Ordinance amending the Public Works Code to establish the requirements for Surface-Mounted Facility Site Permits; to set fees for obtaining such permits; to make the provisions of the Ordinance retroactive; and making environmental findings.

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

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 comply 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. 140319 and is incorporated herein by reference.

Section 2. The Public Works Code is hereby amended by adding Article 27, Sections 2700 to 2731, to read as follows:

ARTICLE 27. SURFACE-MOUNTED FACILITIES

SEC. 2700. SURFACE-MOUNTED FACILITY SITE PERMIT.

(a) Surface-Mounted Facility Site Permit Required. It shall be unlawful for any Person to construct or install a Surface-Mounted Facility in any Public Right-of-Ways that are under the jurisdiction of the
Department without first obtaining from the Department a Surface-Mounted Facility Site Permit under this Article 27 authorizing such construction or installation.

(b) Minimum Permit Requirements. The Department shall require an Applicant for a Surface-Mounted Facility Site Permit to demonstrate to the satisfaction of the Department that:

(1) The City has granted Applicant the authority to construct, install, and maintain the proposed Surface-Mounted Facility in the Public Right-of-Ways; and

(2) The Director of the Department has approved the proposed location for the Surface-Mounted Facility pursuant to the requirements of this Article 27.

(c) Permit Conditions. The Department may include in a Permit such Conditions, in addition to those already set forth in this Article 27 and other Applicable Law, as may be required to govern the construction, installation, removal, or maintenance of Surface-Mounted Facilities in the Public Right-of-Ways, and to protect and benefit the public health, safety, welfare, and convenience.

(d) Authority Granted. A Permit shall authorize the Permittee to perform any excavation that is required to install the Surface-Mounted Facility in the Public Right-of-Ways.

(e) Exceptions to Permit Requirement. The requirements of this Article 27 shall not apply to the following:

(1) The replacement of an existing Surface-Mounted Facility at the same location, provided the replacement Surface-Mounted Facility would be installed on the existing foundation and would be the same size or smaller than the existing Surface-Mounted Facility.

(2) The installation of any equipment in the Public Right-of-Ways pursuant to an encroachment permit issued by the Department pursuant to Article 15 of the Public Works Code.

(f) Other Provisions Inapplicable. This Article shall govern all actions taken by the City with respect to the approval or denial of an Application for a Surface-Mounted Facility Site Permit under this Article 27. The requirements of San Francisco Business and Tax Code Sections 5, 6, and 26(a) shall
not apply to this Article 27 to the extent those provisions are in conflict with the provisions of this Article 27.

SEC. 2701. DEPARTMENT ORDERS AND REGULATIONS.

The Department may adopt such orders or regulations as it deems necessary to implement the requirements of this Article 27, or to otherwise preserve and maintain the public health, safety, welfare, and convenience, as are consistent with the requirements of this Article 27 and Applicable Law. In formulating such orders or regulations, the Department shall consult with the Planning Department and the Recreation and Park Department, for the purpose of considering the impacts Surface-Mounted Facilities would have on the Aesthetic Character of the City’s streetscapes, Historic Resources, public parks, and open spaces, as well on pedestrian circulation and visibility.

SEC. 2702. DEFINITIONS.

For purposes of this Article 27, the following definitions shall apply.

“Aesthetic Character” means pleasing in appearance in the context of the surrounding area.

“Applicable Law” means all applicable federal, state, and City laws, ordinances, codes, rules, regulations and orders, as the same may be amended or adopted from time to time.

“Applicant” means any Person intending to submit or submitting an Application for a Surface-Mounted Facility Site Permit under this Article 27, excluding any City department that has exclusive authority over facilities under the jurisdiction of that department.

“Application” means an application for a Surface-Mounted Facility Site Permit under this Article 27.

“City” means the City and County of San Francisco.
"Conditions" means any additional requirements that a City department reviewing an Application for a Surface-Mounted Facility Site Permit has determined are necessary for the Application to meet those requirements of this Article 27 that are within that department's purview.

"Department" means the Department of Public Works.

"Director" means the Director of Public Works.

"Graffiti" means any inscription, word, figure, marking or design that is affixed, marked, scratched, drawn or painted on a Surface-Mounted Facility, whether permanent or temporary, without the consent of the Permittee.

"Historic Resource" means a national historic landmark district, listed or eligible national register historic district, listed or eligible California register historic district, San Francisco landmark district, local historic or conservation district, locally significant district, a national historic landmark, California landmark, San Francisco landmark, structure of merit, architecturally significant building, or locally significant building. For the purposes of this Article 27, the term Historic Resource includes a "potential" Historic Resource, which is a structure that the Planning Department's Historic Preservation staff has determined has high eligibility of becoming a Historic Resource. If an Applicant challenges the historic value of a potential Historic Resource, the Applicant must provide sufficient information for the Planning Department to make the determination that the identified potential Historic Resource is not a Historic Resource.

"Notice of Intent" means a notice that the Applicant intends to submit an Application for a Surface-Mounted Facility Site Permit.

"Permittee" means an Applicant that has obtained a Permit to construct, install, and maintain a Surface-Mounted Facility in the Public Right-of-Ways.

"Person" means any natural person, corporation, partnership, any City department, or any governmental agency, including the State of California or United States of America.
“Placement Criteria” means the Department’s criteria for locating Surface-Mounted Facilities in the Public Right-of-Ways intended to ensure that a Surface-Mounted Facility does not interfere with the public’s use of the Public Right-of-Ways, which the Department shall establish by order or regulation in consultation with the Planning Department.

“Pre-Application Approval Process” means the process forth in Sections 2704 through 2709 and 2712 through 2714 through which an Applicant for a Surface-Mounted Facility Site Permit must obtain the Department’s prior approval of the proposed location for the Surface-Mounted Facility to be set forth in an Application.

“Preferred Location List” means a list submitted by an Applicant for a Surface-Mounted Facilities Permit identifying the Applicant’s Preferred Locations for a Surface-Mounted Facility.

“Preferred Locations” means the locations for a Surface-Mounted Facility that an Applicant determines best suits its needs and that are consistent with the requirements of this Article 27.

“Public Right-of-Ways” means the area in, on, upon, above, beneath, within, along, across, under, and over the public streets, sidewalks, roads, lanes, courts, ways, alleys, spaces, and boulevards within the geographic area of the City in which the City now or hereafter holds any property interest, which is dedicated to public use.

“Public Works Code” means the City and County of San Francisco Public Works Code.

“Surface-Mounted Facility” means any Utility facility (physical element or structure) that is installed, attached, or affixed in the Public Right-of-Ways on a site that is above the surface of the street (except a Utility pole or associated appurtenances) and that requires the Permittee to excavate in order to install the facility in the Public Right-of-Ways. The term Surface-Mounted Facility shall not include bus shelters and associated kiosks.

“Surface-Mounted Facility Site Permit” or “Permit” means a permit to install a Surface-Mounted Facility in the Public Right-of-Ways as it has been approved by the Department.
“Utility” means any of the following services: electricity, gas, information, sewer, steam, telecommunications, high-speed Internet, voice over Internet protocol, video over Internet protocol, traffic control, cable television, transit, open video, water, or other services that require the provider to install facilities in the Public Right-of-Ways to serve its customers.

SEC. 2703. LOCATION APPROVAL.

(a) Required Prior to Application. In order to ensure that Surface-Mounted Facilities are installed in the most suitable locations, an Applicant must first obtain the Department’s approval of the proposed location for the Surface-Mounted Facility.

(b) Exceptions. If an Applicant demonstrates to the Department that there is only one feasible location for the proposed Surface-Mounted Facility, the Department may by order waive the required Pre-Application Approval Process and authorize the Applicant to submit an Application without a pre-approved location, subject to any reasonable Conditions the Department may place on the proposed Surface-Mounted Facility. By order or regulation, the Department shall establish standards for determining when there is only one feasible location for a proposed Surface-Mounted Facility, but such standards shall be based on technical or physical constraints only.

SEC. 2704. PREFERRED LOCATIONS.

(a) Identification of Preferred Locations. The Pre-Application Approval Process shall begin with an Applicant’s initial site selection. An Applicant shall conduct a thorough survey of the area where it seeks to install a Surface-Mounted Facility to identify its Preferred Locations for the Surface-Mounted Facility.

(b) Criteria for Preferred Locations. In selecting its Preferred Locations, the Applicant should seek to minimize the effect the placement of the Surface-Mounted Facility will have on use of the Public Right-of-Ways by, among other things:
(1) Placing the Surface-Mounted Facility in the Public Right-of-Ways so as to maintain an appropriate path of travel along the sidewalk, paying particular attention to the needs of persons with disabilities. To the extent feasible, an Applicant shall locate the Surface-Mounted Facilities on streets where pedestrian travel is minimal.

(2) Placing the Surface-Mounted Facility in the Public Right-of-Ways so that the Aesthetic Character of the streetscape will not be unreasonably affected by the installation of the Surface-Mounted Facility. Unless no other location is feasible, the Applicant should avoid using sidewalks that: (A) are narrower than the City's standard sidewalk in the applicable zoning district as set forth in the Better Streets Plan; or (B) have special paving or other special design features.

(3) Ensuring that the Surface-Mounted Facility will not obstruct access to other facilities that are installed or the Department knows are to be installed in the Public Right-of-Ways by other entities including City departments and entities providing Utility services.

(4) Placing the Surface-Mounted Facility in a location that is consistent with the City's General Plan, Better Streets Plan, and any applicable Neighborhood or Streetscape Plans.

(5) Placing the Surface-Mounted Facility in a location that is consistent with the Placement Criteria.

(6) Placing the Surface-Mounted Facility in a location that will not unreasonably affect the Aesthetic Character of a City park or open space.

(c) Disfavored Locations. The following locations are disfavored, and the Department shall not issue a Surface-Mounted Facility Site Permit in these disfavored locations unless the Applicant can show that no other option is available:

(1) On Public Right-of-Ways where all Utility facilities are undergrounded.

(2) On Public Right-of-Ways where the City has completed or has plans for major capital improvements, including streetscape and pedestrian safety improvements.
(3) On Public Right-of-Ways that are known for having a high level of pedestrian traffic (e.g. Neighborhood Commercial zoning districts).

(4) On Public Right-of-Ways that are adjacent to or that will affect the view of a Historic Resource or that are within a Historic Resource in which any existing street furniture contributes to the historic nature of the Historic Resource.

(5) On Public Right-of-Ways that the San Francisco General Plan has designated as being most significant to City pattern, defining City form, having an important street view for orientation, or as having views that are rated “excellent” or “good.”

(6) On Public Right-of-Ways that are adjacent to a City park or open space, unless the Department finds that such locations could be used to minimize the effect on the Aesthetic Character of the City park or open space.

(7) On Public Right-of-Ways that are adjacent to a public or private elementary or middle school.

SEC. 2705. COMMUNITY INPUT ON PREFERRED LOCATIONS.

(a) Community Meeting Required. The Pre-Application Approval Process shall require participation in a community meeting in which the Applicant shall discuss its Preferred Locations for a Surface-Mounted Facility with local residents and business owners. At the community meeting, the Applicant shall discuss: (1) all feasible locations for the proposed Surface-Mounted Facility, which may include specific locations or zones, but in no case fewer than two Preferred Locations for the proposed Surface-Mounted Facility shall be identified and discussed; (2) any technological limitations to the location of the proposed Surface-Mounted Facility; and (3) the process for the public to object to the Applicant’s Preferred Locations.

(b) Notice of Meeting. The Applicant shall provide notice of time and place for the community meeting as set forth in Section 2713. The time for the community meeting shall be after regular
business hours and the place for the meeting must be within the vicinity of the Applicant’s Preferred Locations.

(c) City Department Participation. The Applicant shall notify the Department and the Planning Department of the time and place for the community meeting. If one of the Preferred Locations is in front of a City park or open space, the Applicant shall also notify the Recreation and Park Department. Where feasible, the Department, the Planning Department, and the Recreation and Park Department shall attend the community meeting.

(d) Record of Meeting. The Applicant shall keep a record of all Persons that attended a community meeting and shall prepare and distribute a summary of the meeting to the attendees and the Department.

(e) Language Requirement. The Applicant shall ensure that on-call translation services are available for such meeting when required by the Department. Prior to the meeting, the Applicant shall inquire of the Department whether translation services are required, and if so, into which language or languages such translation services shall be offered.

SEC. 2706. SUBMISSION OF PREFERRED LOCATION LIST.

As part of the Pre-Application Approval Process, an Applicant may submit a Preferred Location List to the Department within 10 days of the community meeting in which the Applicant shall identify at least two Preferred Locations for the Surface-Mounted Facility and shall specify the Applicant’s order of preference for the proposed locations. If there are any technological limitations to the location for the proposed Surface-Mounted Facility in the Public Right-of-Ways, the Applicant shall inform the Department of such constraints in the Preferred Location List.

SEC. 2707. DEPARTMENT ACTION ON PREFERRED LOCATION LIST.
(a) Department Review. As part of the Pre-Application Approval Process, the Department shall complete its review of the Preferred Location List within 14 days of receipt from the Applicant. With the concurrence of the Applicant, the Department may extend this review period beyond 14 days.

(b) Notice to Applicant. After completion of its review, the Department shall notify the Applicant as follows:

1. Whether the Applicant has satisfied the requirement to conduct a community meeting.
2. Whether one or more of the Applicant’s Preferred Locations are acceptable locations for Applicant’s proposed Surface-Mounted Facility consistent with the Department’s Placement Criteria.
3. Whether the Department agrees with the Applicant’s order of preference for its Preferred Locations.
4. Whether the Department’s approval of one or more of the Applicant’s Preferred Locations shall include any Conditions, unless the Department by order or regulation has established objective criteria that identify and address the impacts that a Surface-Mounted Facility would have on the Public Right-of-Ways so that no Conditions would be required.
5. Whether the Department will require the Applicant to notify the public of the proposed installation of the Surface-Mounted Facility prior to submitting an Application for a Surface-Mounted Facility Site Permit.
6. Whether the Department will propose any additional locations for the Applicant’s Surface-Mounted Facility.

(c) Referral to Other City Departments.

1. As part of the Pre-Application Approval Process, the Department shall refer every Preferred Location List to the Planning Department for its review. If a Preferred Location List identifies any proposed location that is in front of any City park or open space under the jurisdiction of the Recreation and Park Department, the Department shall refer the Preferred Location List to the Recreation and Park Department.
The referral requirements set forth in subsection (c)(1) above, and the review requirements set forth in Sections 2708 and 2709, may be waived for any and all Preferred Location Lists submitted to the Department, provided that: (A) the Department has by order or regulation adopted in association with the Planning Department established objective criteria that identify and address the impacts that a Surface-Mounted Facility would have on the Aesthetic Character of the City’s streetscapes, Historic Resources, and pedestrian circulation and visibility; and/or (B) the Department has by order or regulation adopted in association with the Recreation and Park Department established objective criteria that identify and address the impacts that a Surface-Mounted Facility would have on the Aesthetic Character of the City’s parks and open spaces.

SEC. 2708. PLANNING DEPARTMENT ACTION ON PREFERRED LOCATION LIST.

(a) Planning Department Review. The Planning Department shall review a Preferred Location List to make the determination set forth in subsection (b) below. The Planning Department may also consult with other City departments during its review.

(b) Planning Department Determination.

(1) The Planning Department shall determine whether the installation of a Surface-Mounted Facility at any or all of the Preferred Locations will unreasonably affect the Aesthetic Character of the streetscape in the immediate vicinity of each of the Preferred Locations or if such installation will adversely affect pedestrian circulation or visibility, or, where applicable, will adversely affect a Historic Resource.

(2) The Planning Department’s determination that the installation of a Surface-Mounted Facility at any or all of the Preferred Locations will not unreasonably affect the Aesthetic Character of the streetscape, adversely affect pedestrian circulation or visibility, or adversely affect a Historic Resource may include Conditions intended to minimize such effects including, but not limited to,
color for the Surface-Mounted Facility and any aesthetic changes to the Surface-Mounted Facility itself or to its installation.

(3) The Planning Department’s determination may suggest changes to the Applicant’s order of preference for the Preferred Locations.

(4) The Planning Department’s determination may include a recommendation that the Applicant include additional locations for the proposed Surface-Mounted Facility in the Notice of Intent.

(5) The Planning Department’s determination shall be in writing and shall set forth the reasons therefore. The Planning Department shall transmit its determination to the Department and the Applicant within 14 days of receipt of the Preferred Location List from the Department. With the concurrence of the Applicant, the Planning Department may extend this review period beyond 14 days.

SEC. 2709. RECREATION AND PARK ACTION ON PREFERRED LOCATION LIST.

(a) Recreation and Park Department Review. The Recreation and Park Department shall review any Preferred Location List that identifies a proposed location for a Surface-Mounted Facility that is in the vicinity front of a City park or open space under its jurisdiction to make the determination set forth in subsection (b) below. The Recreation and Park Department may consult with other City departments during its review.

(b) Recreation and Park Department Determination.

(1) The Recreation and Park Department shall determine whether the installation of a Surface-Mounted Facility at a Preferred Location that is in the vicinity front of a City park or open space under its jurisdiction will unreasonably affect the Aesthetic Character of such City park or open space.
(2) The Recreation and Park Department's determination that the installation of a Surface-Mounted Facility at a Preferred Location that is in the vicinity front of a City park or open space will not unreasonably affect the Aesthetic Character of such City park or open space may include Conditions intended to minimize the effect of the Surface-Mounted Facility on the Aesthetic Character of such City park or open space including, but not limited to, a color for the Surface-Mounted Facility or any aesthetic changes to the Surface-Mounted Facility itself or to its installation.

(3) The Recreation and Park Department's determination may suggest changes to the Applicant's order of preference for the Preferred Locations.

(4) The Recreation and Park Department's determination may include a recommendation that the Applicant include additional locations for the proposed Surface-Mounted Facility in the Notice of Intent.

(5) The Recreation and Park Department's determination shall be in writing and shall set forth the reasons therefore. The Recreation and Park Department shall transmit its determination to the Department and the Applicant within 14 days of receipt of the Preferred Location List from the Department. With the concurrence of the Applicant, the Recreation and Park Department may extend this review period beyond 14 days.

SEC. 2710. LANDSCAPING.

(a) Required for Permit.

(1) The Department shall require every Permittee to install suitable street trees and landscaping in order to minimize any negative effects on the Aesthetic Character of the streetscape resulting from Permittee’s construction, installation, and maintenance of the permitted Surface-Mounted Facility. The Department shall determine the number of required street trees and the total area of the landscaped area. Generally, the Department shall require the installation of at least one
street tree and sidewalk landscaping of approximately 100 square feet with each permitted Surface-Mounted Facility.

(2) In any instance in which the Department cannot require the Permittee to install either appropriate street trees or landscaping in the vicinity of the permitted Surface-Mounted Facility, including on the basis of inadequate sidewalk width, interference with utilities, or other reasons regarding the public health, safety, or welfare, the Department shall instead require the Permittee to make an "in-lieu" payment into the Department's "Adopt-A-Tree" fund. This payment shall be in the amount specified in Public Works Code §§ 802(h) and 807(f) for the installation of one street tree in addition to a payment of $7,500 for sidewalk landscaping, and shall be payable prior to the Department's issuance of the Permit. These in-lieu fees may be adjusted to reflect changes in the relevant Consumer Price Index, subject to the requirements of Section 2729(e).

(b) Care and Maintenance of Street Trees and Landscaping. The Permittee shall be responsible for the care and maintenance of any street trees and landscaping required to be installed in the Public Right-of-Ways under this Section. In this regard, the Permittee shall assume the duty of a "property owner" as set forth in Public Works Code § 805(a).

(c) No Separate Permit Required. The street tree and landscaping requirements set forth subsection (a) above shall be incorporated into the Surface-Mounted Facility Site Permit issued by the Department under this Article 27. No separate permit will be required under Section 810B of the Public Works Code.

SEC. 2711. MURALS.

(a) Required for Permit. Any Person or group of Persons may propose to the Department and the Permittee that the permitted Surface-Mounted Facility be used for a mural that is appropriate for the location. The Permittee Department shall require every Permittee to work with any Person or group of Persons selected by the San Francisco Arts Commission in consultation with the Supervisors Wiener, Breed, Chiu, Cohen, Kim, Campos BOARD OF SUPERVISORS
Department and the Permittee to facilitate the installation of the mural at Permittee's sole expense and at no cost to the City. No mural shall be allowed unless it is approved by the San Francisco Arts Commission. No mural may contain any product advertising of any kind. The Department may establish by order or regulation the process for placing a mural on a permitted Surface-Mounted Facility.

(b) Maintenance. The Permittee shall at Permittee's expense work with the Person or Persons that installed the mural to ensure that the mural is properly maintained. The requirements of this subsection shall be in addition to Permittee's responsibilities under this Article 27 to maintain any permitted Surface-Mounted Facilities and remove any Graffiti from its permitted Surface-Mounted Facilities.

SEC. 2712. NOTICE OF INTENT TO SUBMIT APPLICATION.

(a) Submission to the Department. As part of the Pre-Application Approval Process, within 1 day after the Preferred Location List has been reviewed and approved by all applicable City departments, the Applicant may submit a Notice of Intent to the Department for its review. An Applicant may request additional time to submit a Notice of Intent.

(b) Form and Contents. The Notice of Intent shall be in the form approved by the Department by order or regulation, but at a minimum shall contain the information required in Section 2713(c)(1)-(9).

(c) Department Approval. If the Department determines that a Notice of Intent is complete, the Department will approve the Notice of Intent and authorize the Applicant to post and mail the Notice of Intent as required in Section 2713.

(d) Completion Requirements. The Notice of Intent shall not be complete unless the Department determines that the Applicant has complied with the following requirements:

(1) The Applicant has satisfactorily conducted the community meeting required in Section 2705.
(2) The Applicant has submitted to the Department plans showing all of the sizes and shapes of
the cabinets proposed to be used for its Surface-Mounted Facilities, including the dimensions of any
ancillary equipment. For Applicants that conduct business in jurisdictions other than San Francisco,
the Applicant shall certify that the cabinets proposed for San Francisco are no larger than the
smallest used in any other jurisdiction for similar services.

(3) If the Applicant is seeking approval of a larger cabinet on an existing Surface-Mounted
Facility site, the Applicant has sufficiently demonstrated to the Department the reasons the larger
cabinet is necessary.

(4) The Applicant has surveyed the vicinity of the Preferred Locations for its Surface-Mounted
Facility to identify locations outside of the Public Right-of-Ways (including City-owned property) that
may be appropriate for the installation of the Surface-Mounted Facility and the Applicant has made
reasonable efforts to determine whether the owners of any and all suitable properties would be willing
to allow the Applicant to use their property for Applicant’s proposed Surface-Mounted Facility. For
purposes of this subsection, the term “reasonable efforts” includes offering the owners of any suitable
property reasonable market rate compensation for the use of the property for the Applicant’s
Surface-Mounted Facility. The Department shall by order or regulation establish guidelines defining
what consists of “reasonable efforts” and “market rate compensation.”

(5) The Applicant attempted to place the Surface-Mounted Facility (or parts thereof)
underground where such underground placement is technologically or economically feasible. An
Applicant may satisfy the requirement contained in this subsection by demonstrating to the satisfaction
of the Director that it is not technologically or economically feasible for the Applicant to place the
Surface-Mounted Facility (or parts thereof) underground. At a minimum, the Applicant shall
demonstrate to the Director that it conducted a thorough search for adequate underground technology
and provide a report from a licensed engineer certifying the information.
(6) Where it is not technologically or economically feasible to underground the entire Surface-Mounted Facility, the Applicant has: (A) agreed to underground part of the Surface-Mounted Facility; (B) limited to limit the height and footprint of the Surface-Mounted Facility to the maximum extent feasible; (C) either used stainless steel or painted the Surface-Mounted Facility the color used for City structures in the vicinity unless otherwise specified by the Department and added a Graffiti-proof coating; (D) screened the Surface-Mounted Facility by landscaping the Public Right-of-Ways in the area around the Surface-Mounted Facility or camouflaging the Surface-Mounted Facility where requested by any City department; and (E) to comply with any Conditions imposed by any City department that reviewed the Applicant’s Preferred Location List.

(7) The Applicant has explored reasonable opportunities to co-locate the Surface-Mounted Facility with any other Surface-Mounted Facility installed or to be installed in the Public Right-of-Ways by other entities including City departments.

(8) The Applicant has explored reasonable opportunities for its Surface-Mounted Facility to serve a dual function such as a bench or other amenity. The Department shall have the authority to require that a Surface-Mounted Facility serve a dual function, where the Department determines that such dual function is technologically and economically feasible.

(9) The Applicant has notified the Department whether the Applicant could remove an existing Surface-Mounted Facility from the Public Right-of-Ways because it would no longer be used or useful to the Applicant once the proposed Surface-Mounted Facility has been installed.

(10) The Applicant has submitted a plan to the Department, in a format specified by the Department, showing all of the Surface-Mounted Facilities the Applicant expects to install in the City within five years of the Application date. Any Applicant that does not anticipate installing any other Surface-Mounted Facilities in the next five years may satisfy this requirement by submitting a statement to that effect instead of a five-year plan.
(11) The Department has determined that at least two of the Applicant's Preferred Locations for the Surface-Mounted Facility are acceptable or the Notice of Intent will include additional proposed locations identified by the Department or another City department that reviewed the Applicant's Preferred Location List, unless the Department has determined that there is only one feasible location for the proposed Surface-Mounted Facility.

SEC. 2713. PUBLIC NOTICE OF NOTICE OF INTENT TO SUBMIT APPLICATION.

(a) Public Notice Required. As part of the Pre-Application Approval Process, the Department shall require an Applicant to notify the public that the Applicant has submitted a Notice of Intent to the Department.

(b) Notice Requirements.

(1) The Applicant shall send a copy of the Notice of Intent to all Persons owning or occupying any property located within 300 feet along either side of the fronting streets of any of the Preferred Locations for the Surface-Mounted Facility.

(2) The Applicant shall post a copy of the Notice of Intent in conspicuous places along the Public Right-of-Ways within 300 feet of either side of the fronting streets of any of Applicant's Preferred Locations for the Surface-Mounted Facility.

(3) The Applicant shall send a copy of the Notice of Intent to any neighborhood planning association identified by the Planning Department for any neighborhood within 300 feet of any of the Applicant's Preferred Locations for the Surface-Mounted Facility.

(c) Form of Notice of Intent. The Notice of Intent shall be in a form to be approved by the Department by order or regulation. At a minimum, the Notice of Intent shall contain the following information:

(1) The fronting address for each of the Preferred Locations and photo-simulations of the Surface-Mounted Facility at each of the Preferred Locations. Such photo-simulations shall accurately depict the proposed Surface-Mounted Facility and any proposed street trees or landscaping.
(2) The Applicant’s order of preference for the Preferred Locations.

(3) A brief description of the nature of the use of the proposed Surface-Mounted Facility and the consequences of not installing the facility.

(4) Any assessment made of the Applicant’s Preferred Locations by the Planning Department and/or Recreation and Park Department.

(5) Any Conditions on the installation of the proposed Surface-Mounted Facility at each of the Preferred Locations imposed by any City department that reviewed the Applicant’s Preferred Location List (including a statement indicating whether the Applicant has accepted the Conditions).

(6) Any additional proposed locations for the Surface-Mounted Facility identified by any City department that reviewed the Applicant’s Preferred Location List (including a statement indicating whether the Applicant has accepted the proposed locations).

(7) The procedure for protesting any or all of the Preferred Locations for the Surface-Mounted Facility contained in the Notice of Intent.

(8) The Applicant’s contact information for obtaining information related to the Notice of Intent and/or the technical requirements for the proposed Surface-Mounted Facility.

(9) A statement that more information about the proposed Notice of Intent can be obtained from the Applicant and more information about submitting a protest can be obtained from the Department.

(10) Language Requirement. The Department may require an Applicant to translate the Notice of Intent into such language(s) that the Department determines are appropriate based on the locations for the proposed Surface-Mounted Facility contained in the Notice of Intent. Prior to issuing the Notice of Intent, the Applicant shall inquire of the Department as to whether translation is required, and if so, into which language or languages such translation shall be offered.

(d) Filing with the Department. The Applicant shall file with the Department proof that the Applicant has complied with the notice requirements contained herein.
SEC. 2714. PROTEST OF APPLICANT'S PREFERRED LOCATIONS.

(a) Protest Allowed. As part of the Pre-Application Approval Process, the Department shall allow any Person affected by a proposed Surface-Mounted Facility to protest an Applicant's Preferred Locations for a Surface-Mounted Facility.

(b) Protest Procedure. A protest must be in writing and must be submitted to the Department within 10 days of the date the Notice of Intent was mailed and posted as required under Section 2713.

(c) Hearing Required. If a protest is timely submitted, the Department shall hold a hearing. The Department shall set a date for the hearing for no more than 20 days after the Department's receipt of the protest.

(d) Notice of Hearing Date. The Department shall send written notice to any Person submitting a protest, to the Applicant, and to any City department that reviewed the Preferred Location List of the date the Department has set for the hearing at least 7 days before the date set for the hearing. The Department shall follow its regular procedures for notifying the general public of the date set for the hearing.

(e) Hearing Officer. The Department shall appoint a hearing officer to conduct a public hearing on a protest.

(f) Hearing Record. The hearing record shall include:

1. Records of any community meetings held to discuss the Preferred Location List;
2. The Preferred Location List;
3. Any written determination from the Department, the Planning Department, or the Recreation and Park Department (as applicable), including any Conditions and/or additional proposed locations identified by such City department;
4. Any further written evidence from any City department submitted either prior to or during the hearing.
(5) Any written submissions from the Applicant, any Person submitting a protest, or any other interested Person submitted either prior to or during the hearing; and

(6) Any oral testimony from any City department, the Applicant, any Person submitting a protest, or any interested Person taken during the hearing.

(g) Hearing Officer’s Report.

(1) The hearing officer shall issue a written report and recommendation within 5 days of the close of evidence.

(2) The hearing officer shall include in the report a summary of the evidence and a recommendation to the Director.

(3) The hearing officer may recommend that the Director approve one of the Applicant’s Preferred Locations, and will base such a recommendation upon the following matters only:

   (A) Which of the Preferred Locations best complies with this Article 27.

   (B) Whether the Department’s approval of the Preferred Location should include any of the Conditions recommended by a City department.

   (C) Whether any of the additional proposed locations recommended by a City department would better comply with this Article 27 than any of the Applicant’s Preferred Locations.

(4) The hearing officer may recommend that the Director deny all of the Applicant’s Preferred Locations for the proposed Surface-Mounted Facility should the hearing officer determine that:

   (A) None of the Applicant’s Preferred Locations complies with this Article 27; or

   (B) The Applicant will not accept the Conditions recommended by a City department that the hearing officer determines are necessary to comply with this Article 27; or

   (C) The Applicant will not agree to install the Surface-Mounted Facility in one of the additional proposed locations recommended by a City department.
(h) Director’s Decision. The Director shall issue a written decision adopting, modifying, or rejecting the hearing officer’s written report and recommendation within 5 days of the Director’s receipt of the hearing officer’s report.

SEC. 2715. APPLICATION PROCESS FOR SURFACE-MOUNTED FACILITY SITE PERMIT.

(a) Application. An Application for a Surface-Mounted Facility Site Permit shall contain such information as the Department shall determine is necessary by order or regulation.

(b) Time for Application.

(1) If, pursuant to Section 2703(b), the Department did not require the Applicant to follow the Pre-Application Approval Process, an Application may be submitted immediately upon the Department’s determination there is only one feasible location for the proposed Surface-Mounted Facility.

(2) If the Pre-Application Approval Process has been completed, an Application may be submitted to the Department as further described below:

(A) If a timely protest to a Notice of Intent was not submitted immediately upon the expiration of the protest period.

(B) If a timely protest to a Notice of Intent was submitted, immediately upon receipt of the Director’s decision issued after the hearing.

(c) Completion Notice.

(1) Upon receipt of an Application, the Department shall first determine whether the Application is complete. The Department will notify the Applicant within 3 days whether the Application is complete.

(2) An Application is not complete if the Applicant does not specify that the location for the proposed Surface-Mounted Facility has been approved by the Department, or that the Department has waived the required Pre-Application Approval Process pursuant to Section 2703(b), and that the
Applicant will comply with all of the Conditions of approval imposed by any City department or in a Director's decision issued after a hearing.

(d) Reasons for Denial.

(1) If, pursuant to Section 2703(b), the Department waived the Pre-Application Approval Process for its proposed location for a Surface-Mounted Facility, the Department may deny an Application at the Applicant's selected location if the Applicant rejects any of the Conditions proposed by any City department that reviewed the Application.

(2) If a timely protest was not submitted, the Department may deny an Application at the location identified in the Notice of Intent if the Applicant rejects any of the Conditions proposed by any City department that reviewed the Application.

(3) If a timely protest was submitted, the Department shall deny an Application if the Director has not approved a location for the proposed Surface-Mounted Facility or if the Applicant rejects any of the Conditions set forth in the Director's decision.

(e) Approval of Location.

(1) If, pursuant to Section 2703(b), the Department waived the Pre-Application Approval Process for its proposed location for a Surface-Mounted Facility, the Department shall approve the location identified by the Applicant.

(2) If no protest was submitted, the Department shall evaluate the proposed Preferred Locations in the order ranked by the Applicant.

(3) If a protest was submitted, the Department shall approve the proposed location contained in the Director's decision.

(f) Final Determination. The Department shall finally approve or deny an Application at the Applicant's selected location within 2 days after the Department's determination that the Application is complete.
SEC. 2716. NOTICE OF FINAL DETERMINATION.

(a) Notice by Mail.

____ (1) The Department shall promptly mail a notice of final determination regarding an
Application for a Surface-Mounted Facility Site Permit to both the Applicant and to any neighborhood
association identified by the Planning Department for any neighborhood within 300 feet of the
approved Surface-Mounted Facility.

____ (2) If a protest to a Notice of Intent was submitted, in addition to the Applicant and the relevant
neighborhood associations identified in subsection (a)(1) above, the Department shall also promptly
mail a notice of final determination regarding an Application to any Person who either filed a protest,
submitted evidence, or attended at the hearing, provided that person’s name and address are known to
the Department.

(b) Posting of Notice. The Department shall require the Applicant to promptly post notice of a
Department final determination regarding an Application in conspicuous places throughout the block
face where the approved Surface-Mounted Facility will be located.

(c) Contents of Notice. A notice of final determination regarding an Application shall contain such
information as the Department reasonably requires.

(d) Compliance with Notice Requirement. The Department may require the Applicant to provide the
Department with such evidence as the Department may require of the Applicant’s compliance with the
notice requirements of this Section.

SEC. 2717. APPEALS.

(a) Appealable Determinations. The Department’s approval or denial of an Application for a Surface-
Mounted Facility Site Permit may be appealed to the Board of Appeals.

(b) Board of Appeals Review. Upon such appeal, the Board of Appeals shall determine whether the
final determination was correct under the provisions of this Article 27.
SEC. 2718. EXCAVATION REQUIREMENTS.

The requirements of Subarticles V and VI of Article 2.4 of the Public Works Code, and any Department order or regulation related to Article 2.4, shall apply to any excavation required to install a Surface-Mounted Facility in the Public Right-of-Ways. The Department may invoke the procedures contained in Subarticle VII of Article 2.4 of the Public Works Code to enforce any violations of the requirements of Subarticles V and VI.

SEC. 2719. COMPLIANCE.

Any Surface-Mounted Facility installed in the Public Right-of-Ways pursuant to a Surface-Mounted Facility Site Permit issued under this Article 27 shall be installed in a manner that complies with the terms and conditions of the Permit and this Article 27.

SEC. 2720. NOTICE OF COMPLETION AND INSPECTION.

(a) Notice of Completion. A Permittee shall notify the Department immediately upon completion of the installation of a Surface-Mounted Facility.

(b) Inspection. The Department shall inspect a Surface-Mounted Facility installed in the Public Right-of-Ways within a reasonable time after a Permittee provides the Department with a notice of completion required under subsection (a) above. The Department shall determine during the inspection whether the installation is in accordance with the requirements of the Surface-Mounted Facility Site Permit.

SEC 2721. ADDITIONAL PERMIT REQUIREMENTS.

(a) Permittee’s Use of the Public Right-of-Ways. A Permittee’s use of the Public Right-of-Ways to construct, install, and maintain a Surface-Mounted Facility shall be subordinate to any prior lawful

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occupancy and the continuing right of the City to use and occupy the Public Right-of-Ways, or any part thereof, exclusively or concurrently with any other Person or Persons, and further subject to the public easement for streets and any and all other deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, franchises and claims of title which may affect the Public Right-of-Ways.

(b) Removal or Relocation. When made necessary by any work to be performed under the governmental authority of the City (including but not limited to any lawful change of grade, alignment or width of any street, or construction of City facilities of any kind), or when necessary to protect the public health, safety or welfare, a Permittee shall at its own cost and expense temporarily or permanently remove, relocate, adjust, and/or support a Surface-Mounted Facility or any part thereof to such other locations in the Public Right-of-Ways, in such manner as appropriate and as may be approved by the City in writing and in advance, or otherwise required by the City. The City may not unreasonably withhold its approval of any plan for removal, relocation, adjustment, and/or support of a Surface-Mounted Facility ordered pursuant to this Section. Such removal, relocation, adjustment, and/or support shall be completed within the time and manner prescribed by the City; however, where feasible the City may require the Permittee to follow the procedures set forth in this Article 7 to obtain a new site for the Surface-Mounted Facility.

(c) Public Right-of-Ways Restoration. Whenever the Department requires a Permittee to remove, relocate, adjust, and/or support a Surface-Mounted Facility to ensure the public health, safety or welfare the Permittee shall, after such work is complete, at its own cost and expense, promptly restore the Public Right-of-Ways in accordance with Applicable Law. If a Permittee fails to restore the Public Right-of-Ways in accordance with Applicable Law, the Department shall have the option to perform or cause to be performed such restoration in such manner as the Director deems expedient and appropriate on behalf of the Permittee and charge the actual costs incurred including, but not limited to administrative costs, to the Permittee.
(d) City Costs Reimbursement. If a Permittee does not remove, relocate, adjust, and/or support a Surface-Mounted Facility in the manner and time prescribed by the Department, the Department shall take all reasonable, necessary, and appropriate action, including removing the Surface-Mounted Facility, and may charge the Permittee the reasonable costs actually incurred including, but not limited to, administrative costs. Upon the receipt of a demand for payment by the Department, the Permittee shall reimburse the City for any costs incurred by the Department to remove a Surface-Mounted Facility or to restore the Public Right-of-Ways or the costs may be deducted from the Permittee’s deposit under Section 2725.

SEC. 2722. POST-INSTALLATION OBLIGATIONS.

(a) Required Signage. A Permittee shall place a sign on a permitted Surface-Mounted Facility that shall contain the Permittee’s name and provide a telephone number for people to call to notify the Permittee that there is damage to or Graffiti on a Surface-Mounted Facility or that associated landscaping is in need of maintenance. A telephone call to that number will be considered notice to the Permittee. Such sign shall be displayed in a conspicuous manner and shall be maintained and/or replaced as necessary.

(b) Surface-Mounted Facility Maintenance. A Permittee shall be solely responsible for maintaining a Surface-Mounted Facility installed in the Public Right-of-Ways in a clean and safe condition. A Permittee shall repair any damage to a Surface-Mounted Facility within 30 days after discovering or being notified of such damage to a Surface-Mounted Facility.

(c) Landscaping Maintenance. A Permittee shall be solely responsible for the maintenance of any installed landscaping or street tree installed by the Permittee as a Condition of the Department’s issuance of a Surface-Mounted Facility Site Permit for so long as the permitted Surface-Mounted Facility remains at the location. Such landscaping shall be kept in a state of good visual quality, with any dead or diseased material promptly removed and replaced. The Permittee shall remove a

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litter accumulating within the landscaped area shall be removed within 72 hours after discovering
or being notified of such litter accumulation.

(d) Graffiti Removal. A Permittee shall be solely responsible for the removal of any Graffiti from
Surface-Mounted Facility installed in the Public Right-of-Ways. A Permittee shall remove all Graffiti
from a Surface-Mounted Facility within 72 hours after discovering or being notified that there is
Graffiti on a Surface-Mounted Facility.

(e) Inspection Required. A Permittee shall regularly inspect each Surface-Mounted Facility installed
in the Public Right-of-Ways to determine whether any of its Surface-Mounted Facilities are damaged,
in need a landscaping maintenance, or have been tagged with Graffiti.

(f) Records. A Permittee shall maintain written records of all inspections, repairs to, and maintenance
of any permitted Surface-Mounted Facilities in the Public Right-of-Ways in such form as may be
required by the Department. The Department may require that a copy of these written records be sent
to the Department on a regular basis.

SEC. 2723. VIOLATIONS.

(a) Notice of Deficiency. If the Department determines, either after an inspection required under
Section 2720(b) or at any other time, that a Surface-Mounted Facility is not in compliance with the
Surface-Mounted Facility Site Permit, this Article 27, or other Applicable Law, the Department shall
issue a notice of deficiency and require the Permittee to take corrective action to bring the Surface-
Mounted Facility into compliance.

(b) Department Remedies.

   (1) If a Permittee fails to take corrective action with respect to a Surface-Mounted Facility
within a reasonable time after receiving a notice of deficiency the Department shall:

   (A) Take all reasonable, necessary, and appropriate action to remedy a Permittee’s
non-compliance: OF

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(B) Charge to a Permittee the reasonable costs that the Department has actually incurred including, but not limited to, administrative costs. Upon the receipt of a demand for payment from the Department, the Permittee shall immediately reimburse the Department for any such costs incurred by the Department or the costs may be deducted from the Permittee’s deposit under Section 2725; and

(C) Cease its review of any pending Application submitted by the Permittee and deny the Application.

(2) In the event the required corrective action includes Graffiti removal, the Department may issue a fine of up $1,000 per day that the Permittee fails to take the corrective action. Upon the receipt of such a fine from the Department, the Permittee shall pay the fine immediately or the fine may be deducted from the Permittee’s deposit under Section 2725.

(3) In addition to the foregoing, if the Department determines that a Permittee has repeatedly failed to take corrective action with respect to a Surface-Mounted Facility after receiving a notice of deficiency, the Department may require the Permittee to remove the non-compliant Surface-Mounted Facility from the Public Right-of-Ways.

SEC. 2724. ABANDONMENT.

(a) Notice of Abandonment. A Permittee shall notify the Department, or the Department may determine and notify a Permittee, that a permitted Surface-Mounted Facility has been abandoned. In such event, a Permittee shall promptly remove the abandoned Surface-Mounted Facility as required by the Department and at Permittee’s expense.

(b) Certification of Continued Use. Should the Department have reason to believe a permitted Surface-Mounted Facility has been abandoned, the Department may request that a Permittee certify that the permitted Surface-Mounted Facility is still in use. If the Permittee fails to respond to the...
Department’s request within 60 days, the Department may determine that the permitted Surface-Mounted Facility has been abandoned.

(c) Remedy for Non-Compliance. If a Permittee fails to remove an abandoned Surface-Mounted Facility within a reasonable period of time after notifying the Department or receiving a notice of abandonment, the Department shall take all reasonable, necessary, and appropriate action to remedy the Permittee’s failure to comply with the notice (including removing the Surface-Mounted Facility) and may charge to the Permittee the reasonable costs the City has actually incurred including, but not limited to, administrative costs.

SEC. 2725. DEPOSIT.

Each Permittee shall submit and maintain with the Department a bond, cash deposit, or other security acceptable to the Department securing the faithful performance of the obligations of the Permittee and its agents under any and all Surface-Mounted Facility Site Permits issued to the Permittee under this Article 27. The deposit shall be in the sum of $25,000 in favor of the “Department of Public Works, City and County of San Francisco.” If, in accordance with this Article 27, the Director deducts any amounts from such a deposit, the Permittee must restore the full amount of the deposit prior to the Department’s issuance of a subsequent Permit. The Department shall return the remainder of the deposit to the Permittee should Permittee cease to operate any Surface-Mounted Facilities in the Public Right-of-Ways.

SEC. 2726. LIABILITY.

As a condition of a Surface-Mounted Facility Site Permit, each Permittee agrees on behalf of itself and any agents, successors, or assigns to be wholly responsible for the construction, installation, and maintenance of any permitted Surface-Mounted Facility and any required street trees or landscaping. Each Permittee and its agents are jointly and severally liable for all consequences of
such construction, installation, and maintenance of a Surface-Mounted Facility and any required
street trees or landscaping. The issuance of any Permit, inspection, repair suggestion, approval, or
acquiescence of any Person affiliated with the City shall not excuse any Permittee or its agents from
such responsibility or liability.

SEC. 2727. INDEMNIFICATION AND DEFENSE OF
CITY.

(a) Indemnification of City. As a condition of a Surface-Mounted Facility Site Permit, each Permittee
agrees on behalf of itself and its agents, successors, or assigns, to indemnify, defend, protect, and hold
harmless the City from and against any and all claims of any kind allegedly arising directly or
indirectly from the following:

(1) Any act, omission, or negligence of a Permittee or its any agents, successors, or assigns
while engaged in the construction, installation, or maintenance of any Surface-Mounted Facility
authorized by a Permit, or while in or about the Public Right-of-Ways that are subject to the Permit,
for any reason connected in any way whatsoever with the performance of the work authorized by the
Permit, or allegedly resulting directly or indirectly from the construction, installation, or maintenance
of any Surface-Mounted Facility authorized under the Permit or any required street trees or
landscaping;

(2) Any accident, damage, death, or injury to any of a Permittee’s contractors or
subcontractors, or any officers, agents, or employees of either of them, while engaged in the
performance of the construction, installation, or maintenance of any Surface-Mounted Facility
authorized by a Permit or any required street trees or landscaping, or while in or about the Public
Right-of-Ways that are subject to the Permit, for any reason connected with the performance of the
work authorized by the Permit, including from exposure to radio frequency emissions;

(3) Any accident, damage, death, or injury to any Person or accident, damage, or injury to any
real or personal property in, upon, or in any way allegedly connected with the construction,
installation, or maintenance of any Surface-Mounted Facility authorized by a Permit or any required
street trees or landscaping, or while in or about the Public Right-of-Ways that are subject to the Permit, from any causes or claims arising at any time, including any causes or claims arising from exposure to radio frequency emissions; and

(4) Any release or discharge, or threatened release or discharge, of any hazardous material caused or allowed by a Permittee or its agents about, in, on, or under the Public Right-of-Ways.

(b) Defense of City. Each Permittee agrees that, upon the request of the City, the Permittee, at no cost or expense to the City, shall indemnify, defend, and hold harmless the City against any claims as set forth in subsection (a) above, regardless of the alleged negligence of City or any other party, except only for claims resulting directly from the sole negligence or willful misconduct of the City. Each Permittee specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City from any claims that actually or potentially fall within the indemnity provision, even if the allegations are or may be groundless, false, or fraudulent, which obligation arises at the time such claim is tendered to the Permittee or its agent by the City and continues at all times thereafter.

Each Permittee further agrees that the City shall have a cause of action for indemnity against the Permittee for any costs the City may be required to pay as a result of defending or satisfying any claims that arise from or in connection with a Permit, except only for claims resulting directly from the sole negligence or willful misconduct of the City. Each Permittee further agrees that the indemnification obligations assumed under a Permit shall survive expiration of the Permit or completion of installation of any Surface-Mounted Facility authorized by the Permit.

(c) Additional Requirements. The Department may specify in a Permit such additional indemnification requirements as are necessary to protect the City from risks of liability associated with the Permittee's construction, installation, and maintenance of a Surface-Mounted Facility or any required street trees or landscaping.

SEC. 2728. INSURANCE.
(a) Minimum Insurance Coverages. The Department shall require that each Permittee maintain in full force and effect, throughout the term of a Surface-Mounted Facility Site Permit, an insurance policy or policies issued by an insurance company or companies satisfactory to the City's Risk Manager. Such policy or policies shall, at a minimum, afford insurance covering all of the Permittee’s operations, vehicles, and employees, as follows:

- (1) Workers’ compensation, in statutory amounts, with employers’ liability limits not less than $1,000,000 each accident, injury, or illness.
- (2) Commercial general liability insurance with limits not less than $1,000,000 each occurrence combined single limit for bodily injury and property damage, including contractual liability, personal injury, products and completed operations.
- (3) Commercial automobile liability insurance with limits not less than $1,000,000 each occurrence combined single limit for bodily injury and property damage, including owned, non-owned and hired auto coverage, as applicable.
- (4) Contractors’ pollution liability insurance, on an occurrence form, with limits not less than $1,000,000 each occurrence combined single limit for bodily injury and property damage and any deductible not to exceed $25,000 each occurrence.

(b) Other Insurance Requirements.

- (1) Said The policy or policies required by subsection (a) shall include the City and its officers and employees jointly and severally as additional insureds, shall apply as primary insurance, shall stipulate that no other insurance effected by the City will be called on to contribute to a loss covered thereunder, and shall provide for severability of interests.
- (2) Said The policy or policies required by subsection (a) shall provide that an act or omission of one insured, which would void or otherwise reduce coverage, shall not reduce or void the coverage as to any other insured. Said policy or policies shall afford full coverage for any claims
based on acts, omissions, injury, or damage which occurred or arose, or the onset of which occurred or arose, in whole or in part, during the policy period.

(3) Said The policy or policies required by subsection (a) shall be endorsed to provide 30 days advance written notice of cancellation or any material change to the Department.

(4) Should any of the required insurance be provided under a claims-made form, a Permittee shall maintain such coverage continuously.

(5) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall be double the occurrence or claims limits specified in subsection (a) above.

(c) Indemnity Obligation. Such insurance shall in no way relieve or decrease a Permittee’s or its agent’s obligation to indemnify the City under Section 2727.

(d) Proof of Insurance. Before the Department will issue a Permit, a Permittee shall furnish to the Department certificates of insurance and additional insured policy endorsements with insurers that are authorized to do business in the State of California and that are satisfactory to the City evidencing all coverages set forth in subsection (a) above.

(e) Self-Insurance. Where a Permittee is self-insured, and such insurance is no less broad and affords no less protection to the City than the requirements specified in subsection (a) above, the Department, in consultation with the City’s Risk Manager, may accept such insurance as satisfying the requirements of subsection (a) above. Evidence of such self-insurance shall be provided in the manner required by the City’s Risk Manager.

SEC. 2729. CITY DEPARTMENT FEES AND COSTS.

(a) In General. City departments shall impose fees for their review of an Application for a Surface-Mounted Facility Site Permit, which for purposes of this Section includes their review of an
Applicant’s Preferred Location List. The purpose of these fees is to enable City departments to recover their costs related to reviewing an Application or Preferred Location List.

(b) Fees for Review of Preferred Location Lists.

(1) The Department shall require a non-refundable fee of $150 for the Department’s review of the Preferred Location List.

(2) The Planning Department shall require a non-refundable fee of $286 for the Planning Department’s review of each location on the Preferred Location List.

(3) The Recreation and Park Department shall require a non-refundable fee of $396 for the Recreation and Park Department’s review of a Preferred Location List.

(4) In the event a hearing is required following an Applicant’s submission of a Preferred Location List to the Department, the Applicant shall pay Department a non-refundable hearing fee of $150 for each hearing.

(c) Application Fee. Each Applicant shall pay to the Department a non-refundable Application fee of $150.

(d) Inspection Fee. Each Permittee shall pay the Department a non-refundable time and materials inspection fee not to exceed $500 to inspect a permitted Surface-Mounted Service Facility as required under Section 2720(b).

(e) Adjustment of Fees for CPI. Beginning with fiscal year 2015-2016, the fees established herein may be adjusted each year, without further action by the Board of Supervisors, to reflect changes in the relevant Consumer Price Index (“CPI”) (as determined by the Controller). No later than April 15th of each year, the Director shall submit the current fee schedule to the Controller, who shall apply the CPI adjustment to produce a new fee schedule 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 and certifying that the fees produce sufficient revenue to support the costs of providing the services for
which for a Surface-Mounted Facility Site Permit fee is charged, and that the fees do not produce revenue that exceeds the costs of providing the services for which each Permit fee is charged.

(f) Discretion to Require Additional Fees. In instances where the review of a Preferred Location List or Application is or will be unusually costly to the Department or to other City departments, the Director, in his or her discretion, may, after consulting with other applicable City departments, agencies, boards, or commissions, require an Applicant to pay a sum in excess of the amounts charged pursuant to this Section. This additional sum shall be sufficient to recover actual costs incurred by the Department and/or other City departments, agencies, boards, or commissions, in connection with an Application and shall be charged on a time and materials basis. Whenever additional fees are charged, the Director, upon request, shall provide to the Applicant in writing the basis for the additional fees and an estimate of the additional fees.

(g) Deposit of Fees. All fees paid to the Department for Surface-Mounted Facility Site Permits shall be deposited in the Public Works Excavation Fund established by San Francisco Administrative Code Section 10.100-230. All other fees shall go directly to the appropriate City department.

(h) Reimbursement of City Costs. A City department may determine that it requires the services of a technical expert in order to evaluate an Application, which for purposes of this Section includes the City department's review of an Applicant's Preferred Location List. In such case, the Department shall not approve the Application unless the Applicant agrees to reimburse the applicable City department for the reasonable costs incurred by that department for the services of a technical expert.

SEC. 2730. DEPARTMENT MEETINGS AND TECHNOLOGICAL ADVANCEMENTS.

(a) Department Meetings. Once a year, the Department will convene a meeting with Persons who submitted Applications for Surface-Mounted Facility Site Permits in the past two years to discuss issues related to the permitting and construction of Surface-Mounted Facilities in the Public Right-of-
Ways. The Department shall also invite to the meeting other interested Persons including, but not
limited to, any equipment vendors, technology experts, and design professionals that the Department
knows or has reason to know have expertise or interest in the equipment or cabinets used for Surface-
Mounted Facilities or the requirements of this Article 27. The Department will also post a public
notice of the meetings. At such meetings, the Department will discuss technological advancements,
Graffiti and blight abatement, and the efficacy of community outreach conducted by the Applicants.

(b) Technological Advancements. Should the Department determine that advances in technology have
made it both economically and technologically feasible for Permittees to place existing Surface-
Mounted Facilities underground, the Department shall require that any Surface-Mounted Facility the
Department permitted under this Article be placed underground unless the Department determines
that doing so would be either infeasible or undesirable. The Department shall notify a Permittee of
this determination in writing and shall provide the Permittee with reasonable time to comply with the
undergrounding requirement.

SEC. 2731. SEVERABILITY.
If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Article 27
or any part thereof, is for any reason held to be unconstitutional, invalid, or ineffective by any court of
competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining
portions of this Article 27 or any part thereof. The Board of Supervisors hereby declares that it would
have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof;
irrespective of the fact that any one or more sections, subsections, subdivision paragraphs, sentences,
clauses, or phrases be declared unconstitutional, invalid or ineffective.

Section 3. Effective Date. This ordinance shall become effective 30 days after
enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
of Supervisors overrides the Mayor's veto of the ordinance.

Section 4. Retroactivity. The Board of Supervisor intends that the requirements of this
ordinance shall be retroactive. Any permit under Article 2.4 of the Public Works Code that is
not final on the effective date of this ordinance shall be subject to the requirements of this
ordinance. For purposes of this ordinance, a permit shall not be final if the permit is subject to
a pending appeal before the Board of Appeals.

Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
additions, and Board amendment deletions in accordance with the "Note" that appears under
the official title of the ordinance.

Section 6. Department of Public Works Implementation. The Department of Public
Works shall adopt an order or regulation implementing the requirements of Article 27 of the
Public Works Code within 60 days of the effective date of this ordinance.

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

By: William K. Sanders
Deputy City Attorney

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File Number: 140319  Date Passed: May 20, 2014

Ordinance amending the Public Works Code to establish the requirements for Surface-Mounted Facility Site Permits; to set fees for obtaining such permits; to make the provisions of the Ordinance retroactive; and making environmental findings.

May 05, 2014 Land Use and Economic Development Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

May 05, 2014 Land Use and Economic Development Committee - CONTINUED AS AMENDED

May 12, 2014 Land Use and Economic Development Committee - RECOMMENDED AS COMMITTEE REPORT

May 13, 2014 Board of Supervisors - PASSED, ON FIRST READING
Ayes: 11 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

May 20, 2014 Board of Supervisors - FINALLY PASSED
Ayes: 11 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

File No. 140319

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 5/20/2014 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Mayor

Date Approved

05/28/2014