

FILE NO. 050986

ORDINANCE NO. 179-05

1 [Public Works Code occupancy assessment fees for various encroachments.]

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3 **Ordinance amending the Public Works Code to amend Section 723.2 to adopt a public**  
4 **right-of-way occupancy assessment fee for minor sidewalk encroachments, to amend**  
5 **Section 724.1 to modify the public right-of-way occupancy assessment fee for**  
6 **temporary street occupancy permits; and to add Section 786.7 to adopt a public right-**  
7 **of-way occupancy assessment fee for street encroachments; and making**  
8 **environmental findings.**

9 Note: Additions are *single-underline italics Times New Roman*;  
10 deletions are ~~*strikethrough italics Times New Roman*~~.  
11 Board amendment additions are double underlined.  
12 Board amendment deletions are ~~strikethrough normal~~.

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

14 Section 1. The Planning Department has determined that the actions contemplated in  
15 this Ordinance are in compliance with the California Environmental Quality Act (California  
16 Public Resources Code sections 21000 et seq.). Said determination is on file with the Clerk of  
17 the Board of Supervisors in File No. 050986 and is incorporated herein by reference.

18 Section 2. The San Francisco Public Works Code is hereby amended by amending  
19 Section 723.2, to read as follows:

20 SEC. 723.2. MINOR SIDEWALK ENCROACHMENTS.

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

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, the  
8 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 shall agree to hold harmless the City and County of  
14 San Francisco, its officers, agents, and employees, from any damage or injury caused by  
15 reason of the installation or maintenance of the encroachment in the sidewalk, and the owner  
16 or owners or subsequent owner or owners of the respective real property shall be solely liable  
17 for any damage or loss occasioned by any act or neglect in respect to the installation or  
18 maintenance of the encroachments in the sidewalk.

19           **(e)** Each permit issued under the provisions of this Section shall not become effective  
20 until the permit has been signed by the owner or the owner's authorized agent and a copy  
21 thereof has been recorded in the office of the Recorder of the City and County of San  
22 Francisco; provided, however, that within 15 days following the approval, denial or revocation  
23 of a permit by the Director, any person may file a notice of appeal with the Clerk of the Board  
24 of Supervisors. In the alternative, when the encroachment is related to building construction,  
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1 rehabilitation or maintenance, any person may appeal the encroachment permit decision to  
2 the Building Inspection Commission. A person waives his or her right to appeal to the Building  
3 Inspection Commission encroachment permit decisions relating to building construction,  
4 rehabilitation or maintenance by instead filing the appeal with the Clerk of the Board of  
5 Supervisors. No encroachment permit decision may be appealed to both bodies.

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

9 (g) Upon filing the appeal to the Board of Supervisors, the appeal shall be referred to  
10 the full Board for hearing.

11 (h) The Clerk of the Board shall set a time and place for hearing such appeal, which  
12 shall be not less than 10 nor more than 30 days after such filing.

13 (i) Pending decision by the Board of Supervisors or the Building Inspection  
14 Commission, the permit ~~approval~~decision by the Director shall be suspended. The Board of  
15 Supervisors may disapprove the ~~appeal~~ Director's permit decision only by a vote of not less  
16 than 2/3 of all members of the Board. In the event that one or more of the full membership of  
17 the Board is disqualified or excused from voting because of an interest prohibited by general  
18 law or the San Francisco Charter, any such disapproval shall be by a vote of all members of  
19 the Board that are not disqualified or excused. The Board of Supervisors must decide such  
20 appeal within 30 days of the time set for the hearing thereon, provided that, if the full  
21 membership of the Board is not present on the last day on which said appeal is set or  
22 continued for hearing within said period, the Board may postpone said hearing and decision  
23 thereon until, but not later than, the full membership of the Board is present; provided, further,  
24 that the latest date to which said hearing and decision may be so postponed shall be not more  
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1 than 90 days from the date of filing of the appeal. Failure of the Board of Supervisors to act  
2 within such time limit shall be deemed to constitute approval by the Board of the action of the  
3 Director of Public Works.

4 (j) Before issuance of the permit, the applicant shall be required to pay to the  
5 Department of Public Works a fee as set forth in Section 2.1.1 et seq. and a public right-of-way  
6 occupancy assessment fee as set forth in Subsection (m). ~~needed to equal the actual cost of inspection~~  
7 ~~and investigation as determined by the Department of Public Works, not to exceed \$200. All payments~~  
8 ~~received under the provisions of this Section shall be deposited to the Special Engineering Inspection~~  
9 ~~Fund of said Department.~~

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

14 (l) The Board of Supervisors or the Building Inspection Commission may affirm,  
15 reverse or modify any permit decision made by the Director of Public Works under the  
16 provisions of this Section. The decision by the Board of Supervisors or the Building Inspection  
17 Commission is final.

18 (m) The Board of Supervisors reserves the right to exact a license fee or rental public  
19 right-of-way occupancy assessment fee for the use of the sidewalk or other public right-of-way  
20 space permitted under the provisions of this Section.

21 (1) In accordance with Subsection (m) the public right-of-way occupancy assessment  
22 fee for minor sidewalk encroachments, whether permitted or unpermitted, shall be an annual fee of  
23 \$3.00 per square foot of occupancy of the sidewalk or other public right-of-way space. For purposes of  
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1 calculating the assessment fee, the Department shall charge no less than \$100.00 per year even though  
2 the calculated square footage charge for the encroachment may result in a smaller assessment fee.

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

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

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

9 Section 3. Section 2. The San Francisco Public Works Code is hereby amended by  
10 amending Section 724.1 as follows:

11 SEC. 724.1. TEMPORARY OCCUPANCY OF STREET - FEES TO BE PAID.

12 (a) No permit shall be issued to a private or public entity for the temporary  
13 occupancy of the street for building construction operations unless a fee and public right-of-  
14 way occupancy assessment are paid. The fee shall be \$10.45, per month, per 20 linear feet,  
15 or fraction thereof, occupied as measured parallel with the face of curb. In addition to the fee,  
16 the permit applicant shall pay a public right-of-way occupancy assessment of ~~\$29.55~~70.00, per  
17 month, per 20 linear feet, or fraction thereof, occupied as measured parallel with the face of  
18 curb. For purposes of calculating fees and assessment costs, the Department shall use one-  
19 month increments even though the permittee may occupy for less than a one-month term.

20 (b) For temporary street space occupancy for any purpose other than a  
21 building construction operation, the fee shall be \$50 per day with no assessment cost. Unless  
22 specified otherwise, such occupation is subject to all provisions of Sections 724 et seq.

23 (c) Nonprofit organizations with tax exempt status under the Internal  
24 Revenue Code shall be exempt from payment of the fee where the street occupancy is  
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1 necessary for the development of low and moderate income housing as defined by the United  
2 States Department of Housing and Urban Development.

3 (d) Refund. If a permittee elects to relinquish all or a portion of the occupied  
4 street space prior to termination of the permit, the permittee may seek a refund of fees and  
5 occupancy assessment from the Department. There shall be no fee charged for a refund  
6 request. Refunds shall be issued based only on one-month increments.

7 (e) Fee and Assessment Review. Beginning with fiscal year 2003-2004, the  
8 permit fee and street occupancy assessment set forth in this Section may be adjusted each  
9 year, without further action by the Board of Supervisors, to reflect changes in the relevant  
10 Consumer Price Index, as determined by the Controller. No later than April 15th of each year,  
11 the Director shall submit its current fee and occupancy assessment schedule to the Controller,  
12 who shall apply the price index adjustment to produce a new fee schedule and occupancy  
13 assessment for the following year. No later than May 15th of each year, the Controller shall  
14 file a report with the Board of Supervisors reporting the new fee schedule and occupancy  
15 assessment and certifying that: (a) the permit fees produce sufficient revenue to support the  
16 costs of providing the services for which the permit fee is assessed, and (b) the permit fees do  
17 not produce revenue which is significantly more than the costs of providing the services for  
18 which each permit fee is assessed. Notwithstanding the above, the Board of Supervisors, in  
19 its discretion, may modify the street occupancy assessment at any time.

20 (f) Additional Fees. In instances where administration of this permit program  
21 or inspection of a street space occupancy is or will be unusually costly to the Department, the  
22 Director, in his or her discretion, may require an applicant or permittee to pay any sum in  
23 excess of the amounts charged above. This additional sum shall be sufficient to recover  
24 actual costs incurred by the Department and shall be charged on a time and materials basis.  
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1 The Director also may charge for any time and materials costs incurred by other agencies,  
2 boards, commissions, or departments of the City in connection with the administration or  
3 inspection of the street space occupancy. Whenever additional fees are charged, the  
4 Director, upon request of the applicant or permittee, shall provide in writing the basis for the  
5 additional fees and an estimate of the additional fees.

6 Section 4. The San Francisco Public Works Code is hereby amended by adding  
7 Section 786.7 as follows:

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

10 (a) The Board of Supervisors reserves the right to exact a public right-of-way occupancy  
11 assessment fee for the use of the street or other public right-of-way space permitted under the  
12 provisions of Sections 786 et seq.

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

18 (c) If the Board of Supervisors has imposed an annual public right-of-way occupancy  
19 assessment fee for a street encroachment permit, the permittee shall pay the greater of the Board-  
20 adopted fee or the assessment fee set forth in Subsection (b).

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

23 (e) The public right-of-way occupancy assessment fee shall not be charged to any federal, state,  
24 or local governmental agencies, commission, or departments.

1           Section 4. This section is uncodified. The Board of Supervisors urges the Director of  
2 the Department of Public Works and the Tax Collector to coordinate on establishing a billing  
3 system so that real property tax bills will include a line item for payment of any annual public  
4 right-of-way occupancy assessment fees authorized under the Public Works Code.

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1 RECOMMENDED:  
2 DEPARTMENT OF PUBLIC WORKS

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4 By: \_\_\_\_\_  
5 Edwin M. Lee  
6 Director of Public Works

7 RECOMMENDED:  
8 DEPARTMENT OF PUBLIC WORKS

9  
10 By: \_\_\_\_\_  
11 Robert P. Beck  
12 Deputy Director of Engineering

APPROVED AS TO FORM:  
DENNIS J. HERRERA  
City Attorney

By:   
John D. Malamut  
Deputy City Attorney



# City and County of San Francisco

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

## Tails

## Ordinance

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**File Number:** 050986

**Date Passed:**

Ordinance amending the Public Works Code to amend Section 723.2 to adopt a public right-of-way occupancy assessment fee for minor sidewalk encroachments, to amend Section 724.1 to modify the public right-of-way occupancy assessment fee for temporary street occupancy permits; and to add Section 786.7 to adopt a public right-of-way occupancy assessment fee for street encroachments; and making environmental findings.

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July 12, 2005 Board of Supervisors — CONTINUED

Ayes: 11 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Ma, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval

July 19, 2005 Board of Supervisors — PASSED ON FIRST READING

Ayes: 11 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Ma, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval

July 26, 2005 Board of Supervisors — FINALLY PASSED

Ayes: 10 - Alioto-Pier, Ammiano, Dufty, Elsbernd, Ma, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval

Excused: 1 - Daly

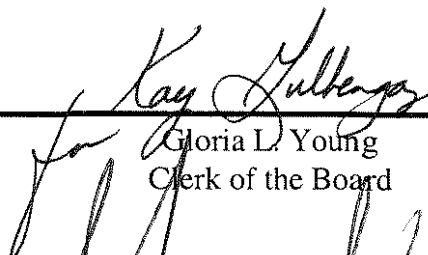
File No. 050986

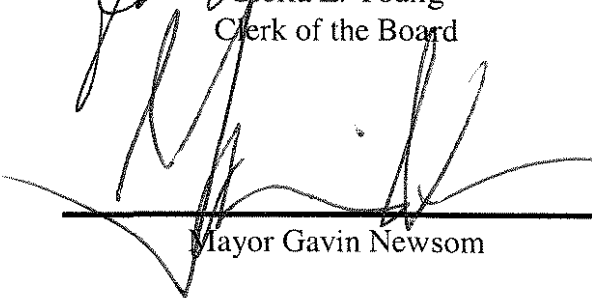
I hereby certify that the foregoing Ordinance  
was **FINALLY PASSED** on July 26, 2005 by  
the Board of Supervisors of the City and  
County of San Francisco.

JUL 29 2005

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Date Approved

  
Gloria L. Young  
Clerk of the Board

  
Mayor Gavin Newsom