

1 [Public Works, Administrative Codes - Street Encroachment Permits and Maintenance Fund
2 for Certain Permits]

3 **Ordinance amending the Public Works Code to update provisions on street**
4 **encroachment permits, establish appeals procedures and fees for such appeals, waive**
5 **the annual public right-of-way occupancy assessment fee in lieu of the waiver for**
6 **permit fee payment for certain permits, modify the street encroachment permit process**
7 **for governmental entities, and create a temporary street encroachment permit for a**
8 **maximum period of 30 months; amending the Administrative Code to establish an**
9 **encroachment maintenance fund for permits where the permittee is not an adjacent**
10 **property owner; and affirming the Planning Department's determination under the**
11 **California Environmental Quality Act.**

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

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

20 Section 1. Findings.

21 (a) The Planning Department has determined that the actions contemplated in this
22 ordinance comply with the California Environmental Quality Act (California Public Resources
23 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
24 Supervisors in File No. 170761 and is incorporated herein by reference. The Board affirms
25 this determination.

1 (b) The Board of Supervisors authority to regulate use of the public right-of-way,
2 including streets and sidewalks, is derived from the California Street and Highways Code and
3 other State laws. The Board of Supervisors has established a variety of public right-of-way
4 use regulatory and permit programs in the San Francisco Public Works Code and other
5 Municipal Codes. In many of the Public Works Code sections on permits, the Board of
6 Supervisors has explicitly identified appeal procedures for the approval, denial, and revocation
7 of permits; however, some permit programs have no identified appeal procedures. When no
8 appeal procedures for permits are included in the Public Works Code, there is confusion as to
9 whether an appeal is available or not, who has the right to appeal, and what the appeal
10 procedures are.

11 (c) Public Works Code Sections 786 et seq., governing street encroachment permits,
12 is one example where the Public Works Code ~~that~~ has no identified appeal process. As part
13 of this legislation's update to the street encroachment permit sections, the Board of
14 Supervisors is establishing two different appeal mechanismsu depending on the form of street
15 encroachment permit.

16 (1) For conventional street encroachment permits, where the Board of
17 Supervisors itself approves or denies the permit after getting a permit recommendation from
18 the Public Works Director, there is no appeal and the Board of Supervisors decision is final.
19 However, if the Public Works Director recommends denial of a permit solely for non-
20 engineering reasons or the Director recommends revocation of a street encroachment permit,
21 then the applicant or permittee, respectively, may appeal that decision to the Board of
22 Supervisors.

23 (2) For a temporary encroachment permit or an encroachment permit issued to
24 a City department or other governmental entity as set forth in this ordinance, the Public Works
25 Director's decision to approve or conditionally approve a permit may be appealed by a

1 member of the general public or the applicant to the Board of Appeals. If the Public Works
2 Director denies a permit solely for non-engineering reasons or the Director revokes a
3 temporary street encroachment, then the applicant or permittee, respectively, may appeal that
4 decision to the Board of Appeals.

5
6 Section 2. The Public Works Code is hereby amended by revising Sections 786,
7 786.2, 786.3, 786.4, 786.5, and 786.7 and adding Section 786.8 and 786.9, to read as
8 follows:

9 **SEC. 786. STREET (MAJOR) ENCROACHMENT PERMIT.**

10 ~~No revocable permit for an encroachment on a public street or place as defined in Section 244~~
11 ~~of this Code authorized by resolution of the Board of Supervisors shall be issued unless application~~
12 ~~therefor is made to the Director of Public Works and a processing fee, in the amount of \$800 shall have~~
13 ~~been paid; provided, however, that the Board of Supervisors may waive payment of the fee provided for~~
14 ~~herein if it finds that a benefit will accrue to the public from a proposed encroachment.~~

15 ~~Annually, on or before the fifteenth day of May in each year, the Controller shall determine and~~
16 ~~report to the Board of Supervisors an estimate of the average unit cost to be incurred by departments,~~
17 ~~boards and commissions of the City and County in processing said applications and in issuing said~~
18 ~~permits for the ensuing fiscal year. The Board of Supervisors may thereupon by resolution revise the~~
19 ~~amount of the fee heretofore fixed for said permits.~~

20 (a) The Board of Supervisors by resolution may approve, conditionally approve, or deny
21 applications for a street encroachment permit, also known as a major encroachment permit, to occupy
22 the public right-of-way, as defined in Section 2.4.4, after the Public Works Director processes the
23 permit application in accordance with the requirements of Sections 786 et seq. The Director's
24 processing of permits shall include a recommendation on the application to the Board of Supervisors.
25 The street encroachment permit shall contain an encroachment agreement that provides

1 additional detail on the permittee's rights and obligations under the permit, including
2 maintenance of the encroachment, and establishes the regulatory relationship between Public
3 Works and the permittee for implementation of the permit. The encroachment agreement also
4 shall include a permittee maintenance monitoring and reporting program for Public Works' use
5 in determining compliance with the permit terms. There is no appeal of the Board of Supervisors
6 decision on such permits ~~is final and there is no appeal.~~

7 (b) For multi-phase or large-scale development projects, such as projects with a City-
8 approved development agreement, the Board of Supervisors may approve, conditionally approve,
9 or deny an application for a master street encroachment permit that applies to all or a portion of the
10 development project site. As part of the Board of Supervisors approval or conditional approval of such
11 master permit, the Board may provide for the contiguous and non-contiguous annexation of new areas
12 of the project site into the master permit and assignments of obligations from the original permittee to
13 the permittee's agent or assignee. The Board also may delegate to the Director of Public Works the
14 ability to divide the master permit into separate master permits or individual street encroachment
15 permits. If the Director determines in writing that a delegated action specified in this
16 subsection (b) would involve entirely new or significantly modified encroachments that were
17 not included as part of the Board of Supervisors approval of the multi-phase or large-scale
18 development project or the initial master encroachment permit, then the Board of Supervisors
19 shall approve, conditionally approve, or deny such encroachments as part of a new or
20 modified master street encroachment permit. Notwithstanding Public Works Code Section 706 or
21 other Municipal Codes that place sidewalk maintenance responsibility on fronting property owners, the
22 Board of Supervisors may authorize the master street encroachment permittee or the permittee's agent
23 or assignee, such as a homeowners' association, to comply with the terms of the Section 706 in lieu of
24 the fronting property owner.

1 (c) All street encroachment permits are non-exclusive and revocable. As a condition of
2 permit revocation, the permittee shall return/restore the public right-of-way to a condition
3 satisfactory to the Public Works Director at the permittee's sole and absolute expense.

4 (d) The Director, in his or her discretion, may recommend denial of a street encroachment
5 permit application. The Director shall notify the applicant in writing of this
6 decision/recommendation. The Director shall hold an administrative hearing on his or her decision
7 to recommendation to denial of/deny the application and issue a written decision on the
8 recommendation to deny within a reasonable period after the hearing. If the basis for the denial
9 recommendation/decision relates solely to engineering design and the Director's recommendation
10 remains unchanged after the administrative hearing, the Director's denial decision constitutes
11 the final decision and therefore that is not subject to appeal. If the basis for the denial
12 recommendation/decision is solely for reasons unrelated to engineering design, the applicant may
13 appeal the Director's recommendation/denial decision to the Board of Supervisors within 30 days of
14 the date of the Director's written decision after the administrative hearing. The applicant's appeal
15 shall be filed in writing with the Clerk of the Board of Supervisors and accompanied with 1) a copy of
16 the Director's written decision, 2) checks in the amount of \$635 for the Clerk of the Board of
17 Supervisors and \$400 for Public Works to compensate the City for its cost related to the appeal, and 3)
18 documentation that constitutes evidence to support the appeal. The Clerk shall conditionally
19 accept an appeal subject to a determination that the appellant filed the appeal in a timely
20 manner and the appeal complies with the requirements of this Section 786(d). The Clerk shall
21 provide notice to the appellant of the conditional acceptance. Within seven working days of
22 the filing of the appeal, the Clerk shall mail notice to the appellant and the Public Works
23 Director of the acceptance or rejection of the appeal. The Clerk shall schedule a hearing on
24 the appeal before the full Board of Supervisors no less than 15 and no more than 45 days
25 from the appeal filing. The Clerk shall provide mailed notice of the appeal to the appellant.

1 Public Works Director, and all organizations and individuals who previously requested notice
2 in writing no less than 10 days prior to the date the appeal is scheduled for a Board of
3 Supervisors hearing. The Board of Supervisors shall act by motion on a majority vote within
4 30 days of the date for the appeal hearing. However, the Board of Supervisors may postpone
5 a decision if the Board does not conduct at least three regular Board meetings during such 30
6 days period. If such postponement occurs, the Board of Supervisors shall decide such appeal
7 within 60 days of the date for the appeal hearing or at the next regularly scheduled Board
8 meeting should such deadline fall within a Board recess. If the Board of Supervisors revokes
9 the street encroachment permit, it shall adopt findings concerning the basis for revocation and
10 the cost of any revocation and associated restoration. The Board also shall identify the
11 responsible party that shall bear such revocation and restoration cost if it is a party other than
12 the permittee. In addition, if the Board revokes the permit after a hearing initiated under
13 subsection (e)(2)(B)(iv), the Board shall adopt findings concerning each of the grounds for
14 revocation that the public revocation petition cites. Failure of the Board of Supervisors to act
15 shall be deemed an disapproval of the Director's decision. The Board of Supervisors shall
16 conduct the appeal hearing in a similar manner to other appeals on land use matters. *The*
17 *Board of Supervisors decision on appeal is final and there is no appeal.*

18 *(e)(1) The Director, in his or her discretion, may recommend revocation of a street*
19 *encroachment permit. The Director shall notify the permittee in writing of this*
20 *decision recommendation. The Director shall hold an administrative hearing on his or her decision*
21 *to recommendation to revocation revoke the permit and issue a written decision on the*
22 *recommendation to revoke within a reasonable period after the hearing. Prior to the*
23 *administrative hearing, the Director shall develop an estimate of the cost of any revocation*
24 *and associated restoration and identify the responsible party that shall bear such cost if it is a*
25 *party other than the permittee. The Director shall provide this cost estimate to the permit*

1 holder in advance of the administrative hearing and include the estimate in the hearing's
2 administrative record. *The Permittee may appeal the Director's decision to revoke to the Board of*
3 *Supervisors within 30 days of the date of the Director's written decision* after the administrative
4 hearing. The Permittee's appeal shall be filed in writing with the Clerk of the Board of
5 Supervisors and accompanied with checks in the amount of \$635 for the Clerk of the Board of
6 Supervisors and \$400 for Public Works to compensate the City for its cost related to the
7 appeal. The Board of Supervisors shall conduct the appeal hearing in a similar manner to
8 other appeals on land use matters. The Board of Supervisors decision on appeal is final and
9 there is no appeal. The appeal process shall be the same as specified in Section 786(d).

10 (2)(A)(i) The public may petition the Public Works Director to revoke a permit. If
11 the petition satisfies the requirements in this subsection (e)(2), the Director shall hold an
12 administrative hearing on the revocation petition. Within 14 days of the filing receipt of the
13 public revocation petition, the Director shall determine if the petition complies with the
14 requirements of this subsection (e)(2) and notify the lead petitioner and permit holder of his or
15 her decision to accept the petition and schedule an administrative hearing on a specific date
16 or to deny the petition. The Director's decision to accept or deny the petition is constitutes a
17 final decision and that is not appealable subject to appeal.

18 (ii) If the Director accepts the petition, he or she shall schedule an
19 administrative hearing no earlier than 60 days and no later than 90 days after the date of
20 petition acceptance in order to provide the permit holder with an opportunity to cure the
21 problems associated with the permit as identified in the petition. At the administrative hearing,
22 the Director shall provide the permit holder with an opportunity to present evidence that he or
23 she has cured the problems identified in the petition.

24 (iii) Prior to any administrative hearing on the petition, the Director
25 shall develop an estimate of the cost of any revocation and associated restoration and identify

1 the responsible party that shall bear such cost if it is a party other than the permittee. The
2 Director shall provide this cost estimate to the lead petitioner and the permit holder in advance
3 of the administrative hearing and include the estimate in the hearing's administrative record.

4 _____ (B)(i) Within a reasonable period after the Director accepts the
5 petition and holds an administrative hearing, the Director shall issue a written decision on the
6 permittee's cure, if any, and the public revocation petition within a reasonable period after the
7 hearing and find, based on the public interest, that he or she either will reject the petition, or
8 approve the petition, or initiate revocation of the permit on grounds other than those identified
9 in the petition. The Director shall mail notice of his or her decision to the lead petitioner, the
10 permit holder, and the Clerk of the Board of Supervisors.

11 _____ (ii) If the Director approves the revocation petition or
12 initiates revocation of the permit on grounds other than those identified in the petition, he or
13 she shall proceed with permit revocation process as specified in subsection (e)(1), including
14 scheduling a new administrative hearing on the Director's revocation decision.

15 _____ (iii) If the Director rejects the petition based solely on
16 engineering design, the Director's decision is constitutes a final decision and that is not subject
17 to appeal and the petition is null and void. If the Director rejects the petition based solely
18 on a determination that the permit holder has successfully cured the problems identified in the
19 petition, the Director's decision constitutes a final decision that is not subject to appeal and the
20 petition is null and void.

21 _____ (iv) If the Director's decision to reject the petition is based
22 on reasons other than neither based solely on a determination of successful cure nor based
23 solely on engineering design, then five members of the Board of Supervisors may subscribe
24 to a notice of appeal to reverse the Director's decision and revoke the permit. Said notice of
25

1 appeal shall be filed with the Clerk of the Board of Supervisors within 30 days of the date of
2 the Director's written decision rejecting the petition.

3 _____ (C) The signature on the notice of appeal of members of the Board on
4 the notice of appeal shall not be deemed to be any indication of their position on the merits of
5 the appeal but rather shall indicate only that they believe there is sufficient public interest and
6 concern in the matter to warrant a hearing by the Board of Supervisors. The scheduling and
7 conduct of the appeal hearing shall be the same as specified in Section 786(d) once the Clerk
8 of the Board of Supervisors receives the notice of appeal from five members of the Board,
9 except that the Clerk shall notify the lead petitioner identified under subsection (e)(2)(D) and
10 the permit holder instead with the exception of notifying an appellant as there is no appellant.

11 _____ (D) A valid public revocation petition for purposes of this subsection
12 (e)(2) shall be a single petition subscribed by no less than 25 San Francisco residents from
13 the Supervisorial district in which the street encroachment permit is located. Each signature
14 on the petition shall be notarized and accompanied with the address of the petitioner. A
15 petition is valid only if it includes documentary evidence of one or more of the following
16 grounds for revocation of the street encroachment permit: (i) the permittee has failed to
17 maintain the encroachment under the terms of the permit, (ii) the encroachment presents a
18 significant health or safety hazard, or (iii) the encroachment creates severe and negative
19 impacts on the surrounding neighborhood that cannot be mitigated. For any street
20 encroachment permit issued prior to June 1, 2017, a valid petition shall include any of the
21 evidence identified in this subsection (e)(2)(D)(i)-(iii) or evidence that revocation of the permit
22 would serve a public purpose. The petition shall include documentation that constitutes
23 evidence to support revocation of the street encroachment permit and identify a lead petitioner
24 that shall receive for purposes of receiving mailed notice of any Director decisions related to
25 the petition. No more than one petition for the subject street encroachment permit shall be

1 submitted in a single year-long period and the signatures and notary statements for that
2 petition shall be affixed no more than six months prior to the date of submission.

3
4 (2f) Beginning with fiscal year 2018-2019, the appeal fees in subsection (e)(1)
5 Section 786(d) may be adjusted each year, without further action by the Board of Supervisors, to
6 reflect changes in the relevant Consumer Price Index, as determined by the Controller. No later than
7 April 15th of each year, the Director and Clerk of the Board of Supervisors shall submit the
8 Department's and Clerk's current fee to the Controller, who shall apply the price index adjustment to
9 produce a new fee for the following year. No later than May 15th of each year, the Controller shall file
10 a report with the Board of Supervisors reporting the new fee and certifying that: (a) the fees produce
11 sufficient revenue to support the costs of providing the services for which the fee is charged and (b) the
12 fees do not produce revenue that exceeds the costs of providing the services for which each permit fee
13 is charged. Notwithstanding the procedures set forth in this subsection (e)(2)(f), the Board of
14 Supervisors, in its discretion, may modify the fees by ordinance at any time.

15 (fg) For purposes of Sections 786 et seq., a street encroachment permit shall include, but is not
16 limited to, an encroachment above and/or below ground that extends beyond the centerline of the
17 public right-of-way, one or more encroachments that occupy the public right-of-way adjacent to more
18 than one property owner and the applicant(s)/permittee(s) proposes it collectively as a single permit,
19 an encroachment where the applicant/permittee is not the property owner adjacent to the
20 encroachment, an encroachment that exceeds one or both of the occupation limits specified in Section
21 723.2 governing minor sidewalk encroachments or its successor Section 723.2, and any encroachment that
22 the Director determines to have significant impacts to the public right-of-way.

23 (gh) If a street encroachment permit involves street reconstruction and occupancy of the
24 majority of a through street segment or an intersection, the design shall provide for communication
25 services as defined in Subdivision Code Section 1336 if the permittee is not providing such services as

1 part the development of real property adjacent to the street encroachment permit. After the permittee
2 provides such communication services, such services shall be excluded from the terms of the street
3 encroachment permit and any associated agreements concerning the permit, and the permittee shall
4 have no further responsibility in regard to such services. The Public Works Director is authorized to
5 waive this requirement if the cost of providing such services is excessive in comparison to the cost of
6 the street encroachment permit, the design of the street encroachment permit would be undermined by
7 inclusion of the services, or for other reasons that the Director determines would adversely affect the
8 permit or its design. This Subsection (g) shall not apply to a temporary street encroachment permit
9 under Section 786.9.

10 (hi) For purposes of Sections 786 et seq., "engineering design" shall mean
11 professional engineering work as set forth in the Professional Engineers Act, California
12 Business and Professions Code Sections 6700 et seq.

13 (ij) The Director, after a public hearing, may adopt such orders, policies, regulations, rules, or
14 standard plans and specifications in regard to street encroachment permits and applications as he or
15 she deems necessary to preserve and maintain the public health, safety, welfare, and convenience. Such
16 orders, policies, regulations, rules, or standard plans and specifications may include, but are not
17 limited to, permit application materials, implementation and annexation procedures for master major
18 encroachment permits, standards for establishing annual maintenance costs for encroachments, site
19 conditions, and accessibility of sidewalks and streets.

20 **SEC. 786.2. REPORTS.**

21 ~~(a)~~ The ~~Director of Public Works~~ Director shall forward copies of the application for a
22 ~~revocable street encroachment~~ permit ~~for an encroachment on a public street or place~~ to the Director
23 of Planning, the Director of Property, the Chief of the Police Department, the Chief of the Fire
24 Department, the ~~General Manager~~ Transportation Director of the Municipal ~~Railway~~ Transportation
25 Agency, the General Manager of the Public Utilities Commission, the Art Commission, and to the

1 City Engineer. The ~~Director of Public Works~~ Director shall request a report from each of the
2 listed departments concerning the effect of the proposed encroachment in relation to their
3 duties and responsibilities. The completed reports shall be returned to the ~~Director of Public~~
4 Works Director within 60 days of the receipt of the copies of the application by the listed
5 departments. The departments listed above may request one extension of time not to exceed
6 30 days from the ~~Director of Public Works~~ Director, which extension of time shall be granted.

7 ~~(b) Upon the Department's receipt of City department reports and any Department~~
8 ~~required permit application revisions, the Department shall forward the application to an~~
9 ~~interagency committee for review and a written report of its findings. The interagency~~
10 ~~committee shall be the Transportation Advisory Staff Committee (TASC) or successor~~
11 ~~committee. The interagency committee shall act on the application within a reasonable period~~
12 ~~after its receipt from the Department.~~

13 **SEC. 786.3. SCHEDULE OF HEARINGS.**

14 Upon receipt of the ~~reports from the departments listed~~ reports from the departments listed
15 ~~interagency committee review findings as specified in Section 786.2(b), regarding an~~
16 ~~application for a revocable street encroachment permit for an encroachment on a public street or~~
17 ~~place, the Director of Public Works Director shall set a time and place for a hearing thereon~~
18 ~~within a reasonable period, not to exceed 90 days from the date on which the application is~~
19 ~~made to the Director of Public Works when the interagency committee performed its review~~
20 Public Works receives the last report. The ~~Director of Public Works Director shall be granted an~~
21 ~~additional period of 30 days from the date on which the application is made may extend to hold the~~
22 ~~public hearing date if a time extension has been requested as provided any City department listed in~~
23 ~~Section 756.2 of this ordinance~~ 786.2, the Department itself, or the applicant requests such extension.
24 The Director shall send written notice of the basis for the extension and a proposed date for the
25 hearing to the City departments listed in Section 786.2 and the applicant.

1 **SEC. 786.4. NOTICE OF HEARING.** ~~The Director of Public Works~~ Director shall give
2 ~~notice of time, place and purpose of the hearing on an application for a revocable street~~
3 ~~encroachment permit for an encroachment on a public street or place shall be given by the Director of~~
4 ~~Public Works~~ as follows:

5 (1a) By mail, not less than 10 days prior to the date of the hearing, to the applicant or
6 other person or agency making the application.

7 (2b) By mail, not less than 10 days prior to the date of the hearing, to the owners of all
8 real property within 300 feet of all exterior boundaries of the proposed encroachment, using
9 for this purpose the names and addresses of the owners as shown on the latest city-wide
10 assessment roll in the office of the ~~Tax Collector~~ Assessor-Recorder. Failure to send notice by
11 mail to any such property owner where the address of such owners is not shown on such
12 assessment roll shall not invalidate any proceedings in connection with such application.

13 (3c) By posting, not less than 10 days prior to the date of the hearing in a public place
14 near the boundaries of the proposed encroachment.

15 (4d) Such other notice as the ~~Director of Public Works~~ Director shall deem
16 appropriate.

17 **SEC. 786.5. CONDUCT OF HEARINGS.**

18 (a) **Reports and Application Revisions.** The Department shall compile the reports of the
19 departments listed in Section 786.2(a), the TASC findings specified in Section 786.2(b), and
20 along with any application revisions, shall be submitted and make them this information available at
21 the hearing ~~on an application for a revocable~~ the subject street encroachment permit ~~for an~~
22 ~~encroachment on a public street or place.~~

23 (b) **Record.** A record shall be kept of the pertinent information presented at the
24 hearing on ~~any application for a revocable street encroachment~~ permit ~~for an encroachment on a~~
25

1 ~~public street or place~~, and such record shall be maintained as part of the permanent public
2 records of ~~the Department of~~ Public Works.

3 (c) **Continuances.** The ~~Director of~~ Public Works Director shall determine the
4 instances in which cases scheduled for hearing may be continued or taken under advisement.
5 In such cases, new notice need not be given provided the date of any further hearing is
6 announced at the previously scheduled hearing and public notice of the continued hearing is
7 issued.

8 **SEC. 786.7. PUBLIC RIGHT-OF-WAY OCCUPANCY ASSESSMENT FEE FOR**
9 **STREET ENCROACHMENTS.**

10 * * * *

11 (b) In accordance with Subsection (a) the public right-of-way occupancy assessment
12 fee for street encroachments, whether permitted or unpermitted, shall be an annual fee of
13 \$3.00 per square foot of occupancy of the street or other public right-of-way space. For
14 purposes of calculating the assessment fee, the Department shall charge no less than
15 \$100.00 per ~~p~~year even though the calculated square footage charge for the encroachment
16 may result in a smaller assessment fee.

17 * * * *

18 (f) Notwithstanding Subsection (b), no public right-of-way occupancy assessment fee
19 shall be charged against the ~~owner of a property~~ permittee for elements installed: (1) as a
20 requirement under Planning Code Section 138.1, or (2) that the Department determines are
21 consistent with any Board of Supervisors adopted Neighborhood Plan or streetscape plan as identified
22 in the General Plan or Planning Code, or (3) as a condition of a City-approved development agreement
23 or a disposition and development agreement authorized by the City or the ~~former~~ Successor Agency
24 to the San Francisco Redevelopment Agency, or (4) for improvements associated with a Planning
25 Commission approved in-kind agreement in accordance with the Planning Code, or (5) pursuant to a

1 street encroachment permit issued under Section 786.9(a) or (b), or (6) for a People Place permit
2 associated with the Places for People Program established under Administrative Code Chapter 94A.

3 **SEC. 786.8. MAINTENANCE ENDOWMENT FOR STREET ENCROACHMENT**

4 **PERMITS WHERE THE PERMITTEE IS NOT THE OWNER OF ADJACENT PROPERTY.**

5 (a) If a permittee is not the owner of real property adjacent to the street encroachment permit,
6 the permit is not recorded against the real property adjacent to the street encroachment permit, or
7 both, then the permittee shall pay the Department a maintenance endowment to ensure adequate funds
8 are available for ongoing and future maintenance of the street encroachment permit area and any
9 future modification or restoration of the permit area to a condition satisfactory to the ~~Director of~~
10 Public Works ~~Director~~ if the permittee abandons or terminates the permit or the Director revokes the
11 permit.

12 (b) The Department shall deposit all funds collected for the maintenance endowment into the
13 Public Works Encroachment Maintenance Fund as established under Administrative Code Section
14 10.100-229.

15 (c) The permittee shall pay the maintenance endowment in annual installments that are the
16 equivalent each year of 20% of the estimated annual maintenance cost. The permittee shall pay the
17 annual maintenance endowment installment for 10 years with the first payment due at the time of
18 permit issuance. As part of the permit application, the permittee shall include an estimate of the annual
19 maintenance cost and the City Engineer shall verify said cost for purposes of the maintenance
20 endowment required under this Section 786.8.

21 (d) If the Board of Supervisors authorizes or approves the transfer or assignment of a street
22 encroachment permit to an individual or entity that is not the owner of real property adjacent to the
23 street encroachment permit area, then the transferee or assignee shall pay the annual maintenance
24 endowment installment under the terms specified in subsection (c) during the time they are the
25 permittee. The transferee's or assignee's first installment payment is due on or before the effective date

1 of the transfer or assignment. If there are multiple transfers or assignments, the Department shall not
2 charge an amount that would exceed the total remaining payments it would collect for the subject street
3 encroachment permit under the 10-year term for the Maintenance Endowment Fund specified in
4 Section 786.8(c).

5 (e) If the Department or any other City agency, department, or commission, including the City
6 Attorney's Office, incurs costs in performing the permittee's maintenance obligation or abating a
7 violation, including any City required modification or restoration, and the permittee has paid the
8 maintenance endowment required under this Section 786.8 in full, then the permittee shall reimburse
9 the Department for all such City costs. If the permittee still is paying the maintenance endowment
10 required under this Section 786.8, then the permittee shall: (1) reimburse the Department for all such
11 City costs and (2) continue to make the required payments into the Public Works Maintenance
12 Endowment Fund.

13 (f) In accordance with the reimbursement process of Section 786.8(e), the Director, in his or
14 her discretion, may arrange for a reimbursement plan for the City maintenance and abatement with the
15 permittee that takes into account the permittee's history of past permit compliance and other factors the
16 Director deems appropriate, including but not limited to, the permittee's budget and number of
17 employees. If the Department is reimbursed for the City's incurred costs, then the Department shall
18 send the affected departments their share of the reimbursement.

19 (g) This Section 786.8 shall not apply to a street encroachment permit: (1) where the Board of
20 Supervisors authorizes or approves the transfer or assignment of the permit from the original permittee
21 to an individual or entity that is the successor owner(s) of real property adjacent to the street
22 encroachment permit and the permit is recorded against the successor owner(s) real property, or (2)
23 that the Board issues in accordance with the terms of Section 786(b) for a master encroachment
24 permit, or (3) that the Board issues for a street plaza in accordance with Section 792 where the street
25 plaza permittee is a different individual or entity than the holder of the underlying street encroachment

1 permit or Public Works retains responsibility for the underlying public right-of-way, or (4) that the
2 Director issues to a City agency, department, or commission, a State agency, or the federal
3 government, or (5) that comprises a People Place permit associated with the Places for People
4 Program established under Administrative Code Chapter 94A.

5 (h) If a street encroachment permit subject to the maintenance endowment as
6 specified in this Section 786.8 has a construction cost of \$1 million or greater, the Board of
7 Supervisors shall require a bond, other form of security, or payment into the Maintenance
8 Endowment Fund in an amount required to restore the public right-of-way to a condition
9 satisfactory to the Public Works Director based on a cost that the City Engineer determines. If
10 the Board requires posting of a bond or other security, the permittee shall provide evidence to
11 the Department that the bond or other security is operative on an annual basis. If the Board
12 authorizes the Director to allow a transfer or assignment of a permit that is or will be subject to
13 the maintenance endowment as specified in this Section 786.8 and said permit has or had a
14 construction cost of \$1 million or greater, then the Director shall impose the same
15 requirements as set forth in this subsection (h) as a condition of transfer or assignment.
16 Departmental expenditures related to restoration shall be consistent with the terms of
17 Administrative Code Section 10.100-229 or any successor law.

18 **SEC. 786.9. PERMITS FOR CITY DEPARTMENTS OR OTHER GOVERNMENTAL**
19 **ENTITIES AND TEMPORARY ENCROACHMENTS.**

20 (a) If a City agency, department, or commission, a State agency, or the federal government
21 applies for a street encroachment permit, the Public Works Director may approve, conditionally
22 approve, or deny in writing the application administratively without action from the Board of
23 Supervisors after the applicant satisfies the requirements of Sections 786 et seq.

24 (b) The Public Works Director, in his or her discretion, may approve, conditionally approve, or
25 deny in writing a temporary street encroachment permit application administratively without action

1 from the Board of Supervisors after the applicant satisfies the requirements of Sections 786 et seq. For
2 purposes of this subsection (b), a temporary street encroachment permit is for a project that: (1) a City
3 agency, department, or commission has co-sponsored and approved or authorized through an
4 officially-adopted City program and (2) shall occupy the street or other type of public right-of-way for
5 no longer than two years. The Director, in his or her sole discretion, may extend the permit term for a
6 temporary street encroachment for a period not to exceed six additional months. This temporary street
7 encroachment permit is not intended to conflict with ~~or supersede~~ a People Place permit associated
8 with the Places for People Program established under Administrative Code Chapter 94A, but rather be
9 a separate and distinct permit.

10 (c) The Director's approval or conditional approval of a permit under this Section 786.9 is
11 appealable by a member of the general public or the applicant to the Board of Appeals within 15 days
12 of the date of the Director's ~~final~~-written decision on the permit application.

13 (d) If the Director ~~denies~~recommends denial of an application under Section 786.9(a) or
14 (b), the Director shall notify the applicant in writing of this ~~decision~~recommendation. The Director
15 shall hold an administrative hearing on his or her ~~decision~~recommendation to deny the application
16 and issue a written decision on the recommendation to deny within a reasonable period after
17 the hearing. If the basis for the denial ~~decision~~ relates solely to engineering design ~~and the~~
18 Director's ~~decision~~ remains unchanged after the administrative hearing, the Director's ~~denial~~
19 decision to deny the application ~~constitutes the~~ final decision and ~~there~~that is not subject to
20 appeal. If the basis for ~~the~~ denial ~~decision~~ is solely for reasons unrelated to engineering design, the
21 applicant may appeal the Director's ~~denial~~ decision to the Board of Appeals within 15 days of the date
22 of the Director's ~~final~~-written decision ~~after the administrative hearing.~~

23 (e) The Director, in his or her discretion, may ~~revoke~~recommend revocation of a permit
24 issued under this Section 786.9. The Director shall notify the permittee in writing of this
25 ~~decision~~recommendation. The Director shall hold an administrative hearing on his or her

1 ~~decision recommendation to revoke~~ and issue a written decision on the recommendation to
2 revoke within a reasonable period after the hearing. Prior to the administrative hearing, the
3 Director shall develop an estimate of the cost of any revocation and associated restoration
4 and identify the responsible party that shall bear such cost if it is a party other than the
5 permittee. The Director shall provide this cost estimate to the permit holder in advance of the
6 administrative hearing and include the estimate in the hearing's administrative record. The
7 Permittee may appeal the Director's decision to revoke to the Board of Appeals within 15 days of the
8 date of the Director's final written decision ~~after the administrative hearing.~~

9
10 Section 3. The Administrative Code is hereby amended by adding Section 10.100-229,
11 to read as follows:

12 **SEC. 10.100-229. PUBLIC WORKS ENCROACHMENT MAINTENANCE FUND.**

13 (a) Establishment of Fund. The Public Works Encroachment Fund is established as a
14 category 8 fund to receive the maintenance endowment payments that permittees make in accordance
15 with Public Works Code Section 786.8.

16 (b) Use of Fund. If any street encroachment permittee fails to perform maintenance in
17 accordance with the terms of a street encroachment permit or abate any violation of permit terms,
18 including any City required modification or restoration, under Public Works Code Sections 786 et seq.,
19 Public Works may use the Encroachment Maintenance Fund to cover any costs that Public Works or
20 any other City agency, department, or commission, including the City Attorney's Office, incurs in
21 performing any street encroachment permittee's maintenance obligation or abating a violation of any
22 street encroachment permit. If the City incurs such costs while a permittee is paying the maintenance
23 endowment required under Public Works Code Section 786.8 and the Department uses the
24 Maintenance Endowment Fund to address such costs at the subject permittee's street encroachment
25 permit location, then the Department shall place any permittee reimbursed funds under Section

1 786.8(e) and (f) back into the Public Works Encroachment Maintenance Fund in an amount equivalent
2 to such City costs, but in no case more than the subject permittee's required maintenance endowment
3 payment would have been at the time the City incurred such costs. If the Board of Supervisors
4 requires a permittee to deposit money into the Encroachment Maintenance Fund for
5 restoration under Public Works Code 786.8(h), then the Public Works Director shall use such
6 money to restore the street encroachment permit area to a condition satisfactory to the
7 Director if the permittee fails to do so at the permittee's sole and absolute cost. If the
8 restoration cost to Public Works is less than the amount of the deposit or the permittee
9 completes the restoration at the permittee's sole and absolute cost, the Public Works Director
10 shall refund the any remaining deposit to the permittee if there is an active permittee. If there
11 is no permittee in existence at the time of restoration to receive a refund, the Public Works
12 Director may use the refund amount for the other purposes identified in this subsection (b).

13 (c) **Administration of Fund.** Public Works shall submit to the Board of Supervisors an annual
14 written report of revenues to and expenditures from the Fund established in this Section.

15
16 Section 4. Effective Date and Operative Dates. This ordinance shall become effective
17 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor
18 returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it,
19 or the Board of Supervisors overrides the Mayor's veto of the ordinance. This ordinance shall
20 be operative as of June 1, 2017.

21
22 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
23 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
24 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
25

1 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
2 additions, and Board amendment deletions in accordance with the "Note" that appears under
3 the official title of the ordinance.

4

5

6 APPROVED AS TO FORM:
7 DENNIS J. HERRERA, City Attorney

8 By: _____
9 John D. Malamut
Deputy City Attorney

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