

1 [Unpermitted Subsidewalk Encroachment into Public Right of Way.]

2
3 **Ordinance establishing that an unpermitted subsidewalk encroachment into the public**
4 **right of way along the Central Subway Corridor constitutes a public nuisance.**

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

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

9 Section 1. The San Francisco Public Works Code is hereby amended by adding
10 Section 723.3, to read as follows:

11 **SEC. 723.3 UNPERMITTED SUBSIDEWALK ENCROACHMENT INTO THE PUBLIC**
12 **RIGHT OF WAY ALONG THE CENTRAL SUBWAY CORRIDOR.**

13 (a) For purposes of Section 723.3, the following terms shall have the following meanings:

14 (1) "Property Owner" means the record owner of the Property.

15 (2) "Property" means the real property immediately abutting, adjacent or otherwise connected
16 to an unpermitted subsidewalk obstruction or other encroachment into the public right of way.

17 (3) "Central Subway Corridor" shall mean the north-south subway alignment commencing at
18 Fourth and King Streets and continuing via Fourth and via Stockton Streets to the terminus located on
19 the north side of the intersection of Stockton and Jackson Streets.

20 (4) "Unpermitted" shall mean the unauthorized use of a subsidewalk obstruction or other
21 encroachment into the public right-of-way, including those obstructions or encroachments for which a
22 permit has been revoked, annulled or for which a permit has not been issued.

23 (b) Notwithstanding any permit, license, easement or authorization of any kind, an unpermitted
24 subsidewalk obstruction or other encroachment into the public right of way along the Central Subway
25

1 Corridor shall constitute a public nuisance that the City may abate by any legal means, and the
2 abatement of such nuisance shall be at the expense of the Property Owner.

3 (c) Notice to abate nuisance

4 (1) Notwithstanding any other remedy, upon request from the Central Subway Project Manager,
5 the Director of Public Works shall mail a notice to the Property Owner, any known occupant of the
6 unpermitted subsidewalk obstruction or encroachment and any mortgagee or beneficiary under a
7 recorded deed of trust.

8 (2) The notice shall state the conditions that constitute the public nuisance and shall order the
9 abatement of the nuisance within a specific amount of time after the date of the notice. The time
10 allowed for abatement shall be a reasonable time in the judgment of the Director of Public Works,
11 based upon the circumstances of the particular nuisance.

12 (3) The Director of Public Works shall serve the notice by first class mail, postage prepaid,
13 return receipt requested, addressed to the Property Owner as that address appears on the last
14 equalized assessment roll or as known to the Director of Public Works. If no address appears, then a
15 copy of the notice shall be mailed addressed to the Property Owner at the address of the Property. The
16 Director of Public Works shall also serve the notice by first class mail, postage prepaid, return receipt
17 requested, to any known occupant of the subsidewalk obstruction or encroachment determined to
18 constitute a nuisance.

19 Service of the notice is effective on the date of mailing.

20 (4) The Director of Public Works shall retain in the file a declaration of the person effecting
21 service declaring the date, time and manner that service was made.

22 (d) Effect of failure to abate. If the Property Owner does not comply with the notice prescribed
23 in Section 723.3(c), the Director of Public Works may permit the Municipal Transportation Agency to
24 abate the nuisance by giving a second notice in the same manner set forth in Section 723.3(c). The
25 second notice shall direct the Property Owner and the occupant of the subsidewalk obstruction or

1 encroachment to appear before the Director of Transportation, or his or her designee, at a stated time
2 and place to show cause why the nuisance should not be abated. The notice shall be titled "Notice of
3 Hearing to Abate Nuisance" and shall be substantially in the following form:

4
5 NOTICE OF HEARING TO ABATE NUISANCE

6 _____, the owner(s)/occupant(s) of real property located at
7 _____, is notified to appear before the Director of Transportation, or his or her
8 designee, at a hearing to be held on _____, 20 _____, at _____ o'clock, at
9 _____ [insert location of hearing], and show cause, if any he or she has, why the
10 nuisance should not be abated and the cost of abatement of the nuisance on that parcel of land should
11 not be made a special assessment against the parcel. A notice to you previously sent on
12 _____, 20 _____ is attached for further details regarding the nuisance.

13 (e) **Hearing.** At the time fixed in the notice, the Director of Transportation, or his or her
14 designee, shall hear the testimony of all interested persons desiring to testify respecting the condition
15 constituting the nuisance, including the estimated cost of its abatement and any other matter which may
16 be pertinent. Following the conclusion of the hearing, the Director of Transportation, or his or her
17 designee may, by written statement, declare his or her findings. The Director of Transportation, or his
18 or her designee, may order the Property Owner to abate the nuisance within a specific time, which is
19 reasonable under the circumstances, after the date of serving the notice of the written statement.

20 (f) **Abatement by City.** If the Property Owner fails to abate the nuisance within the time set
21 forth, the Municipal Transportation Agency may proceed to abate the nuisance.

22 (g) **Recoverable expenses.** The expense of abatement of a nuisance under this Section 723.3
23 shall be a lien against the Property.

24 (1) A recoverable expense shall include but not be limited to the following:
25

1 (a) The hourly rates for personnel time in (i) preparing for and attending all inspections, (ii)
2 preparing all written reports and memos, (iii) preparing for and attending all meetings at which the
3 enforcement actions against the property being charged with the expense is the subject, (iv) preparing
4 for and attending all official enforcement proceedings, including but not limited to proceedings before
5 the Director of Transportation, or his or her designee, and (v) preparing for and attending civil or
6 criminal proceedings instituted in state or federal court; and

7 (b) The cost of services rendered by third parties such as the preparation of title reports,
8 investigative services, process servers and consulting services (including costs of estimates, appraisals,
9 work and abatement).

10 (c) Attorneys' fees incurred due to any enforcement proceedings commenced by the city
11 pursuant to this code shall be awarded to the prevailing party. The proceedings shall be considered to
12 have commenced upon the city's initial inspection of the property that is the subject of the proceeding.
13 If the Property Owner against whom the enforcement proceeding is pursued is found to be in violation
14 of this Section, the city shall be deemed to be the prevailing party. In no action, administrative
15 proceeding, or special proceeding shall an award of attorneys' fees to a prevailing party exceed the
16 amount of attorneys' fees incurred by the city in the action or proceeding. Any award to the city of its
17 attorneys' fees shall be collectable as a recoverable expense and shall be included in the statement of
18 expense and provided for hereunder.

19 (h) **Statement of expenses.** The Municipal Transportation Agency shall keep an itemized
20 account of its expenses involved in abating the nuisance. After completing abatement of the nuisance,
21 the Municipal Transportation Agency shall mail to the Property Owner a statement including:

22 (1) What abatement action has been taken;

23 (2) A statement of all removal, administrative and other expenses incurred;

24 (3) That the expenses are due and payable within 45 days from the date of this notice;

1 (4) That if the Property Owner fails to make payment within 45 days, the amount will be
2 charged to the owner on the next regular tax bill and recorded as a lien against the Property;

3 (5) The date, time and place for a hearing before the Board of Supervisors at which the
4 Property Owner may contest the amount charged.

5 (i) **Hearing on statement of expenses.** At the time fixed for the hearing of the statement of
6 expenses, the Board of Supervisors shall consider the statement and protests or objections raised by the
7 Property Owner. The Board of Supervisors may correct or modify the statement as it considers just
8 and thereafter shall finally determine the amount due by written resolution.

9 (j) **Expenses as special assessment against the property.** If the Property Owner does not pay
10 the expense of abating the nuisance within 45 days after the Board of Supervisors confirms the costs of
11 abatement, the costs of abatement shall constitute a lien upon the Property and shall be collected as a
12 special assessment against the Property. The assessment shall continue until it is paid, together with
13 interest at the rate of 10 percent per year computed from the date of dispatch of the statement of
14 expenses until payment. The assessment may be collected at the same time and in the same manner as
15 ad valorem real property taxes are collected, and shall be subject to the same penalties and the same
16 procedure and sale in case of delinquency as provided for ad valorem real property taxes.

17 (k) **Notice of special assessment**

18 (1) When a special assessment is charged against property as provided in this Section, the
19 Municipal Transportation Agency shall mail, by certified mail, to the Property Owner and file in the
20 office of the Recorder of the City and County of San Francisco a certificate substantially in the
21 following form:

22 NOTICE OF SPECIAL ASSESSMENT

23 On _____, 20____, the City and County of San Francisco abated a nuisance on
24 the property located at _____ (Assessor's Parcel No. _____). This
25

1 property is owned by _____ The abatement was done under the authority of
2 California Government Code Section 38773.5 and San Francisco Public Works Code Section 723.3.

3 The City and County of San Francisco claims a special assessment on the real property for the
4 costs of the abatement in the amount of \$ _____ . This amount is a special assessment against the
5 real property until paid with interest at the legal rate of _____ and discharged of record. This property
6 may be sold after three (3) years by the tax collector for unpaid delinquent assessments.

7 The real property referred to in this notice is that parcel of land situated within the City and
8 County of San Francisco, State of California, more specifically described as follows: (insert or attach
9 legal description).

10 Dated: _____, 20_____

11 City of San Francisco

12 By: _____

13 (2) The city shall file with the Auditor of the City and County of San Francisco a certified copy
14 of the notice of special assessment, a brief description of the abatement action taken and a request that
15 the charges be added to the tax rolls and collected at the same time and in the same manner as
16 ordinary municipal taxes. Amounts received either as payment on a property tax bill or final sale of the
17 Property shall be deposited in the Municipal Transportation Fund created by Section 8A.105 of the
18 City Charter minus the administrative costs of the Tax Collector in collecting the payments.

19
20 APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

21 By: Stephanie J. Stuart
22 STEPHANIE J. STUART
23 Deputy City Attorney
24
25



City and County of San Francisco

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

Tails

Ordinance

File Number: 090933

Date Passed:

Ordinance amending Article 15 of the San Francisco Public Works Code by adding Section 723.3, establishing that an unpermitted subsidewalk encroachment into the public right-of-way along the Central Subway Corridor constitutes a public nuisance.

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

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

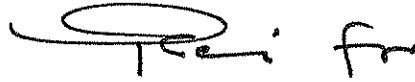
Excused: 1 - Dufty

September 15, 2009 Board of Supervisors — FINALLY PASSED

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

File No. 090933

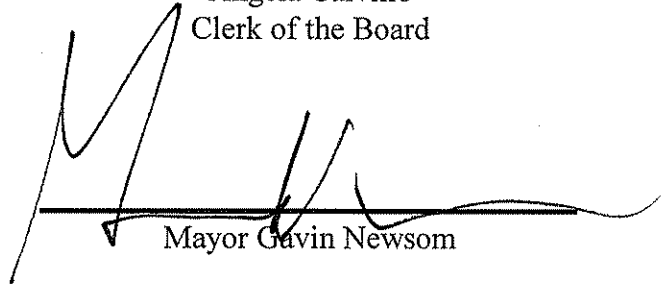
I hereby certify that the foregoing Ordinance was **FINALLY PASSED** on September 15, 2009 by the Board of Supervisors of the City and County of San Francisco.



Angela Calvillo
Clerk of the Board

9-25-09

Date Approved



Mayor Gavin Newsom