election. Section 16.129 transfers responsibility to maintain street trees and sidewalks damaged by street trees from property owners to the City. The proposed amendment would require that the responsibility for maintaining street trees be consistent with Public Works Code Article 16, which section 16.129 requires the Board of Supervisors to amend. The proposed amendment would also repeal the landscaping maintenance requirement.

Section 2712(d)(4) is being repealed in response to a court ruling against the City. In 2014, Pacific Bell sued the City claiming that Public Utilities Code sections 5885 and 7901 preempted the City's authority to require a telephone corporation or state video provider to attempt to place its SMF on private property before applying for a Surface-Mounted Facility Site Permit. The San Francisco Superior Court in *Pacific Bell Telephone Company v. City and County of San Francisco* (Docket No. CGC-14-541846) found for Pacific Bell on that claim. In light of that ruling, San Francisco could not enforce Section 2712(d)(4) against Pacific Bell or other telephone corporations or state video providers.