

1 [Public Works Code – Appellate body for minor sidewalk encroachments.]

2
3 **Ordinance amending Public Works Code Section 723.2 to change the appellate body**
4 **for Minor Sidewalk Encroachment Permits for subsidewalk encroachments from the**
5 **Board of Appeals to the Board of Supervisors.**

6 NOTE: Additions are *single-underline italics Times New Roman*;
7 deletions are *strike-through italics Times New Roman*.
8 Board amendment additions are double-underlined;
9 Board amendment deletions are ~~strikethrough normal~~.

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

10 Section 1. The San Francisco Public Works Code is hereby amended by amending
11 Section 723.2, to read as follows:

12 **SEC 723.2 MINOR SIDEWALK ENCROACHMENTS.**

13 (a) The Director of Public Works may grant permission, revocable at his or her will, to
14 an owner of property abutting any court, alley or street to install and maintain minor
15 encroachments such as fences, retaining walls, steps or stairways and other minor structures
16 in the sidewalk fronting such property where such encroachments are desirable or convenient
17 in conjunction with the owner's use and enjoyment of the property, or required for the safety,
18 convenience and comfort of the public using the sidewalk.

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

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

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

13 (e) Each permit issued under the provisions of this Section shall not become effective
14 until the permit has been signed by the owner or the owner's authorized agent and a copy
15 thereof has been recorded in the office of the Recorder of the City and County of San
16 Francisco; ~~provided, however, that~~ within 15 days following the approval, denial or revocation
17 of a permit by the Director, any person may file a notice of appeal ~~with the Board of Appeals. as~~
18 follows:

19 (1) Appeals of the revocation or denial of a permit issued by the Director for the following
20 encroachments that impede or otherwise impact the Central Subway Corridor, as defined in Section
21 723.3(3) of this Code: subsidewalk encroachments below the public right-of-way or other
22 encroachments in, on, and/or below the public right-of-way may be appealed to the Board of
23 Supervisors by filing a notice to appeal with the Clerk of the Board of Supervisors.

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

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

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

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

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

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

19 (j) The Board of Supervisors, the Board of Appeals or the Building Inspection
20 Commission may affirm, reverse or modify any permit decision made by the Director of Public
21 Works under the provisions of this Section. The decision by the Board of Supervisors, the Board
22 of Appeals or the Building Inspection Commission is final.

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

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

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

9 (a) Encroachments in, on, above, or below the public right-of-way that are affixed or
10 appurtenant to any building whose owner obtained a site permit for new construction on or
11 after August 29, 2005. This Subsection (k)(2)(a) also shall apply to any commercial, industrial,
12 or mixed-use building whose owner obtained a site permit for new construction prior to August
13 29, 2005; provided, however, that such building is not located in any Neighborhood
14 Commercial District as designated in Planning Code Article 7 and that the encroachment
15 associated with such building was installed or encroachment permit obtained prior to August
16 29, 2005. This Subsection shall specifically include, but not be limited to, doors that open over
17 the public right-of-way and subsidewalk basements; provided, however, that this Subsection
18 shall exclude encroachments for shoring and tiebacks. This Subsection shall not apply to a
19 building that has been converted from a commercial, industrial, or mixed-use building into
20 building containing only residential use.

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

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

6 (d) Underground storage tanks.

7 (3) For purposes of Subsection (k)(2), the term "site permit" also shall mean "building
8 permit."

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

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

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

21 (7) Notwithstanding this Subsection (k), the public right-of-way assessment fee for
22 underground vaults shall be as specified in Section 2.1.1 et seq.

1 APPROVED AS TO FORM:
2 DENNIS J. HERRERA, City Attorney

3 By: Stephanie J. Stuart
4 STEPHANIE J. STUART
5 Deputy City Attorney
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Name of Supervisor/Committee/Department
BOARD OF SUPERVISORS



City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails Ordinance

File Number: 090934

Date Passed:

Ordinance amending Public Works Code Section 723.2 to change the appellate body for Minor Sidewalk Encroachment Permits for subsidewalk encroachments from the Board of Appeals to the Board of Supervisors.

August 18, 2009 Board of Supervisors — PASSED, ON FIRST READING

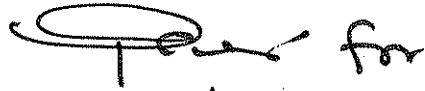
Ayes: 10 - Alioto-Pier, Avalos, Campos, Chiu, Chu, Daly, Elsbernd, Mar,
Maxwell, Mirkarimi
Excused: 1 - Dufty

September 15, 2009 Board of Supervisors — FINALLY PASSED

Ayes: 11 - Alioto-Pier, Avalos, Campos, Chiu, Chu, Daly, Dufty, Elsbernd, Mar,
Maxwell, Mirkarimi

File No. 090934

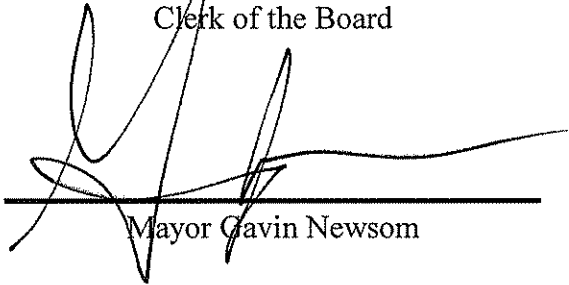
I hereby certify that the foregoing Ordinance was **FINALLY PASSED** on September 15, 2009 by the Board of Supervisors of the City and County of San Francisco.



Angela Calvillo
Clerk of the Board

9-25-09

Date Approved



Mayor Gavin Newsom