

BOARD of SUPERVISORS



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MEMORANDUM

TO: Alaric Degrafinried, Interim Director, Public Works
Sally Oerth, Interim Executive Director, Office of Community Investment and Infrastructure

FROM: Erica Major, Assistant Clerk, Land Use and Transportation Committee

DATE: July 21, 2021

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Mayor Breed on July 13, 2021:

File No. 210805

Ordinance granting revocable permission to HV Community Association, Inc., to occupy and maintain the irrigation system (other than street trees), sidewalks, curbs and ramps for ADA-compliant passenger loading, and a portion of a retaining wall footing, with all such encroachments located generally along portions of Fairfax Avenue, Acacia Avenue, Ironwood Way, Catalina Street, and Middle Point Road fronting Hunters View Phase 1, 1101 Fairfax Avenue, (Assessor's Parcel Block No. 4624, Lot Nos. 23 through 32); waiving the annual public right-of-way occupancy assessment fee under Public Works Code, Section 786.7, for all phases of the Hunters View project; adopting environmental findings under the California Environmental Quality Act; and making findings of consistency with the eight priority policies of Planning Code, Section 101.1.

If you have 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 or by email at: erica.major@sfgov.org.

cc: David Steinberg, Public Works
Jeremy Spitz, Public Works
John Thomas, Public Works
Lena Liu, Public Works
Lucinda Nguyen, Office of Community Investment and Infrastructure

1 [Master Major Encroachment Permit - Hunters View HOPE SF Phase 1]

2
3 **Ordinance granting revocable permission to HV Community Association, Inc., to**
4 **occupy and maintain the irrigation system (other than street trees), sidewalks, curbs**
5 **and ramps for ADA-compliant passenger loading, and a portion of a retaining wall**
6 **footing, with all such encroachments located generally along portions of Fairfax**
7 **Avenue, Acacia Avenue, Ironwood Way, Catalina Street, and Middle Point Road fronting**
8 **Hunters View Phase 1, 1101 Fairfax Avenue, (Assessor's Parcel Block No. 4624, Lot**
9 **Nos. 23 through 32); waiving the annual public right-of-way occupancy assessment fee**
10 **under Public Works Code, Section 786.7, for all phases of the Hunters View project;**
11 **adopting environmental findings under the California Environmental Quality Act, and**
12 **making findings of consistency with the eight priority policies of Planning Code,**
13 **Section 101.1.**

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

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

22 Section 1. Findings.

23 (a) Pursuant to Public Works Code Sections 786 et seq., HV Community Association,
24 Inc., (the "Permittee") requested permission to occupy a portion of the public right-of-way to
25 maintain the irrigation system (other than street trees), sidewalks, curbs and ramps for ADA-
compliant passenger loading, and a portion of a retaining wall footing, with all encroachments

1 located generally along portions of Fairfax Avenue, Acacia Avenue, Ironwood Way, Catalina
2 Street and Middle Point Road fronting Hunters View Phase 1, 1101 Fairfax Avenue
3 (Assessor's Parcel Block No. 4624, Lot Nos. 23 through 32).

4 (b) The improvements (collectively referred to as the "Encroachments") include:

5 (1) An Irrigation system (other than street trees);

6 (2) Sidewalks along portions of Fairfax Avenue, Acacia Avenue, Ironwood Way,
7 Catalina Street, and Middle Point Road;

8 (3) Curbs/ramps for ADA passenger loading; and

9 (4) Portions of a retaining wall footing in Acacia Avenue.

10 (c) The Permittee is constructing or has constructed the Encroachments under Public
11 Works Permit No. 11IE-0336 in conjunction with its development of Hunters View Phase 1, a
12 107-unit affordable rental property, the first of three phases of the overall Hunters View HOPE
13 SF project (the "Project" or the "Hunters View Project"), and the Permittee has proposed to
14 maintain the Encroachments for the life of the master major encroachment permit, including
15 the encroachment agreement (collectively referred as the "Permit").

16 (d) The Encroachments associated with Public Works Permit No. 11IE-0336 are
17 shown in documents and plans, copies of which are on file in the office of the Clerk of the
18 Board of Supervisors in File No. 210805 and incorporated herein by reference.

19 (e) Environmental Findings.

20 (1) The Planning Commission, on June 12, 2008, in Motion No. 17617, certified
21 the Hunters View Redevelopment Project Environmental Impact Report ("EIR"), and on
22 February 20, 2020, in Motion No. 20663, adopted an addendum to the EIR dated January 16,
23 2020, pursuant to the California Environmental Quality Act (California Public Resources Code
24 Sections 21000 et seq., "CEQA"), and adopted findings ("Environmental Findings") in
25 connection with the development of the Project, which includes the Encroachments.

1 (2) The Planning Commission reviewed the Project, including the
2 Encroachments, and found pursuant to CEQA Guidelines (California Code of Regulations
3 Title 14, Sections 15000 et seq.), Sections 15162 and 15164, that the actions contemplated in
4 this ordinance are consistent with, and within the scope, of the Project analyzed in the EIR
5 and addendum, and that (A) no substantial changes are proposed in the Project and no
6 substantial changes have occurred with respect to the circumstances under which this Project
7 will be undertaken that would require major revisions to the EIR due to the involvement of any
8 new significant environmental effects or a substantial increase in the severity of previously
9 identified effects and (B) no new information of substantial importance that was not known
10 and could not have been known with the exercise of reasonable diligence at the time the EIR
11 was certified as complete shows that the Project will have any new significant effects not
12 analyzed in the EIR, or a substantial increase in the severity of any effect previously
13 examined, or that new mitigation measures or alternatives previously found not to be feasible
14 would in fact be feasible and would substantially reduce one or more significant effects of the
15 Project, or that mitigation measures or alternatives which are considerably different from those
16 analyzed in the EIR would substantially reduce one or more significant effects on the
17 environment.

18 (f) General Plan and Planning Code Section 101.1 Findings. The Planning
19 Commission, in Motion No. 20663, dated February 20, 2020, which incorporated by reference
20 the General Plan Findings set forth in Planning Commission Motion No. 17621, declared that
21 the Project (including the Encroachments) is in conformity with the General Plan and is
22 consistent with the eight priority policies of Planning Code Section 101.1.

23 (g) The Board of Supervisors adopts the Environmental Findings as its own and finds
24 that the Permit is consistent with the General Plan for the reasons set forth in the February 20,
25 2020 determination of the Planning Commission in Motion No. 20663. Copies of the Planning

1 Commission Motions Nos. 17617 and 20663, the Environmental Findings, and additional
2 environmental determination are on file with the Clerk of the Board of Supervisors in File No.
3 210805 and incorporated herein by reference.

4 (h) On May 5, 2021, Public Works held a hearing on the Encroachments that are the
5 subject of the Permit.

6 (i) In Public Works Order No. 205129, dated July 13, 2021, the Acting Public Works
7 Director (“Public Works Director”) determined that the Hunters View Phase 1 Project qualifies
8 under Public Works Code Section 786(b) as a portion of a multi-phase, large-scale
9 development project, and therefore, may obtain an individual master major encroachment
10 permit, including the major encroachment agreement (collectively, the “Permit”) for this
11 development phase that includes maintenance of all sidewalks within this particular phase.

12 (j) In Public Works Order No. 205129, the Public Works Director also determined that
13 waiver of the public right-of-way occupancy assessment fee under Public Works Code Section
14 786.7 is a policy decision for the Board of Supervisors, but noted the Encroachments
15 associated with the Hunters View Project and all future phases provide a public benefit. In
16 addition, the Director acknowledges that the Hunters View project is subject to the terms of a
17 Disposition and Development Agreement (“DDA”) with the Housing Authority of the City and
18 County of San Francisco, a public body corporate and politic (“SFHA”), which is similar to
19 projects that have a DDA with either the City or the Successor Agency to the San Francisco
20 Redevelopment Agency, for which a fee waiver is authorized under Public Works Code
21 Section 786.7(f)(3).

22 (k) The Public Works Director recommends that the Permit for the Encroachments
23 shall not become effective until:

24 ///

1 (1) The Permittee executes and acknowledges the Permit and delivers said
2 Permit and all required documents and fees to Public Works, and

3 (2) Public Works records the Permit ensuring maintenance of the
4 Encroachments in the County Recorder's Office.

5 (l) The Public Works Director further recommends that the Permittee, at its sole
6 expense and as is necessary as a result of this Permit, shall make the following
7 arrangements:

8 (1) To provide for the support and protection of facilities under the jurisdiction of
9 Public Works, the San Francisco Public Utilities Commission, the Fire Department, other City
10 Departments, and public utility companies;

11 (2) To provide access to such facilities to allow said entities to construct,
12 reconstruct, maintain, operate, or repair such facilities as set forth in the Permit;

13 (3) To remove or relocate such facilities if installation of Encroachments
14 requires said removal or relocation and to make all necessary arrangements with the owners
15 of such facilities, including payment for all their costs, should said removal or relocation be
16 required;

17 (4) The Permittee shall assume all costs for the maintenance and repair of the
18 Encroachments pursuant to the Permit and no cost or obligation of any kind shall accrue to
19 Public Works by reason of this permission granted; and

20 (5) No structures shall be erected or constructed within the public right-of-way
21 except as specifically authorized under this Permit.

22 (m) A copy of Public Works Order No. 205129 is on file with the Clerk of the Board of
23 Supervisors in File No. 210805 and incorporated herein by reference.

24
25 Section 2. Master Major Encroachment Permit Approval.

1 (a) Pursuant to Public Works Code Sections 786 et seq., the Board of Supervisors
2 hereby grants revocable, personal, non-exclusive, and non-possessory permission to the
3 Permittee, HV Community Association, Inc., to occupy the public right-of-way with the
4 Encroachments in accordance with the Master Major Encroachment Permit and maintain said
5 Encroachments under the terms of the Permit.

6 (b) The Board of Supervisors accepts the recommendations of the Public Works Order
7 No. 205129 and approves the Permit with respect to the Encroachments.

8 (c) The Board of Supervisors also authorizes the Director of Public Works to perform
9 and exercise the City's rights and obligations with respect to the Encroachments under the
10 Permit and to enter into any amendments or modifications to the Permit with respect to the
11 Encroachments. Such actions may include without limitation, those amendments or
12 modifications that the Director of Public Works, in consultation with the City Attorney,
13 determines are in the best interest of the City, do not materially increase the obligations or
14 liabilities of the City or materially decrease the obligations of the Permittee or its successors,
15 are necessary or advisable to effectuate the purposes of the Permit or this ordinance with
16 respect to the Encroachments, and are in compliance with all applicable laws.

17
18 Section 3. Waiver of the Annual Public Right-of-Way Occupancy Assessment Fee for
19 the Entire Hunters View Project. Notwithstanding the requirements of Public Works Code
20 Section 786.7 regarding payment of the annual public right-of-way occupancy fee, the Board
21 of Supervisors hereby waives payment of such fee for all phases of the Hunters View Project.
22 In granting this waiver, the Board of Supervisors determines the Encroachments associated
23 with the Hunters View Phase 1 project and all future phases of the Hunters View Project
24 provide a public benefit. In addition, the Board of Supervisors acknowledges that the Hunters
25 View Project is subject to the terms of a DDA with the SFHA, which is similar to the basis for a

1 fee waiver authorized under Public Works Code Section 786.7(f)(3) for projects that have a
2 DDA with either the City or the Successor Agency to the San Francisco Redevelopment
3 Agency.

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

9
10 APPROVED AS TO FORM:
11 DENNIS J. HERRERA, City Attorney

12 By: /s/ John D. Malamut
13 JOHN D. MALAMUT
14 Deputy City Attorney

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LEGISLATIVE DIGEST

[Master Major Encroachment Permit - Hunters View HOPE SF Phase 1]

Ordinance granting revocable permission to HV Community Association, Inc., to occupy and maintain the irrigation system (other than street trees), sidewalks, curbs and ramps for ADA-compliant passenger loading, and a portion of a retaining wall footing, with all such encroachments located generally along portions of Fairfax Avenue, Acacia Avenue, Ironwood Way, Catalina Street, and Middle Point Road fronting Hunters View Phase 1, 1101 Fairfax Avenue, (Assessor's Parcel Block No. 4624, Lot Nos. 23 through 32); waiving the annual public right-of-way occupancy assessment fee under Public Works Code, Section 786.7, for all phases of the Hunters View project; adopting environmental findings under the California Environmental Quality Act; and making findings of consistency with the eight priority policies of Planning Code, Section 101.1.

Existing Law

Public Works Code Sections 786 et seq. establish the regulatory framework for street (major) encroachments. The Public Works Code provides for various types of encroachment permits, one of which is a master major encroachment permit that is allowed for multi-phase or large-scale development projects and provides certain flexibility not available for conventional major encroachment permits. Public Works Code Section 786.7 establishes an annual public right-of-way occupancy assessment fee and identifies certain projects that are eligible for waiver of this fee.

Amendments to Current Law

This ordinance would approve a master major encroachment for Phase 1 of the Hunters View HOPE SF development project. The encroachments include an irrigation system (other than street trees); sidewalks along portions of Fairfax Avenue, Acacia Avenue, Ironwood Way, Catalina Street, and Middle Point Road; curbs/ramps for ADA passenger loading; and a portion of retaining wall footing in Acacia Avenue. The legislation also would waive the annual public right-of-way occupancy assessment fee for all phases of the Hunters View HOPE SF project. The basis for the fee waiver is that the encroachments provide a public benefit and the project involves a Disposition and Development Agreement ("DDA") with the Housing Authority of the City and County of San Francisco, which is similar to the fee waiver already authorized under Public Works Code Section 786.7(f)(3) for projects that have a DDA with either the City or the Successor Agency to the San Francisco Redevelopment Agency.

Background Information

This legislation would help facilitate the development of the Hunters View HOPE SF project, a public housing transformation collaborative effort aimed at disrupting intergenerational poverty, reducing social isolation, and creating vibrant mixed-income communities without mass displacement of current residents.

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