

1 [Public Works Code - Public Right-of-Way Occupancy Fee Exemption]

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3 **Ordinance amending the Public Works Code to provide that floodwater management**
 4 **projects that are located within public rights of way, requiring a minor encroachment**
 5 **permit, and funded by San Francisco Public Utilities Commission grant funds, are**
 6 **exempt from payment of public right-of-way occupancy assessment fees.**

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.

11

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

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14 Section 1. The Public Works Code is hereby amended by revising Section 723.2, to
 15 read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (D) Underground storage tanks.

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

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

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

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

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

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

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

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

19 (11) Notwithstanding subsection (k)(2), no public right-of-way occupancy assessment fee
20 shall be charged to an owner of property that obtains a minor encroachment permit to construct and
21 maintain a floodwater management project that is located in public rights of way and funded with San
22 Francisco Public Utilities Commission grant funds.

23 (l) Notwithstanding the fees specified herein, if a project involves voluntary seismic
24 retrofit upgrades to soft-story, wood-frame buildings, as defined by the Director of the
25 Department of Building Inspection, such project applicant shall be exempt from the

1 proportionate share of fees specified under this Section 723.2 and Sections 2.1.1 et seq. that
2 is related to such retrofit work.

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

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9 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
10 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
11 numbers, letters, punctuation marks, charts, diagrams, or any other constituent parts of the
12 Public Works Code that are explicitly shown in this ordinance as additions, deletions, Board
13 amendment additions, and Board amendment deletions in accordance with the “Note” that
14 appears under the official title of the ordinance. For purposes of this Section 4, Section 723.2
15 of the Public Works Code, as reprinted herein, includes all amendments of Section 723.2
16 contained in Ordinance No. 109-15 (File No. 150350).

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

20 By: _____
21 JOHN RODDY
22 Deputy City Attorney

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