Ordinance adding Article 2.1 of the Public Works Code to add sections 2.1.1, 2.1.2, 2.1.3, and 2.1.4 concerning permit fees and occupancy assessments, specifying procedures to establish such permit fees and assessments, amending section 2.4.45 to modify the procedures for fee review and adjustments, and making environmental findings.

Note: Additions are single-underline italics Times New Roman; deletions are strikethrough italics Times New Roman. Board amendment additions are double underlined. Board amendment deletions are strikethrough normal.

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

Section 1. The Planning Department has determined that the actions contemplated in this Ordinance are in compliance with the California Environmental Quality Act (California Public Resources Code sections 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. 030830 and is incorporated herein by reference.

Section 2. The San Francisco Public Works Code is hereby amended by adding Article 2.1 and Sections 2.1.1, 2.1.2, 2.1.3, and 2.1.4 to read as follows:

Article 2.1 FEES

Sec. 2.1.1. Fee and Assessment Schedule Establishment.

Notwithstanding the permit fee provisions listed elsewhere in this Code, the Director of Public Works is authorized to establish a permit fee and assessment schedule for the permit categories and uses specifically listed below:

(a) Street Flower Market Permit pursuant to Article 5 (sections 155 et seq.);
(b) Tables and Chairs Permit pursuant to Article 5.2 (sections 176 et seq.);
(c) Display Merchandise Permit pursuant to Article 5.3 (sections 183 et seq.);
(d) Street Improvement Permit in an accepted or unaccepted right-of-way in order to
satisfy requirements under sections 416, 706, 708, and 724.2;

(e) Special Sidewalk Permit pursuant to section 703.1;

(f) Automobile Runway (Driveway) Permits pursuant to sections 715 et seq.
   (i) Standard Permit; and
   (ii) Over-wide Driveway Permit;

(g) Pipe Barrier Permit pursuant to section 723.1
   (i) Standard Permit; and
   (ii) Security Bollard Barrier;

(h) Minor Sidewalk Encroachment Permit pursuant to section 723.2
   (i) Standard Permit;
   (ii) Underground Storage Tank Abandonment;
   (iii) Underground Vault, which shall be comprised of: (A) a permit fee and (B) an annual occupancy assessment cost per 100 square feet of occupied space;
   (iv) Underground Vaults with validly issued permits prior to July 1, 2003 shall be subject to the annual occupancy assessment cost beginning January 1, 2004;

(i) Debris Box Permit pursuant to section 725
   (i) 7-day Permit; and
   (ii) Annual Permit;

(j) Encroachment Permit pursuant to section 786;

(k) Commemorative Plaque Permit pursuant to section 789.2.

Section 2.1.2. Fee and Assessment Review and Adjustment.

(a) Beginning with fiscal year 2004-2005, the fees and occupancy assessment costs which are established for the permit categories and uses set forth in section 2.1.1 for fiscal year 2003-2004 may be adjusted each year, without further action by the Board of
Supervisors, to reflect changes in the relevant Consumer Price Index, as determined by the Controller. No later than April 15th of each year, the Director shall submit the Department’s current fees and occupancy assessment costs schedule to the Controller, who shall apply the price index adjustment to produce a new fee schedule and occupancy assessment for the following year. No later than May 15th of each year, the Controller shall file a report with the Board of Supervisors reporting the new fee schedule and occupancy assessment and certifying that: (a) the fees produce sufficient revenue to support the costs of providing the services for which the fee is charged and (b) the fees do not produce revenue that exceeds the costs of providing the services for which each permit fee is charged. Notwithstanding the procedures set forth in this Section, the Board of Supervisors, in its discretion, may modify the fees or occupancy assessment costs by ordinance at any time.

Section 2.1.3. Additional Fees.

In instances where administration or processing of any permit is or will exceed the fee amount established pursuant to section 2.1.1, the Director, in his or her discretion, may require an applicant or permittee to pay a sum in excess of the subject fee amounts. This additional sum shall be sufficient to recover actual costs that the Department incurs and shall be charged on a time and materials basis. The Director also may charge for any time and materials costs that other agencies, boards, commissions, or departments of the City incur in connection with the processing or administration of a particular application or permit. Whenever additional fees are or will be charged, the Director, upon request of the applicant or permittee, shall provide in writing the basis for the additional fees or an estimate of the additional fees to be charged.

Section 2.1.4. Fee and Occupancy Assessment Calculation Method.

Establishment of the fees for each permit category and use specified in section 2.1.1 shall be based on the Department’s actual costs to process and administer the particular
permit category or use. Said fees may include the actual costs that other agencies, boards,
commissions, or departments of the City incur in connection with the processing or
administration of a particular permit category or use. The occupancy assessment costs
specified in section 2.1.1 shall be based on fair market value. The Director shall codify the fee
and assessment schedule by departmental order. Any adjustment in fees and assessments
pursuant to section 2.1.2 also shall be codified by departmental order. The fee and
assessment schedule shall be effective on the date that the departmental order is issued, but
in no case shall the schedule become effective before the beginning of the fiscal year for
which the schedule has been established or adjusted.

Section 3. The San Francisco Public Works Code is hereby amended by amending
Section 2.4.45 to read as follows:

SEC. 2.4.45. REPORT TO BOARD OF SUPERVISORS AND PROCEDURES FOR FEE
ADJUSTMENTS.

(a) Street Damage Restoration Fee Adjustment. Within one year after adoption or
amendment of the street damage restoration fee or other fees set forth in this Subarticle, and
every three years thereafter, the Director shall review the proceeds of the street damage
restoration fee and such other fees, the costs of repaving and reconstruction reasonably attributed to
excavation in City streets, the City's costs to administer this Article and inspect excavations, and any
other new information that shall become available, and prepare a report to the Board of
Supervisors. Based upon the result of the review, the Director shall recommend to the Board
of Supervisors any necessary adjustments to the such fee, along with written justification for
the recommended adjustment and any necessary legislation. In the event that fee proceeds
have exceeded, or are anticipated to exceed, the costs for street repaving and reconstruction
reasonably attributable to excavation or the City's costs to administer this Article or inspect
excavations, the Director shall recommend legislation to the Board of Supervisors that modifies
the applicable such fee to ensure that fee proceeds do not exceed the costs for street repaving and reconstruction reasonably attributable to excavation or the City’s costs to administer this Article or inspect excavations. In the event that fee proceeds have undercollected, or are anticipated to undercollect, for the costs for street repaving and reconstruction reasonably attributable to excavation or the City’s costs to administer this Article or inspect excavations, the Director may recommend legislation to the Board of Supervisors that modifies the applicable fee to more accurately recover the costs for street repaving and reconstruction reasonably attributable to excavation or the City’s costs to administer this Article or inspect excavations.

(b) Administrative and Inspection Fees Adjustment. The procedures to review and adjust the fees specified in Sections 2.4.41 and 2.4.42 shall be the procedures for fee review and adjustment set forth in Section 2.1.2.

Section 4. Establishment of the initial fee and assessment schedule specified in Public Works Code section 2.1.1, as set forth in this Ordinance, shall not be effective until all of the following actions have been completed:

(a) This Ordinance shall be in effect;

(b) The Director of Public Works shall submit to the Controller and the Planning Department’s Environmental Compliance Officer written documentation that demonstrates the proposed fee and assessment schedule satisfies the requirements of Public Works Code section 2.1.4, as set forth in this Ordinance;

(c) The Controller shall submit written certification to the Director and the Clerk of the Board of Supervisors that the fees and assessments specified in the Director’s proposal are consistent with the charges that are authorized under Public Works Code section 2.1.4, as set forth in this Ordinance. The Controller’s certification shall be on file with the Clerk of the Board of Supervisors in File No. ;
(d) The Environmental Compliance Officer shall submit written certification to the Director and the Clerk of the Board of Supervisors that the fees and assessments contemplated in the Director's proposal are in compliance with the California Environmental Quality Act (California Public Resources Code sections 21000 et seq.). This certification shall be on file with the Clerk of the Board of Supervisors in File No. 030830.

(e) The Director shall make available for public review all written documentation prepared in relation to the proposed fee and assessment schedule. Said materials shall be available for review by appointment at the Director's Office, City Hall, 1 Dr. Carlton B. Goodlett Place, Room 348;

(f) The Director shall hold a public hearing on the proposed schedule;

(g) Notice of the public hearing shall be provided in the following manner:
   (i) Notice of the date, time, and location of the hearing shall be published in a newspaper of general circulation and the Department's website for at least two weeks prior to the public hearing;
   (ii) Notice of the date, time, and location of the hearing shall be posted outside the hearing room for at least one week before the hearing;
   (iii) At least one week before the hearing, notice of the date, time, and location of the hearing shall be mailed to all those individuals or organizations that requested such notice;

(h) The Director shall appoint an administrative hearing officer to conduct the hearing. Said hearing shall be tape recorded;

(i) Within 10 days after the public hearing, the hearing officer shall submit a written recommendation on the proposed fee schedule along with copies of all materials submitted at the hearing and a copy of the hearing tape to the Director;
(j) After review of the hearing record, the Director shall approve, deny, or modify the hearing officer’s recommendation and shall issue a tentative decision on the establishment of fees and assessments to the Controller;

(k) If the Controller determines that any of the fees or assessments exceed the charges as set forth in the Controller’s certification under subsection (c), such fees or assessments may not be established; provided, however, the Director, in his or her discretion, may reintroduce the subject fees or assessments. If the Director elects to reintroduce fees or assessments, the Director shall proceed through the steps of this Section beginning with subsection (b) until such fees and assessments satisfy the requirements of subsection (l). If the Controller determines that any of the fees or assessments are less than the charges as set forth in the Controller’s certification under subsection (c), the Director must obtain Board of Supervisors approval, by ordinance, for such charges. The provisions of this subsection shall not affect the Director’s ability to establish fees or assessments that satisfy the requirements of subsection (l);

(l) If the Controller determines that some or all of fees or assessments specified in the Director’s tentative decision are consistent with the charges set forth in the Controller’s certification under subsection (c), the Director shall issue a Departmental Order establishing said fees and assessments. A copy of said Order shall be submitted to the Clerk of the Board of Supervisors for filing in the Board’s File No.

Section 5. To the extent the fees and assessment schedule established pursuant to Public Works Code section 2.1.1, as set forth in this Ordinance, affects existing permits that are issued or renewed on an annual basis, the fee and assessment schedule shall apply to those permits upon the date of issuance or renewal of the specific permit.
APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By:  
John D. Malamut  
Deputy City Attorney
Ordinance adding Article 2.1 of the Public Works Code to add sections 2.1.1, 2.1.2, 2.1.3, and 2.1.4 concerning permit fees and occupancy assessments, specifying procedures to establish such permit fees and assessments, amending section 2.4.45 to modify the procedures for fee review and adjustments, and making environmental findings.

June 10, 2003 Board of Supervisors — AMENDED
Ayes: 10 - Daly, Dufty, Gonzalez, Hall, Ma, Maxwell, McGoldrick, Newsom, Peskin, Sandoval
Absent: 1 - Ammiano

June 10, 2003 Board of Supervisors — PASSED ON FIRST READING AS AMENDED
Ayes: 7 - Daly, Dufty, Hall, Ma, Maxwell, McGoldrick, Newsom
Noes: 3 - Gonzalez, Peskin, Sandoval
Absent: 1 - Ammiano

June 17, 2003 Board of Supervisors — FINALLY PASSED
Ayes: 10 - Ammiano, Daly, Dufty, Gonzalez, Hall, Ma, Maxwell, Newsom, Peskin, Sandoval
Excused: 1 - McGoldrick

June 17, 2003 Board of Supervisors — FINALLY PASSED
Ayes: 8 - Ammiano, Daly, Dufty, Hall, Ma, Maxwell, Newsom, Sandoval
Noes: 2 - Gonzalez, Peskin
Excused: 1 - McGoldrick
I hereby certify that the foregoing Ordinance was FINALLY PASSED on June 17, 2003 by the Board of Supervisors of the City and County of San Francisco.

Gloria L. Young
Clerk of the Board

Mayor Willie L. Brown Jr.