

FILE NO. 98-1038

1 [Excavation in the Public Right-of-Way]
2 AMENDING PART II, CHAPTER 10 OF THE SAN FRANCISCO MUNICIPAL CODE (PUBLIC
3 WORKS CODE) BY REPEALING ARTICLE 8 (EXCAVATIONS IN STREETS), REPEALING
4 SECTIONS 672 AND 673 OF ARTICLE 14 (UNDERGROUND PIPES, WIRES AND
5 CONDUITS), AND ADDING ARTICLE 2.4 (EXCAVATION IN THE PUBLIC RIGHT-OF-WAY),
6 INCLUDING SECTION 2.4.44 TO IMPOSE A NEW STREET DAMAGE RESTORATION FEE;
7 AUTHORIZING ESTABLISHMENT OF THE STREET CONSTRUCTION COORDINATION
8 CENTER AND REQUESTING OTHER OFFICIAL ACTIONS IN CONNECTION THEREWITH;
9 MAKING FINDINGS FOR THESE AMENDMENTS; AND AMENDING ARTICLE XIII OF
10 CHAPTER 10 OF THE SAN FRANCISCO ADMINISTRATIVE CODE BY ADDING SECTION
11 10.117-119 TO CREATE A FUND FOR COLLECTION OF STREET DAMAGE
12 RESTORATION FEES AND ADDING SECTION 10.117-120 TO REESTABLISH THE
13 EXCAVATION FUND FOR THE COLLECTION OF OTHER DEPOSITS, FEES, AND
14 PENALTIES IMPOSED BY ARTICLE 2.4.

15 Note: Additions are underlined; deletions are in ((double parentheses)).

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

17
18 Section 1. **FINDINGS.** The Board of Supervisors finds that:

19 (a) Excavation in City streets can significantly disrupt and interfere with public use of
20 the streets. Among other things, excavation can disrupt traffic flow, impeding public
21 transportation such as buses and street cars that travel on fixed, scheduled routes, and
22 creating barriers for pedestrians and bicyclists to navigate. Additionally, obstruction of streets
23 during excavation can result in a loss of parking to nearby businesses and residents. Noise
24 and debris from excavation can further inconvenience nearby businesses and residents and
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1 limit access to their premises. These impacts can be magnified when a street is subject to
2 multiple excavations within a relatively short period of time.

3 (b) It is desirable to revise the Public Works Code to modify the existing street
4 excavation permitting process to improve and encourage coordination of street work in order
5 to minimize disruption to traffic flow, limit inconvenience to San Francisco businesses,
6 residents and visitors, and provide for the public health, safety and well-being. Coordination
7 of excavations can be improved and encouraged through a number of means.

8 (c) Major excavation projects should be undertaken jointly and, with limited
9 exceptions, there should be a moratorium on excavation in City streets that have been
10 repaved in the past five (5) years.

11 (d) Excavators should also be required to submit five-year plans of anticipated major
12 excavations that will allow the Department of Public Works to identify conflicts and
13 opportunities for coordinating street excavation with repaving while protecting confidential
14 information submitted by excavators.

15 (e) The street excavation permitting process should enhance the public's access to
16 information about construction in streets by requiring excavators to provide notice of major
17 excavation projects to the surrounding communities and to place explanatory signs at the
18 excavation site.

19 (f) The street excavation permitting process should minimize the impact of
20 construction on neighborhood residents and businesses by enforcing cleanliness and safety
21 standards for construction sites, imposing strict timelines for construction, and requiring
22 excavators to install finished pavement with a uniform visual appearance.

23 (g) The Department of Public Works should have the authority to enforce violations of
24 the street excavation permitting process through the imposition of civil, criminal, or
25 administrative penalties.

1 (h) The impacts of excavation do not end when construction is complete. The
2 Department of Public Works has sponsored two studies, prepared by a panel of engineering,
3 statistical and economic experts, which demonstrate that excavation increases taxpayer costs
4 to maintain City streets because it accelerates the deterioration and reduces the service life of
5 streets. The Engineering Report commissioned by the Department of Public Works
6 concludes that street damage occurs no matter how well the excavation is restored, and the
7 more excavations that occur in a street, the more the street is damaged. Both the
8 Engineering Report and the Economic Report, completed in September and October of 1998,
9 respectively, are available in the Board of Supervisors' file. Studies performed in a number of
10 cities, including the California cities of Los Angeles and Sacramento, confirm the findings of
11 the City's reports.

12 (i) The City's streets are a valuable public asset which the City holds in trust for its
13 citizens. The City spends millions of tax dollars every year to maintain this public asset. The
14 Economic Report commissioned by the Department of Public Works concludes that
15 excavation costs City taxpayers an additional \$3.3 to \$5.1 million annually in increased street
16 maintenance because of the damage it causes. Consequently, it is reasonable and in the
17 public interest to impose a Street Damage Restoration Fee to be paid by excavators in order
18 to recover the increased repaving and reconstruction costs caused by excavation which are
19 currently born by taxpayers. It is also reasonable and in the public interest to structure the
20 fee, and any exclusions from the fee, in a manner which discourages excavation in newly
21 paved streets and encourages excavators to minimize excavation and to coordinate
22 necessary excavation with the Department of Public Works' repaving schedule.
23 Consequently, among other things, it is appropriate for the Street Damage Restoration Fee to
24 be higher for newer streets, and lower for older streets and those scheduled for imminent
25 repaving.

1 (j) The Economic Report estimates that the square foot cost to the City of excavation
2 is between \$5.37 and \$8.38. Consequently, if the Street Damage Restoration Fee is \$3.50 or
3 less per square foot of excavation, the City's proceeds from the fee will not exceed the
4 repaving and reconstruction costs incurred by the City that are reasonably attributable to the
5 impact of excavation in City streets, and no individual excavator will be charged a fee that
6 exceeds the reasonable costs of the impact of that party's excavation on the need for
7 repaving and reconstruction of City streets. Proceeds collected from the Street Damage
8 Restoration Fee shall be used solely for repaving and reconstruction of City streets.

9 (k) To ensure that proceeds from the Street Damage Restoration Fee do not exceed
10 the repaving and reconstruction costs incurred by the City that are reasonably attributable to
11 excavation, a separate fund should be created to deposit proceeds from the fee. Additionally,
12 the Department of Public Works shall report to the Board of Supervisors regarding the
13 proceeds collected and costs incurred, and a refund shall be granted to excavators in the
14 event that proceeds from the fee exceed costs incurred that are reasonably attributable to
15 excavation.

16 (l) In a further effort to minimize disruption caused by excavation and other
17 construction in City streets, the City shall create a Street Construction Coordination Center
18 which will be responsible for planning and coordinating excavation in streets. In addition, the
19 Director shall undertake efforts to inform the public, private and public excavators, and this
20 Board about the progress of this legislation.

21
22 Section 2. Part II, Chapter 10 of the San Francisco Municipal Code (Public Works
23 Code) is hereby amended by repealing Article 8 (Excavations in Streets) in its entirety as
24 follows:

25 ((ARTICLE 8

EXCAVATIONS IN STREETS

- 1
- 2 Sec. 335. Excavating in or Upon Street, Etc., Prohibited—Exception.
- 3 Sec. 336. Department to Adopt Regulations.
- 4 Sec. 337. Excavations Confined to Description in Application.
- 5 Sec. 338. Application—Approval—Deposits—Bond.
- 6 Sec. 339. Certificate of Authorization—Not Transferable—Extension of Time.
- 7 Sec. 341. (Repealed)
- 8 Sec. 342. Restoration of Streets—Penalty.
- 9 Sec. 343. Regulating Advance Excavations.
- 10 Sec. 344. Replacement of Pavement.
- 11 Sec. 345. Side or Lateral Tamping Prohibited For Fills.
- 12 Sec. 346. Repaving—Clearing Streets—Time Allowed.
- 13 Sec. 347. Streets Opened for “Prospecting”—Repaving.
- 14 Sec. 348. Clearing Street Obstructions—Strikes.
- 15 Sec. 349. Defects Appearing After Completion—Duty to Repair—Expense.
- 16 Sec. 350. Materials—Quality—Sign at Excavation.
- 17 Sec. 351. Notice to Complete Work—Completion by Department.
- 18 Sec. 352. Excavation Fees.
- 19 Sec. 352.1 Gas Service Relocation Fee.
- 20 Sec. 352.2 Collection of Excavation Fees.
- 21 Sec. 353. Definitions—“Excavation”—“Permit”—“Block.”
- 22 Sec. 354. Deposit Retained For Three Years—Deductions.
- 23 Sec. 355. Special Deposits—Retention—Return.
- 24 Sec. 356. Return of General Deposit.
- 25 Sec. 357. Decision of Department as to Cost of Work Final.

- 1 Sec. 358. Special "Excavation Fund" Established—Payments From.
2 Sec. 359. Supervision of Work.
3 Sec. 361. Abandonment of Underground Pipes, Etc.—Report—Maps.
4 Sec. 362. Department May Delegate Power to Issue Certificates—Register Of.
5 Sec. 363. Laying of Pipes, Etc., Without Permission, Forbidden.
6 Sec. 364. Definition of "Service Connection."
7 Sec. 365. Certificate to be Exhibited.
8 Sec. 366. Provisions Applicable to Certain Works.
9 Sec. 367. Provisions not Applicable to Official Work Performed by City Employees.
10 Sec. 368. Emergency Excavations—Procedure.
11 Sec. 369. Certificate Subject to Lawful Use of Street by Others.
12 Sec. 370. Liability for Damages—City and City Officers Exempted.
13 Sec. 371. Penalty.
14 Sec. 372. Side-Sewer and Sub-Sidewalk Construction Not Affected.
15 Sec. 373. Use of Labor-Saving Devices Authorized.
16 Sec. 374. Moratorium.

17 **SEC. 335. EXCAVATING IN OR UPON STREET, ETC., PROHIBITED —**

18 **EXCEPTION.** It shall be unlawful for any person, firm or corporation to make, or to cause or
19 permit to be made, any excavation in or under the surface of any public street, alley, sidewalk
20 or other public place for the installation, repair or removal of any pipe, conduit, duct or tunnel,
21 or for any other purpose, except side sewers and subsidewalk areas, without first obtaining
22 from the Department of Public Works a written certificate that such person, firm or corporation
23 is entitled to make such excavation and making a deposit to cover the cost of inspection and
24 of restoring such public street, alley, sidewalk or other public place to its original condition,
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1 together with the incidental expenses in connection therewith, all as hereinafter in this Article
2 provided. The Department of Public Works, before issuing such certificate, shall require:

3 (a) Written Application. A written application for each excavation, upon a form to be
4 furnished by the Department of Public Works to be made and filed with said department,
5 wherein the applicant shall set forth the name and residence or business address of the
6 person, firm or corporation making such application, and shall state in detail the location and
7 approximate area of such excavation intended to be made and shall state the purpose for
8 which the excavation is to be made and used;

9 (b) Plat of Proposed Excavation. The presentation of a plat in duplicate showing the
10 location of each proposed excavation and the dimensions thereof, and such other details as
11 the Department of Public Works may require to be shown upon such plat;

12 (c) Legal Authority for Use. That the applicant show legal authority to occupy and
13 use, for the purpose mentioned in said application, the streets, alleys, sidewalks or other
14 public places wherein the excavation is proposed to be made;

15 (d) Material Ready for Use. That all the material to be used in any excavation will
16 be on hand in the City and County ready for use before any portion of such excavation is
17 made, otherwise any certificate issued shall be void.

18 **SEC. 336. DEPARTMENT TO ADOPT REGULATIONS.** The Department of Public
19 Works shall adopt such regulations for the location, size and depth of such excavations as it
20 may deem necessary for the public welfare. Such regulations shall include a requirement that
21 bridges flush with the pavement shall be maintained over all excavations in street crossings
22 for the full width and length of such excavation; also over service trenches suitable coverings
23 shall be maintained, and all excavations parallel to the curb not at street crossings or
24 intersections shall be fenced where trenches are open.

1 **SEC. 337. EXCAVATIONS CONFINED TO DESCRIPTION IN APPLICATION.** It

2 shall be unlawful for any person, firm or corporation to make, or to cause or permit to be
3 made, any excavation, or to install or cause or permit to be installed any tank, pipe, conduit,
4 duct or tunnel, except side sewers and sub-sidewalk areas, in or under the surface of any
5 public street, alley, sidewalk or other public place at any location, other than that described in
6 the application and shown on the plats, filed by such person, firm or corporation, as required
7 by the provisions of this Article.

8 **SEC. 338. APPLICATION — APPROVAL — DEPOSITS — BOND.** When the

9 application to excavate and the details shown upon the accompanying duplicate plats, when
10 such plats are required, comply with the terms of this Article and the regulations of the
11 Department of Public Works, the application and duplicate plats shall be approved by the City
12 Engineer's office. After such approval one of the duplicate plats shall be filed in the office of
13 the City Engineer as a public record. The application and the other duplicate plat shall be filed
14 with the Department of Public Works, together with a special deposit of \$10,000 per square
15 foot of surface of each such excavations to be made in streets or other public places;
16 provided, that no deposit shall be less than \$10,000; and provided, further, that any person,
17 firm or corporation intending to make excavations in public streets, alleys or other public
18 places may make and maintain with the said Department of Public Works a general deposit in
19 the sum of \$25,000, which general deposit shall be used for the same purpose as the special
20 deposits described hereinbefore in this Section, or may, in lieu thereof, execute and file with
21 the Department of Public Works a bond in the penal sum of \$25,000, with some surety
22 company authorized to do business in the State of California as surety thereon, running in
23 favor of the City and County of San Francisco, conditioned that such person, firm or
24 corporation shall make all payments required to be made by him or it under and pursuant to
25 this Article, and while such general deposit is maintained at the said sum of \$25,000 or while

1 no breach of condition of said bond shall occur such person, firm or corporation shall not be
2 required to make the special deposits hereinbefore in this Section provided for, but shall be
3 required to file a written application for a permit for each such excavation and duplicate plats
4 showing the location thereof, as in this Article provided, and to comply with all of the other
5 provisions of this Article. If a general deposit is made the Department of Public Works shall
6 deduct from the same all amounts due under the provisions of this Article for each calendar
7 month from the person, firm or corporation maintaining the same and shall render a statement
8 of such deductions at the end of each month to said person, firm or corporation who must,
9 within five days, restore said deposit to its original amount. If a bond is executed and filed
10 hereunder, the Department of Public Works shall each month render to the person, firm or
11 corporation filing the same a statement showing the amount of the payments due from him or
12 it hereunder, for such month and such person, firm or corporation must, within five days, pay
13 such amount to the Department of Public Works pursuant to this Article.

14 **SEC. 339. CERTIFICATE OF AUTHORIZATION — NOT TRANSFERABLE —**

15 **EXTENSION OF TIME.** Upon receiving a written application, as provided in Section 335 of
16 this Article, and one of the duplicate plats, when such plats are required, each bearing the
17 approval of the City Engineer, and the general or special deposit required by Section 338 of
18 this Article, the Department of Public Works shall issue a certificate in writing, which shall be
19 evidence of the right of the person, firm or corporation therein named to make such
20 excavation, and shall open and keep an account thereof; provided, however, that the
21 Department of Public Works shall not issue such certificate unless the applicant has legal
22 authority to occupy and use, for the purpose mentioned in the application, the streets, alleys,
23 sidewalks or other public places covered by said application.

24 Such certificate shall state whether the work to be done is covered by a general or
25 special deposit, and, if a special deposit, shall state the amount thereof and shall be a receipt

1 therefor. It shall also specify the person, firm or corporation to whom the same is issued, the
2 street, alley or other public place and the particular portion or portions thereof to be
3 excavated and the approximate extent of such excavation. No certificate shall be
4 transferable. The certificate shall state a time when all of the work to be done thereunder shall
5 be completed and every such certificate shall become and be void unless the excavation to
6 be made pursuant thereto is commenced within six months from the date of issuance of said
7 certificate and the work diligently prosecuted as in this Article required; provided, however,
8 that the Department of Public Works may grant not to exceed one extension of time for a
9 period not exceeding 30 days, such extension to be granted in the same manner as the
10 original certificate.

11 (a) Penalty. In case any excavation made in accordance with any certificate shall
12 not be refilled and the pavement restored within the time stated therein, or within the time as
13 extended as herein permitted, then the sum of \$25 for each day such work is thereafter
14 incompleated shall be deducted from the deposit made as required by Section 338 of this
15 Article.

16 **SEC. 342. RESTORATION OF STREETS — PENALTY.** In every case the street or
17 thoroughfare so opened or torn up shall be restored by the person, firm or corporation
18 opening or tearing up the same, in the manner and with the material in this Article provided,
19 and to as good a condition as it was in before the opening or tearing up thereof.

20 The person, firm or corporation opening or tearing up any pavement shall assume the
21 full responsibility for all reconstruction and repairs as aforesaid, and shall be subject to the
22 penalties hereinafter in this Article provided in case the work of such repairs and
23 reconstruction was not properly performed.

24 **SEC. 343. REGULATING ADVANCE EXCAVATIONS.** No trench shall be opened in
25 any graded street or thoroughfare for the purpose of laying pipes or conduits more than 600

1 feet in advance of the pipe or conduit placed therein, except in case of emergency and by
2 consent of the Department of Public Works. All such trenches shall be backfilled and the old
3 torn-up pavements shall be removed from the street, together with the surplus excavated
4 material, within three working days from the time such material is placed upon the street,
5 except by the written consent of the Department of Public Works.

6 **SEC. 344. REPLACEMENT OF PAVEMENT.** Pavement shall be restored within
7 seven working days from the time the trench was backfilled in the manner specified by order
8 of the Director of Public Works.

9 On major streets designated by the Director of Public Works during the period
10 following the laying of the concrete base to the relaying of the wearing surface such concrete
11 shall be covered with steel plates ramped to the elevation of the contiguous pavement.

12 **SEC. 345. SIDE OR LATERAL TAMPING PROHIBITED FOR FILLS.** Whenever any
13 caving occurs in the side walls of any excavation, the pavement above such paving shall be
14 cut away, and in no case shall any void under a pavement be filled by any side or lateral
15 tamping.

16 **SEC. 346. REPAVING — CLEARING STREETS — TIME ALLOWED.** In every case
17 the work or repaving over all trenches must be commenced immediately after said trenches
18 are backfilled, and the work of clearing up the streets is to be considered a part of the
19 repaving work, and shall be finished within the same time allowed in all cases for said
20 repaving and to the satisfaction of the Department of Public Works.

21 **SEC. 347. STREETS OPENED FOR “PROSPECTING” — REPAVING.** When a
22 street is opened for the purpose of what is known as prospecting or for the purpose of making
23 repairs or alterations to pipes or conduits, as soon as the work of such repairs and alterations
24 is finished, the trench shall be backfilled and pavement restored in the manner and within the
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1 time allowed for the restoration of the same kind and character of pavements over main or
2 service trenches.

3 **SEC. 348. CLEARING STREET OBSTRUCTIONS — STRIKES.** In every case and
4 at all times the work of removal from the streets of all obstructions, surplus materials and
5 debris or waste matter of every description caused and accumulated by said work of opening
6 and restoring public streets and thoroughfares, shall be kept up jointly with the work of
7 backfilling and repaving either over "main" or "service" trenches, and all finished together —
8 or nearly so and within the time herein allowed in Sections 342 to 347, inclusive, of this
9 Article, and in all cases the surface of the street shall be restored to as good a condition as it
10 was in before the work of opening commenced.

11 When any of the work required to be done by Sections 343 to 348, inclusive, of this
12 Article is necessarily delayed by any strike or strikes, such delay shall be added to the time
13 limits therein prescribed.

14 **SEC. 349. DEFECTS APPEARING AFTER COMPLETION — DUTY TO REPAIR —**
15 **EXPENSE.** In case the pavement or surface of the street over said openings should become
16 depressed or broken at any time after the work has been completed — natural wear of the
17 surface or improper work of some other person, firm or corporation excepted — the person,
18 firm or corporation for whom the street was opened shall, upon a written notice from the
19 Department of Public Works, immediately proceed to repair and restore said pavement in a
20 proper and workmanlike manner to the satisfaction of the Department of Public Works,
21 immediately and it is hereby expressly declared that the fact that the original work of restoring
22 said pavement or surface was subject to the inspection or inspected by or under the authority
23 of the Department of Public Works as in this Article provided shall not excuse such person,
24 firm or corporation from the duty and obligation imposed by this Article.

1 When the street was opened for any department, board or officer of the City and
2 County of San Francisco in the discharge of its, his or her official duty, the written notice shall
3 be sent to the person or firm who actually opened the street, and it shall be the responsibility
4 of such person or firm to repair and restore the pavement.

5 In case said pavement is not completely restored within 30 days after such notice has
6 been given, and unless delayed by a strike or strikes, or conditions beyond their control, the
7 said Department shall thereupon do the work at the expense of said delinquent person, firm
8 or corporation.

9 **SEC. 350. MATERIALS — QUALITY — SIGN AT EXCAVATION.** All materials shall
10 be furnished by the party or parties for whom the work is being done, and said material shall
11 be of the best quality in strict accordance with the City's Standard Specifications, and all the
12 work shall be performed in a proper and workmanlike manner in compliance with the Rules
13 and Regulations and to the satisfaction of the Department of Public Works. The person, firm
14 or corporation, during the progress of the work, shall maintain a sign at such excavation
15 bearing the name of such person, firm and the address and telephone number at which the
16 person or firm may be reached at any time during the day or night.

17 **SEC. 351. NOTICE TO COMPLETE WORK — COMPLETION BY DEPARTMENT.**
18 In case any part of the work herein referred to, such as refilling of trenches, restoring the
19 pavements or clearing the streets, is not completed within the time required by Sections 339
20 to 348, inclusive, of this Article (excepting by reason of legal holidays or delays caused by
21 strike or strikes), or unless the Department of Public Works shall in its discretion allow further
22 time for the work that cannot be reasonably so performed, the said Department shall notify in
23 writing the person, or firm doing the work to complete the same within 48 hours thereafter,
24 legal holidays excepted, and in case said work should not be so completed within 48 hours
25 after said notice has been received, the Department of Public Works shall have full power to

1 do said work, or may contract for the performance of said work, and the reasonable cost
2 thereof shall be deducted from the general or special deposit of the delinquent person or firm.
3 If, in the judgment of the Director of Public Works or his designated representative, the
4 construction defect is considered hazardous or if it constitutes a public nuisance, requiring
5 immediate action, the Director may order the condition remedied by written or oral, including
6 telephonic communication to the person or firm specified on the sign described in Section
7 350. If the person or firm doing the work cannot be reached or does not take immediate
8 action, the Department of Public Works shall have full power to do said work, or may contract
9 for the performance of said work, and the reasonable cost thereof, including administrative
10 expense, shall be deducted from the general or special deposit of the delinquent person, firm
11 or corporation.

12 **SEC. 352. EXCAVATION FEES.** The Department of Public Works shall collect for
13 any excavation permit, under the authority of which the excavation was made an amount
14 equal to \$0.80 per square foot of pavement to be excavated, plus a \$50 processing fee for
15 each permit to cover the cost of incurred by the Department of Public Works in the exercise of
16 its duties pursuant to this Article and for the administration, supervision and inspection of the
17 permitted excavation.

18 In addition to the fees provided for hereinabove, the Director is authorized to deduct or
19 collect amounts to compensate the Department for any and all special costs including but not
20 limited to overtime, weekend or night work, or other work for which the Department may incur
21 more than the normal anticipated cost for administration, supervision and inspection; and for
22 any and all extraordinary costs, including but not limited to costs arising from unanticipated or
23 emergency work incidental to the permitted excavation.

24 **SEC. 352.1. GAS SERVICE RELOCATION FEE.** In addition to the fees provided for
25 in Section 352 of this Article, the Director of Public Works or his or her designated

1 representative is authorized to deduct or collect a fee of \$35 for each gas house-line
2 relocated as part of a gas main replacement.

3 **SEC. 352.2. COLLECTION OF EXCAVATION FEES.** The Director of Public Works is
4 authorized to establish procedures for efficient and effective billing and collection of the fees
5 provided for in Section 352 of this Article. The Director in his or her discretion may require any
6 permittee to deposit in advance of undertaking any excavation, a sum representing the
7 estimated fees anticipated to be incurred for said excavation within any fiscal year, from
8 which deposit any fees attributable to said permit work may be deducted as provided in
9 Section 352 of this Article. Prior to requiring any permittee to deposit estimated fees in
10 advance of any excavations the Director shall consider the permittee's record of past
11 payment.

12 **SEC. 353. DEFINITIONS — “EXCAVATION” — “PERMIT” — “BLOCK.”** For the
13 purpose of this Article, an “excavation” shall be defined as an opening in or beneath any
14 public street, alley, sidewalk or other public place. A “block” shall be defined as the area of a
15 street from property line to property line in width and extending from the centerline of one
16 intersecting street to the centerline of the next intersecting street. At the discretion of the
17 Director, all excavations within one block or a continuous excavation extending more than
18 one block and occurring within the same time period may be considered one excavation for
19 purposes of computing the fees provided for in Section 352 of this Article.

20 **SEC. 354. DEPOSIT RETAINED FOR THREE YEARS — DEDUCTIONS.** The
21 balance of each such deposit, after the deductions hereinbefore provided for have been
22 made, shall be retained by the City and County of San Francisco for three years from the date
23 of the completion of the work.

24 The said City and County shall also deduct the cost of any work done or repairs made
25 by the Department of Public Works, as provided for in this Article, from any and all deposits

1 then on hand, belonging to or that may thereafter be made by any person or firm required by
2 this Article to do any work or to make any repairs under the provisions of Sections 349, 350
3 and 351 of this Article, and who shall have failed, refused or neglected to perform such work
4 or to make such repairs.

5 **SEC. 355. SPECIAL DEPOSITS — RETENTION — RETURN.** Each special deposit
6 made pursuant to the provisions of this Article shall be retained by the City and County of San
7 Francisco for a period of three years after the completion of the refilling of the excavation on
8 account of which such special deposit was made, and at the expiration of such period of three
9 years, such special deposit, less the deductions made pursuant to this Article, shall be
10 returned to the person, firm or corporation making the same, or to such person's or firm's
11 assigns.

12 **SEC. 356. RETURN OF GENERAL DEPOSIT.** Each general deposit made pursuant
13 to the provisions of this Article may be returned at any time to the person, firm or corporation
14 making the same, or to his or its assigns, after first making the deductions therefrom
15 authorized by this Article; provided, however, that the City and County of San Francisco shall
16 retain, of each general deposit, such amounts and for such period of time as would be
17 required by this Article if the amount of such general deposit had been paid as special
18 deposits for permits for the several excavations made by reason of such general deposit.

19 **SEC. 357. DECISION OF DEPARTMENT AS TO COST OF WORK FINAL.** The
20 decision of the Department of Public Works as to the cost of any work done or repairs made
21 by it or under its direction pursuant to the provisions of Sections 349, 350 and 351 of this
22 Article shall be final and conclusive as to such cost.

23 **SEC. 358. SPECIAL "EXCAVATION FUND" ESTABLISHED — PAYMENTS FROM.**
24 All the moneys paid to the Department of Public Works under the provisions of Sections 352
25 to 354, inclusive, of this Article shall be deposited with the Treasurer to the credit of a special

1 fund hereby created and designated "Excavation Fund," to be used to defray the cost of
2 inspection made necessary by reason of such excavation and repairs.

3 All costs of inspection shall be paid from said last named fund, on a warrant drawn by
4 the Controller on demands approved by the Department of Public Works and returns of any
5 deposit shall be made in like manner.

6 The cost of all repairs made to pavements by the Department of Public Works by
7 reason of the failure of any person, firm, or corporation to make the same when required to do
8 so under the provisions of this Article shall also be paid out of said fund and charged against
9 the general or special deposit made by said person, firm or corporation.

10 **SEC. 359. SUPERVISION OF WORK.** All excavations, refilling of excavations and
11 repairing of street surfaces, pursuant to the provisions of this Article, shall be made under the
12 supervision and direction of the Department of Public Works. It shall be the duty of the said
13 department to supervise and direct all such making and refilling of excavations and repairing
14 of street surfaces.

15 **SEC. 361. ABANDONMENT OF UNDERGROUND PIPES, ETC. — REPORT —**
16 **MAPS.** Whenever any pipe, conduit, duct, tunnel, or other structure located under the
17 surface of any public street, alley or other public place, or the use thereof, is abandoned, the
18 person, firm or corporation owning, using, controlling or having an interest therein, shall,
19 within 30 days after such abandonment, file in the office of the City Engineer a statement in
20 writing, giving in detail the location of the pipe, conduit, duct, tunnel or other structure so
21 abandoned. Each map or set of maps filed pursuant to the provisions of this Article shall show
22 in detail the location of all such pipes, conduits, ducts, tunnels or other structures abandoned
23 subsequent to the filing of the last preceding map or set of maps.

24 It shall be unlawful for any person, firm or corporation to fail, refuse or neglect to file
25 any map or set of maps at the time, and in all respects as required by this Article.

1 **SEC. 362. DEPARTMENT MAY DELEGATE POWER TO ISSUE CERTIFICATES —**
2 **REGISTER OF.** The power to issue certificates for service connections may be delegated by
3 the Department of Public Works to its secretary or other employee or assistant of such
4 Department. A register shall be kept by said Department showing the date and location of
5 each excavation for which a certificate has been granted.

6 **SEC. 363. LAYING OF PIPES, ETC., WITHOUT PERMISSION, FORBIDDEN.**
7 Individuals, corporations, agents or their employees, are strictly forbidden to lay main pipes,
8 conduits, etc., in any excavation made by the city or its contractors, except by permission of
9 the Department of Public Works.

10 **SEC. 364. DEFINITION OF "SERVICE CONNECTION."** For the purpose of
11 interpreting the provisions of this Article, the term "service connection" as herein used shall be
12 taken to mean a branch pipe or conduit between a main pipe or conduit and a building or
13 buildings which are to be supplied with heat, light, power, water or telephone, telegraphic or
14 signal service from said main pipe or conduit.

15 **SEC. 365. CERTIFICATE TO BE EXHIBITED.** Any person, firm or corporation
16 engaged in the making or refilling of any excavation in any public street, alley or other public
17 place shall at all times while such work is in progress, keep at the place where such
18 excavation is located the original certificate (or the number thereof) for such excavation and
19 must, on demand, exhibit the same to the Department of Public Works, or to any police
20 officer.

21 **SEC. 366. PROVISIONS APPLICABLE TO CERTAIN WORKS.** None of the
22 provisions of this Article shall apply to any work done or to be done along, in or upon any
23 public street, alley or other public place pursuant to any law of the State of California,
24 providing for the improvement thereof, or to any work done or to be done along, in or upon
25 any such street, alley or other public place pursuant to any contract for improvement

1 authorized by the Board of Supervisors; provided, however, that the provisions contained in
2 Sections 343 to 348, inclusive, of this Article shall apply to all such work and to all
3 excavations to be made along, in or upon any public street, alley or other public place.

4 **SEC. 367. PROVISIONS NOT APPLICABLE TO OFFICIAL WORK PERFORMED**
5 **BY CITY EMPLOYEES.** The provisions of this Article shall not apply to excavations made by
6 any department, board or officer of the City and County of San Francisco in the discharge of
7 its, his or her official duty when such work is performed directly by City employees. Nothing in
8 this Section shall be construed to exonerate an independent contractor from legal liability for
9 violations of the provisions of this Article when such contractor performing any work for a
10 department, board or officer under a contract entered into in discharge of its, his or her official
11 duty.

12 **SEC. 368. EMERGENCY EXCAVATIONS — PROCEDURE.** Nothing in this Article
13 contained shall be construed to prevent any person, firm or corporation maintaining any pipe
14 or conduit in any public street, alley or other public place, by virtue of any law, ordinance or
15 permit, from making such excavation as may be necessary for the preservation of life or
16 property when such necessity arises during such hours as the offices of the City are closed;
17 provided, that the person, firm or corporation making such excavation shall apply for a permit
18 therefor as herein required within four hours after the offices of the City are first opened
19 subsequent to the making of such excavation. The fees for any such excavation shall be as
20 provided for in Section 352 of this Article.

21 **SEC. 369. CERTIFICATE SUBJECT TO LAWFUL USE OF STREET BY OTHERS.**
22 Every certificate for an excavation in or under the surface of any public street, alley or other
23 public place shall be issued subject to the right of the City and County of San Francisco or of
24 any other person, firm or corporation entitled thereto, to use that part of such street, alley or
25 other public place for any purpose for which such street, alley or other public place may

1 lawfully be used.

2 **SEC. 370. LIABILITY FOR DAMAGES — CITY AND CITY OFFICERS EXEMPTED.**

3 Neither the City and County nor officer or employee thereof shall be held responsible for any
4 damage caused by any excavation in the street made by or for any person, firm or
5 corporation but such person, firm or corporation shall be solely liable for any damage or loss
6 occasioned by any act or neglect in respect to such excavation.

7 **SEC. 371. PENALTY.** In case any person or firm shall violate the requirements of this
8 Article, order of the Director of Public Works, or permit condition, the Director of Public Works,
9 or his designated representative shall issue a Warning of Violation of the offending party.
10 Should the violation continue the sum of \$100 for each day of said violation shall be deducted
11 from the deposit made as required by Section 338 of this Article.

12 In case any person or firm is found performing work without the permits required by
13 this Public Works Code, the Director of Public Works or his designated representative shall
14 order, in writing that such work be stopped and shall deduct the sum of \$1,000 from any
15 deposit made as required by Section 338 of this Article.

16 Any person or firm refusing to stop work when ordered to do so by written notice of the
17 Director of Public Works or his designated representative, shall be deemed guilty of a
18 misdemeanor, and upon conviction thereof, shall be punishable by a fine of not less than
19 \$1,000 nor more than \$5,000 or by imprisonment in the County Jail for a period of not less
20 than five days nor more than six months or by both such fine and imprisonment.

21 **SEC. 372. SIDE-SEWER AND SUBSIDEWALK CONSTRUCTION NOT AFFECTED.**

22 This Article shall not be construed as affecting in any manner any ordinance regulating the
23 construction of side sewers or for excavating or maintaining subsidewalk areas.

24 **SEC. 373. USE OF LABOR-SAVING DEVICES AUTHORIZED.** No construction
25 contract or agreement to which the City and County of San Francisco is a party shall include

1 any terms or conditions which limit or restrict production or the use of machinery, tools, or
2 other labor-saving devices, except as such limitation or restriction in specific cases shall be
3 necessary to avoid public nuisance or protect public health, safety or facilities. It is declared to
4 be the general policy of the City and County of San Francisco that there shall be no limitation
5 or restriction on production or the use of machinery, tools, or other labor-saving devices;
6 provided, that the contractor operating the same shall assume legal liability for damage to
7 property of others, including utilities, resulting from the operation of such machinery, tools or
8 other labor-saving devices. Where such limitation or restriction is necessary to avoid nuisance
9 or protect public health, safety or facilities, the contract or agreement limiting or restricting
10 such production or the use of machinery, tools, or other labor-saving devices shall specify the
11 location, basis for, and conditions pertaining to such limitation or restriction. The terms hereof
12 are intended to include, but are not restricted to, automatic rapid pavement breakers or other
13 such types of equipment.

14 **SEC. 374. MORATORIUM.** No excavations shall be allowed in or beneath any public
15 street, alley, or other public place for a period of three years from the completions of street
16 resurfacing or reconstruction; provided, however, that the Director of Public Works may adopt
17 rules and regulations to allow exceptions to this moratorium when such exceptions would
18 benefit the public; and further provided that the inspection cost to be charged shall be as
19 specified in Section 352.))

20
21 Section 3. Part II, Chapter 10 of the San Francisco Municipal Code (Public Works
22 Code) is hereby amended by repealing Sections 672 and 673 of Article 14 (Underground
23 Pipes, Wires and Conduits) as follows:

24 **((SEC. 672. NOTICE OF INTENTION TO BE GIVEN TO PRIVILEGE HOLDERS.**

25 When the Director of Public Works shall deem it necessary to pave or repave any public

1 street he shall serve notice upon every person, firm or corporation having pipes or conduits
2 within the City and County used for the purposes herein specified, of his intention to so pave
3 or repave such street.

4 **SEC. 673. NOTICE OF INTENTION — TIME — REGULATION FOR OPENING NEW**
5 **PAVEMENT.** Such person, firm or corporation, within 10 days thereafter may exercise the
6 rights herein granted as to the roadway of such streets upon written notice given to said
7 department of its intention to do so. The right to lay down new pipes or conduits in said street
8 for such purpose shall continue for 30 days after the service of the notice aforesaid, but not
9 longer unless the time shall be extended by a resolution of the Board of Supervisors. No
10 street pavement laid after the passage of this Article shall be opened for a greater length than
11 100 yards for the purpose of laying pipes and conduits in the street for supplying gas or
12 electricity for a period of one year after the construction of such pavement, except with the
13 consent of the Board of Supervisors.))

14
15 Section 4. Part II, Chapter 10 of the San Francisco Municipal Code (Public Works
16 Code) is hereby amended by adding Article 2.4 (Excavation in the Public Right-of-Way) to
17 read as follows:

18 **ARTICLE 2.4**

19 **EXCAVATION IN THE PUBLIC RIGHT-OF-WAY**

20 **SUBARTICLE I - GENERAL PROVISIONS**

21 **Sec. 2.4.1. Excavation in the Public Right-of-Way.**

22 **Sec. 2.4.2. Permits Required to Excavate.**

23 **Sec. 2.4.3. Department Orders and Regulations.**

24 **Sec. 2.4.4. Definitions.**

25 **SUBARTICLE II - APPLICATIONS FOR PERMITS TO EXCAVATE**

1 Sec. 2.4.10. Applications.

2 Sec. 2.4.11. Coordination of Excavation.

3 Sec. 2.4.12. Joint Excavation.

4 **SUBARTICLE III - PERMITS TO PERFORM AN EXCAVATION**

5 Sec. 2.4.20. Action on Applications for Permits to Excavate.

6 Sec. 2.4.20.1. Terms and Limitations.

7 Sec. 2.4.20.2. Duration and Validity.

8 Sec. 2.4.20.3. Non-Transferability of Permits.

9 Sec. 2.4.21. Moratorium Streets.

10 Sec. 2.4.22. Emergency Excavation.

11 Sec. 2.4.23. Liability and Indemnification.

12 Sec. 2.4.24. Permit to Be Available at Excavation Site.

13 **SUBARTICLE IV - DEPOSITS AND FEES**

14 Sec. 2.4.40. Deposit.

15 Sec. 2.4.41. Administrative Fee.

16 Sec. 2.4.42. Inspection Fee.

17 Sec. 2.4.43. Additional Fees for Excavation.

18 Sec. 2.4.44. Street Damage Restoration Fee.

19 Sec. 2.4.45. Report to Board of Supervisors.

20 Sec. 2.4.46. Collection and Return of Deposit and Fees.

21 **SUBARTICLE V - EXCAVATIONS**

22 Sec. 2.4.50. Notices.

23 Sec. 2.4.51. Notice for Marking of Subsurface Facilities.

24 Sec. 2.4.52. Limits upon Excavation in the Public Right-of-Way.

25 Sec. 2.4.53. Regulations Concerning Excavation Sites.

1 Sec. 2.4.54. Stop Work Order, Permit Modification, and Permit Revocation.

2 Sec. 2.4.55. Restoration of the Public Right-of-Way.

3 **SUBARTICLE VI - POST-EXCAVATION REPAIR, MAINTENANCE,**
4 **AND PAVEMENT FAILURE**

5 Sec. 2.4.70. Repair and Maintenance Obligation of Permittee.

6 Sec. 2.4.71. Subsurface or Pavement Failures.

7 Sec. 2.4.72. Repair by the Department.

8 Sec. 2.4.73. Emergency Remediation by the Department.

9 **SUBARTICLE VII - VIOLATION OF ARTICLE**

10 Sec. 2.4.80. Violation of Article.

11 Sec. 2.4.81. Administrative Penalties and Costs.

12 Sec. 2.4.82. Civil Penalties and Fees.

13 Sec. 2.4.83. Criminal Fines.

14 Sec. 2.4.84. Deposit of Penalties into Excavation Fund.

15 Sec. 2.4.85. Suspension of Action on Applications.

16 **SUBARTICLE VIII - MISCELLANEOUS**

17 Sec. 2.4.90. Abandonment of Underground Facilities, Reports, and Maps.

18 Sec. 2.4.91. Identification of Visible Facilities.

19 Sec. 2.4.92. City's Obligation.

20 Sec. 2.4.93. Time Limit on Commencement of Actions.

21 Sec. 2.4.94. Severability.

22
23
24 **SUBARTICLE I - GENERAL PROVISIONS**

1 **SEC. 2.4.1. EXCAVATION IN THE PUBLIC RIGHT-OF-WAY.** This Article 2.4 shall
2 govern Excavation in the Public Right-of-Way within the City that is under the jurisdiction and
3 control of the Department of Public Works. The Director of Public Works shall be responsible
4 for managing the Public Right-of-Way.

5 **SEC. 2.4.2. PERMITS REQUIRED TO EXCAVATE.** (a) It is unlawful for any Person
6 to make or to cause or permit to be made any Excavation in any Public Right-of-Way that is
7 under the jurisdiction of the Department of Public Works without first obtaining from the
8 Department a Permit authorizing such Excavation.

9 (b) The Department shall issue a Permit to Excavate only if the Applicant has the legal
10 authority to occupy and use the Public Right-of-Way for the purposes identified in the
11 application for the Permit.

12 (c) No Permit to Excavate shall be required when an Excavation is to be completed
13 within a period of twenty-four (24) hours or less to install a parking meter, street light, street
14 tree, traffic sign, traffic signal, or utility pole or to repair a utility box in a Sidewalk; or when an
15 Excavation is in connection with the construction or maintenance of a sub-sidewalk
16 basement; or when an Excavation is performed for the sole purpose of repairing a Sidewalk.

17 (d) Permit requirements pertaining to emergency Excavation are addressed in Section
18 2.4.22.

19 **SEC. 2.4.3. DEPARTMENT ORDERS AND REGULATIONS.** In addition to the
20 requirements set forth in this Article, the Department may adopt such orders or regulations as
21 it deems necessary in order to preserve and maintain the public health, safety, welfare, and
22 convenience. Each Excavation in the Public Right-of-Way pursuant to this Article shall be
23 performed in accordance with the Standard Plans and Specifications of the Department and
24 any Department orders or regulations, except where the Director, in his or her discretion,
25 grants prior written approval to deviate from such Standard Plans and Specifications, orders,

1 or regulations. The Director shall develop guidelines to implement the granting of waivers
2 authorized pursuant to this Article. Furthermore, Excavation in the Public Right-of-Way shall
3 conform to the orders, regulations, and rules of the Department of Parking and Traffic,
4 including, but not limited to, the regulations adopted in accordance with Article 11 of the San
5 Francisco Traffic Code (the "Blue Book").

6 **SEC. 2.4.4. DEFINITIONS.** For purposes of this Article, the following terms shall have
7 the following meanings:

8 (a) "Applicant" shall mean any Owner or duly authorized agent of such Owner, who
9 has submitted an application for a Permit to Excavate.

10 (b) "Article" shall mean this Article 2.4 of the Public Works Code.

11 (c) "Block" shall mean that part of the Public Right-of-Way that includes the street area
12 from the property line to the parallel property line in width and extending from the property line
13 of an intersecting street to the nearest property line of the next intersecting street in length.
14 For purposes of this definition, an intersection also shall be considered a "Block".

15 (d) "City" shall mean the City and County of San Francisco.

16 (e) "Department" shall mean the Department of Public Works.

17 (f) "Deposit" shall mean any bond, cash deposit, or other security provided by the
18 Applicant in accordance with Section 2.4.40 of this Article.

19 (g) "Director" shall mean the Director of the Department of Public Works or his or her
20 designee.

21 (h) "Excavation" shall mean any work in the surface or subsurface of the Public Right-
22 of-Way, including, but not limited to opening the Public Right-of-Way; installing, servicing,
23 repairing or modifying any Facility(ies) in or under the surface or subsurface of the Public
24 Right-of-Way, and restoring the surface and subsurface of the Public Right-of-Way.

1 (i) "Facility" or "Facilities" shall include, but not be limited to, any and all cables,
2 cabinets, ducts, conduits, converters, equipment, drains, handholds, manholes, pipes,
3 pipelines, splice boxes, surface location markers, tracks, tunnels, utilities, vaults, and other
4 appurtenances or tangible things owned, leased, operated, or licensed by an Owner or
5 Person, that are located or are proposed to be located in the Public Right-of-Way.

6 (j) "Major Work" shall mean any reasonably foreseeable Excavation that will affect the
7 Public Right-of-Way for more than fifteen (15) consecutive calendar days.

8 (k) "Moratorium Street" shall mean any Block that has been reconstructed, repaved, or
9 resurfaced by the Department or any other Owner or Person in the preceding five (5) year
10 period.

11 (l) "Municipal Excavator" shall mean any agency, board, commission, department, or
12 subdivision of the City that owns, installs, or maintains a Facility or Facilities in the Public
13 Right-of-Way.

14 (m) "Owner" shall mean any Person, including the City, who owns any Facility or
15 Facilities that are or are proposed to be installed or maintained in the Public Right-of-Way.

16 (n) "Permit" or "Permit to Excavate" shall mean a Permit to perform an Excavation as it
17 has been approved, amended, or renewed by the Department.

18 (o) "Permittee" shall mean the Applicant to whom a Permit to Excavate has been
19 granted by the Department in accordance with this Article.

20 (p) "Person" shall mean any natural person, corporation, partnership, any Municipal
21 Excavator, or any governmental agency, including the State of California or United States of
22 America.

23 (q) "Public Right-of-Way" shall mean the area across, along, beneath, in, on, over,
24 under, upon, and within the dedicated public alleys, boulevards, courts, lanes, roads,
25

1 Sidewalks, spaces, streets, and ways within the City, as they now exist or hereafter will exist
2 and which are or will be under the permitting jurisdiction of the Department of Public Works.

3 (r) "Sidewalk" shall mean the area between the fronting property line and the back of
4 the nearest curb.

5 (s) "Utility Excavator" shall mean any Owner whose Facility or Facilities in the Public
6 Right-of-Way are used to provide electricity, gas, information services, sewer service, steam,
7 telecommunications, traffic controls, transit service, video, water, or other services to
8 customers regardless of whether such Owner is deemed a public utility by the California
9 Public Utilities Commission.

10 **SUBARTICLE II - APPLICATIONS FOR PERMITS TO PERFORM AN EXCAVATION**

11 **SEC. 2.4.10. APPLICATIONS.** (a) Applications shall be submitted in format and
12 manner specified by the Department and shall contain:

13 (i) The name, address, telephone, and facsimile number of the Applicant.
14 Where an Applicant is not the Owner of the Facility to be installed, maintained, or repaired in
15 the Public Right-of-Way, the application also shall include the name, address, telephone, and
16 facsimile number of the Owner.

17 (ii) A description of the location, purpose, method of Excavation, and surface
18 and subsurface area of the proposed Excavation.

19 (iii) A plan showing the proposed location and dimensions of the Excavation
20 and the Facilities to be installed, maintained, or repaired in connection with the Excavation,
21 and such other details as the Department may require.

22 (iv) A copy or other documentation of the franchise, easement, encroachment
23 permit, license, or other legal instrument that authorizes the Applicant or Owner to use or
24 occupy the Public Right-of-Way for the purpose described in the application. Where the
25 Applicant is not the Owner of the Facility or Facilities to be installed, maintained, or repaired,

1 the Applicant must demonstrate in a form and manner specified by the Department that the
2 Applicant is authorized to act on behalf of the Owner.

3 (v) The proposed start date of Excavation.

4 (vi) The proposed duration of the Excavation, which shall include the duration
5 of the restoration of the Public Right-of-Way physically disturbed by the Excavation.

6 (vii) Written acknowledgment that all material to be used in the Excavation,
7 installation, maintenance, or repair of Facilities, and restoration of the Public Right-of-Way will
8 be on hand and ready for use so as not to delay the Excavation and the prompt restoration of
9 the Public-Right-Way.

10 (viii) Written acknowledgment that the Applicant and Owner are in compliance
11 with all terms and conditions of this Article, the orders, regulations, and Standard Plans and
12 Specifications of the Department, and that the Applicant and Owner are not subject to any
13 outstanding assessments, fees, penalties that have been finally determined by the City or a
14 court of competent jurisdiction.

15 (ix) A current Business Tax Registration Certificate issued by the San Francisco
16 Tax Collector pursuant to Section 1003 of Part III of the San Francisco Municipal Code for the
17 Applicant and the Owner.

18 (x) Evidence of insurance as required by Section 2.4.23 of this Article.

19 (xi) A Deposit as required by Section 2.4.40 of this Article.

20 (xii) Any other information that may reasonably be required by the Department.

21 (b) The Department may allow an Applicant to maintain documents complying with
22 Subsections (iv), (ix), (x), and (xi) on file with the Department rather than requiring submission
23 of such documents with each separate application.

24 **SEC. 2.4.11. COORDINATION OF EXCAVATION. (a) Five-year plans.**

1 (i) On the first day of April and October, or the first regular business day
2 immediately thereafter, each Utility and Municipal Excavator shall prepare and submit to the
3 Department a plan, in a format specified by the Department, that shows all Major Work
4 anticipated to be done in the Public Right-of-Way in the next five (5) years. Any Utility or
5 Municipal Excavator that does not propose Major Work in the next five (5) years shall submit
6 a plan with a statement that no such Major Work is anticipated and shall immediately report
7 any Major Work to the Department as soon as it becomes reasonably foreseeable.

8 (ii) The Department may disclose information contained in a five year plan to
9 any Utility Excavator or Municipal Excavator only on a need-to-know basis in order to facilitate
10 coordination among excavators and to avoid unnecessary Excavation in City streets. To the
11 maximum extent permissible under federal, state, and local laws applicable to public records,
12 the City shall not otherwise disclose to the public any information contained in a five-year plan
13 submitted by a Utility Excavator that is proprietary, trade secret or is otherwise protected from
14 disclosure; provided, however that the City shall have no duty to decline to disclose any
15 information that the Utility Excavator has not identified on its face as proprietary, trade secret
16 or otherwise protected from disclosure. The Department shall notify a Utility Excavator of any
17 request for inspection of public records that calls for disclosure of any five-year plan on which
18 any information has been identified as proprietary, trade secret or otherwise protected from
19 disclosure. The Department shall consult with the City Attorney regarding any such request
20 and shall inform the affected Utility Excavator either that the Department will refuse to
21 disclose the protected information or, if there is no proper basis for such refusal, that the
22 Department intends to disclose the requested information unless ordered otherwise by a
23 court.

24 (b) **Department repaving plans.** (i) The Department shall prepare a five-year
25 repaving plan showing all proposed repaving and reconstruction of the Public Right-of-Way.

1 The Department's repaving plan shall be revised and updated on a semi-annual basis after
2 receipt of the five-year plans from Utility and Municipal Excavators. In order to facilitate
3 coordination and minimize the cost of Excavation, the Department shall make its repaving
4 plan available for public inspection.

5 _____ (ii) At least one hundred twenty (120) calendar days prior to undertaking the
6 repaving and reconstruction of any Block, the Department shall send a notice of the proposed
7 repaving and reconstruction to each Utility and Municipal Excavator.

8 _____ (c) **Coordination.** (i) The Department shall review the five year plans and identify
9 conflicts and opportunities for coordination of Excavations. The Department shall notify
10 affected Owners and Permittees of such conflicts and opportunities to the extent necessary to
11 maximize coordination of Excavation. Each Applicant shall coordinate, to the extent
12 practicable, with each potentially affected Owner and Permittee to minimize disruption in the
13 Public Right-of-Way.

14 _____ (ii) When two (2) or more Applicants coordinate Major Work in the same Block
15 so that, in the opinion of the Department, such Major Work minimizes disruption to the
16 affected neighborhood, and is likely to qualify the Block for repaving, the Department shall
17 make its best effort to schedule the affected Block for repaving. Such scheduling shall occur,
18 to the extent funds are available in the Street Damage Restoration Fund, so that the
19 Applicants may qualify for a waiver of the Street Damage Restoration Fee under Section
20 2.4.44(b)(ii). Notwithstanding the foregoing, nothing in this Subsection shall interfere with the
21 Department's authority to allocate available repaving resources in a manner that it determines
22 best serves the public interest.

23 _____ **SEC. 2.4.12. JOINT EXCAVATION.** (a) **Municipal Excavators.** Whenever two (2) or
24 more Municipal Excavators propose Major Work in the same Block within a five (5) year
25 period, such Work shall be performed by one (1) Municipal Excavator. The participants to the

1 Excavation shall pay their pro rata share of the Work. For purposes of this Subsection, the
2 Municipal Excavators shall be treated as a single Applicant and shall submit one (1)
3 application.

4 (b) **Utility Excavators.** Whenever two (2) or more Utility Excavators propose Major
5 Work in the same Block within a five (5) year period, such Work shall be performed by one (1)
6 Utility Excavator. For purposes of this Subsection, the Utility Excavators shall be treated as a
7 single Applicant and shall submit one (1) application.

8 (c) **Municipal Excavator and Utility Excavator.** Whenever a Municipal Excavator(s)
9 and a Utility Excavator(s) propose Major Work in the same Block within a five (5) year period,
10 the Department shall condition Permits for such Work in a manner that maximizes
11 coordination and minimizes the total period of construction.

12 (d) **Waiver of joint Excavation requirements.** Applicants may seek a waiver of the
13 joint Excavation requirements with respect to a particular Excavation. Within thirty (30)
14 calendar days of receipt of a written request for a waiver, the Director, in his or her discretion,
15 may grant a waiver to the joint Excavation requirements for good cause. In making his or her
16 decision on the request for waiver, the Director shall consider the impact of the proposed
17 Excavation on the neighborhood, the Applicant's need to provide services to a property or
18 area, facilitating the deployment of new technology as directed pursuant to official City policy,
19 and the public health, safety, welfare, and convenience. The Director shall indicate in written,
20 electronic, or facsimile communication the basis for granting any waiver pursuant to this
21 Subsection. The Director may place additional conditions on any Permit(s) subject to a
22 waiver, including, but not limited to, the charging of additional fees pursuant to Section 2.4.43.
23 The Director's decision regarding waivers of the joint Excavation requirements shall be final.

24 **SUBARTICLE III - PERMITS TO EXCAVATE**

25 **SEC. 2.4.20. ACTION ON APPLICATIONS FOR PERMITS TO EXCAVATE.**

1 (a) After receipt of an application for a Permit to Excavate, the Department, within a
2 reasonable time period, shall determine whether an application is complete.

3 (b) If the application is deemed to be incomplete, the Department promptly shall
4 advise the Applicant in a written, electronic, or facsimile communication of the reasons for
5 rejecting the application as incomplete.

6 (c) If the application is deemed to be complete, the Department, in its discretion, may
7 deny, approve, or conditionally approve the application.

8 (i) If the application is approved or conditionally approved, the Department shall
9 issue a permit to the Applicant. The Department may condition a Permit with specified
10 requirements that preserve and maintain the public health, safety, welfare, and convenience.
11 The Department shall inform the Permittee of the basis for such requirements.

12 (ii) If the application is denied, the Department shall advise the Applicant in a
13 written, electronic, or facsimile communication of the basis for denial.

14 **SEC. 2.4.20.1. TERMS AND LIMITATIONS.** The Permit shall specify the location,
15 extent, and method of the Excavation, the start date and duration of the Excavation, the
16 Permittee to whom the Permit is issued, and any conditions placed on the Permit.

17 **SEC. 2.4.20.2. DURATION AND VALIDITY.** Permits shall be void if the Excavation
18 has not begun within thirty (30) calendar days of the start date specified in the Permit, if the
19 Excavation is not prosecuted diligently to its conclusion, or if the Excavation, including
20 restoration, has not been completed within the specified duration; provided, however, that the
21 Director, in his or her discretion, may issue extensions to the start date, the duration of
22 Excavation, or both upon written request from the Permittee.

23 **SEC. 2.4.20.3. NON-TRANSFERABILITY OF PERMITS.** Permits are not transferable
24 from Owner to Owner.

1 **SEC. 2.4.21. MORATORIUM STREETS.** The Department shall not issue any Permit
2 to Excavate in any Moratorium Street; provided, however, that the Director, in his or her
3 discretion, may grant a waiver for good cause. The Director is specifically authorized to grant
4 a waiver for an Excavation that facilitates the deployment of new technology as directed
5 pursuant to official City policy. The Director shall issue his decision on a waiver within a
6 reasonable period after receipt of a written request for a waiver. The Director may place
7 additional conditions on a Permit subject to a waiver, including, but not limited to, the charging
8 of additional fees pursuant to Section 2.4.43. The Director's decision regarding a waiver shall
9 be final.

10 **SEC. 2.4.22. EMERGENCY EXCAVATION.** Nothing contained in this Article shall be
11 construed to prevent any Person from taking any action necessary for the preservation of life
12 or property or for the restoration of interrupted service provided by a Municipal or Utility
13 Excavator when such necessity arises during days or times when the Department is closed.
14 In the event that any Person takes any action to Excavate or cause to be Excavated the
15 Public Right-of-Way pursuant to this Section, such Person shall apply for an emergency
16 Permit within four hours after the Department's offices are first opened. The Applicant for an
17 emergency Permit shall submit a written statement of the basis of the emergency action and
18 describe the Excavation performed and any work remaining to be performed.

19 **SEC. 2.4.23. LIABILITY AND INDEMNIFICATION.** Each Permit, except one obtained
20 by a Municipal Excavator, shall incorporate by reference and require the Permittee and
21 Owner to comply with the liability, indemnity, insurance, and taxable possessory interest
22 provisions set forth below in this Section; provided, however, that the Director, with the
23 concurrence of the City Controller and City Risk Manager, may modify the indemnity and
24 insurance provisions as they pertain to a particular Permit.

1 (a) Liability upon Owner and Permittee. Each Owner and Permittee is wholly
2 responsible for the quality of the Excavation performed in the Public Right-of-Way and both
3 the Owner and Permittee are jointly and severally liable for all consequences of any condition
4 of such Excavation and any Facilities installed in the Public Right-of-Way. The issuance of
5 any Permit, inspection, repair, or suggestion, approval, or acquiescence of any person
6 affiliated with the Department shall not excuse any Owner or Permittee from such
7 responsibility or liability.

8 (b) Indemnification, defense, and hold harmless. (i) Each Owner and Permittee
9 shall agree on its behalf and that of any successor or assign to indemnify, defend, protect,
10 and hold harmless the City, including, without limitation, each of its commissions,
11 departments, officers, agents, and employees (hereinafter in this Subsection collectively
12 referred to as "San Francisco") from and against any and all actions, claims, costs, damages,
13 demands, expenses, fines, injuries, judgments, liabilities, losses, penalties, or suits including,
14 without limitation, attorneys' fees and costs (collectively, "claims") of any kind allegedly arising
15 directly or indirectly from:

16 (1) any act by, omission by, or negligence of, Owner or Permittee or its
17 subcontractors, or the officers, agents, or employees of either, while engaged in the
18 performance of the Excavation authorized by the Permit, or while in or about the property
19 subject to the Permit for any reason connected in any way whatsoever with the performance
20 of the Excavation authorized by the Permit, or allegedly resulting directly or indirectly from the
21 maintenance or installation of any equipment, Facility(ies), or structures authorized under the
22 Permit;

23 (2) any accident, damage, death, or injury to any contractor or
24 subcontractor, or any officer, agent, or employee of either of them, while engaged in the
25 performance of the Excavation authorized by the Permit, or while in or about the property for

1 any reason connected with the performance of the Excavation authorized by the Permit, or
2 arising from liens or claims for services rendered or labor or materials furnished in or for the
3 performance of the Excavation authorized by the Permit:

4 _____ (3) any accident, damage, death, or injury to any person(s) or accident,
5 damage, or injury to any real or personal property in, upon, or in any way allegedly connected
6 with the Excavation authorized by the Permit from any cause or claims arising at any time;
7 and,

8 _____ (4) any release or discharge, or threatened release or discharge, of any
9 hazardous material caused or allowed by Permittee about, in, on, or under the Excavation site
10 subject to the Permit or the environment. As used herein, "hazardous material" means any
11 gas, material, substance, or waste which, because of its quantity, concentration, or physical
12 or chemical characteristics, is deemed by any federal, state, or local governmental authority
13 to pose a present or potential hazard to human health or safety or to the environment.

14 "Release" when used with respect to hazardous materials shall include any actual or
15 imminent disposing, dumping, emitting, emptying, escaping, injecting, leaching, leaking,
16 pumping, pouring, or spilling.

17 _____ (ii) Upon the request of San Francisco, the Owner or Permittee, at no cost or
18 expense to San Francisco, must indemnify, defend, and hold harmless San Francisco against
19 any claims, regardless of the alleged negligence of San Francisco or any other party, except
20 only for claims resulting directly from the sole negligence or willful misconduct of San
21 Francisco. Each Owner and Permittee specifically acknowledges and agrees that it has an
22 immediate and independent obligation to defend San Francisco from any claims which
23 actually or potentially fall within the indemnity provision, even if the allegations are or may be
24 groundless, false, or fraudulent, which obligation arises at the time such claim is tendered to
25 Owner or Permittee by San Francisco and continues at all times thereafter. In addition, San

1 Francisco shall have a cause of action for indemnity against each Owner and Permittee for
2 any costs San Francisco may be required to pay as a result of defending or satisfying any
3 claims that arise from or in connection with the Permit, except only for claims resulting directly
4 from the sole negligence or willful misconduct of San Francisco. Owner and Permittee agree
5 that the indemnification obligations assumed under the Permit shall survive expiration of the
6 Permit or completion of Excavation.

7 (c) Insurance. (i) Each Owner or Permittee shall maintain in full force and effect,
8 throughout the term of the Permit, an insurance policy or policies issued by an insurance
9 company or companies satisfactory to the City's Controller and Risk Manager. Policy or
10 policies shall afford insurance covering all operations, vehicles, and employees, as follows:

11 (1) Workers' Compensation with employers' liability limits not less than
12 \$1,000,000 each accident.

13 (2) Commercial General Liability Insurance with limits not less than
14 \$1,000,000 each occurrence combined single limit for bodily injury and property damage,
15 including contractual liability; personal injury; explosion, collapse, and underground (xcu);
16 products; and completed operations.

17 (3) Business Automobile Liability Insurance with limits not less than
18 \$1,000,000 each occurrence combined single limit for bodily injury and property damage,
19 including owned, non-owned, and hired auto coverage, as applicable.

20 (4) Contractors' Pollution Liability Insurance, on an occurrence form, with
21 limits not less than \$1,000,000 each occurrence combined single limit for bodily injury and
22 property damage and any deductible not to exceed twenty-five thousand dollars (\$25,000)
23 each occurrence.

24 (ii) Said policy or policies shall include the City and its officers and employees
25 jointly and severally as additional insureds, shall apply as primary insurance, shall stipulate

1 that no other insurance effected by the City will be called on to contribute to a loss covered
2 thereunder, and shall provide for severability of interests. Said policy or policies shall provide
3 that an act or omission of one insured, which would void or otherwise reduce coverage, shall
4 not reduce or void the coverage as to any other insured. Said policy or policies shall afford
5 full coverage for any claims based on acts, omissions, injury, or damage which occurred or
6 arose, or the onset of which occurred or arose, in whole or in part, during the policy period.
7 Said policy or policies shall be endorsed to provide thirty (30) calendar days advance written
8 notice of cancellation or any material change to the Department.

9 _____ (iii) Should any of the required insurance be provided under a claims-made
10 form, the insured Owner or Permittee shall maintain such coverage continuously throughout
11 the term of the Permit, and, without lapse, for a period of three (3) years beyond the
12 expiration or termination of the Permit, to the effect that, should occurrences during the term
13 of the Permit give rise to claims made after expiration or termination of the Permit, such
14 claims shall be covered by such claims-made policies.

15 _____ (iv) Should any of the required insurance be provided under a form of coverage
16 that includes a general annual aggregate limit or provides that claims investigation or legal
17 defense costs be included in such general annual aggregate limit, such general aggregate
18 limit shall be double the occurrence or claims limits specified above in Subsection (c)(i).

19 _____ (v) Such insurance shall in no way relieve or decrease Permittee's and Owner's
20 obligation to indemnify the City under Subsection (b) or any other provision of this Article.

21 _____ (vi) Certificates of insurance, in the form satisfactory to the Department,
22 evidencing all coverages above, shall be furnished to or maintained on file with the
23 Department before issuance of a Permit, with complete copies of policies furnished promptly
24 upon the Department's request.

1 (vii) Where a Permittee who is an Owner is self-insured, and such insurance is no less
2 broad and affords no less protection to the City than the requirements specified above in
3 Subsection (c), the Department, in consultation with the City's Controller and Risk Manager,
4 may accept such insurance as satisfying the requirements of Subsection (c). Evidence of
5 such insurance shall be provided in the manner specified in Subsection (c)(vi).

6 (d) **Taxable possessory interest.** Each Owner and Permittee shall acknowledge on
7 its behalf and that of any successor or assign that its Permit incorporates the following
8 statements: The Owner of the Facility(ies) for which the Permit to Excavate was obtained
9 and the Permittee recognize and understand that the Permit may create a possessory interest
10 subject to property taxation and that Owner and Permittee may be subject to the payment of
11 property taxes levied on such interest under applicable law. Owner and Permittee agree to
12 pay taxes of any kind, including possessory interest taxes, if any, that may be lawfully
13 assessed on Owner's and Permittee's interest under the Permit to Excavate or for use of the
14 Public Right-of-Way and to pay any other excises, licenses, taxes, or permit charges or
15 assessments based on Owner's and Permittee's usage of the Public Right-of-Way that may
16 be imposed on Owner and Permittee by applicable law. Owner and Permittee shall pay all of
17 such charges when they become due and before delinquency.

18 **SEC. 2.4.24. PERMIT TO BE AVAILABLE AT EXCAVATION SITE.** The Permit or a
19 photo duplicate shall be available for review at the site of the Excavation for the duration of
20 the Excavation and shall be shown, upon request, to any police officer or any employee of a
21 City agency, board, commission, or department with jurisdictional responsibility over activities
22 in the Public Right-of-Way.

23 **SUBARTICLE IV - DEPOSITS AND FEES**

24 **SEC. 2.4.40. DEPOSIT.** Each Applicant shall submit and maintain with the
25 Department a bond, cash deposit, or other security acceptable to the Department securing

1 the faithful performance of the obligations of the Owner and Applicant under any Permit(s) to
2 Excavate and the compliance with all terms and conditions of this Article (the "Deposit"). The
3 Deposit shall be in the sum of twenty-five thousand dollars (\$25,000.00) in favor of the
4 "Department of Public Works, City and County of San Francisco." Utility and Municipal
5 Excavators and other frequent Applicants may submit a single Deposit for multiple
6 Excavations so long as a constant balance of twenty-five thousand dollars (\$25,000.00) is
7 maintained on file with the Department. If the Director has deducted from such a Deposit
8 pursuant to Section 2.4.46(c), the Utility or Municipal Excavator or other frequent Applicant
9 must restore the full amount of the Deposit prior to the Department's issuance of a
10 subsequent Permit.

11 **SEC. 2.4.41. ADMINISTRATIVE FEE.** Each Applicant shall pay to the Department a
12 fee of twenty-five dollars (\$25.00) for each Block in which Excavation is proposed to
13 compensate the Department for the cost incurred to administer the provisions of this Article.

14 **SEC. 2.4.42. INSPECTION FEE.** Each Applicant shall pay to the Department a fee of
15 eighty cents (\$0.80) per square foot of pavement to be Excavated for the cost of the
16 inspection and regulatory services provided to such Applicant when he or she becomes a
17 Permittee pursuant to this Article. No inspection fees shall be collected from a Municipal
18 Excavator when: (a) the Municipal Excavator pays the Department to manage and inspect the
19 construction or (b) the Excavation is to construct, replace, or repair Municipal Railway tracks.

20 **SEC. 2.4.43. ADDITIONAL FEES FOR EXCAVATION.** In instances where
21 administration of this Article or inspection of an Excavation is or will be unusually costly to the
22 Department, the Director, in his or her discretion, may require an Applicant or Permittee to
23 pay any additional sum in excess of the amounts charged pursuant to Sections 2.4.41 and
24 2.4.42. This additional sum shall be sufficient to recover actual costs incurred by the
25 Department and shall be charged on a time and materials basis. The Director also may

1 charge for any time and materials costs incurred by other agencies, boards, commissions, or
2 departments of the City in connection with the administration or inspection of the Excavation.
3 Whenever additional fees are charged, the Director, upon request of the Applicant or
4 Permittee, shall provide in writing the basis for the additional fees and an estimate of the
5 additional fees.

6 **SEC. 2.4.44. STREET DAMAGE RESTORATION FEE. (a) Calculation of fee.**

7 Each Applicant shall pay to the Department a Street Damage Restoration Fee to recover the
8 increased repaving and reconstruction costs incurred by the City that are reasonably
9 attributable to the impact of Excavation in City streets. The Fee shall not generate proceeds
10 in excess of the City's costs of street repaving and reconstruction reasonably attributable to
11 the Excavation for which the Fee is charged. The amount of the Fee shall be calculated as
12 follows:

<u>Age of Block (Years Since Last Resurfacing)</u>	<u>Fee Amount</u>
0-5 years	\$3.50 per square foot of Excavation
6-10 years	\$3.00 per square foot of Excavation
11-15 years	\$2.00 per square foot of Excavation
15-20 years	\$1.00 per square foot of Excavation

18 Where an Applicant proposes an Excavation in a Block whose age is unknown to the
19 Department and the Block's pavement condition score recorded in the Department's
20 Pavement Management and Mapping database is greater than 53, the Applicant shall be
21 charged the Street Damage Restoration Fee at the rate specified for streets 15-20 years old.

22 **(b) Exceptions from the Street Damage Restoration Fee to encourage**
23 **coordination.** To encourage coordination of Excavation with the Department's repaving
24 schedule and to encourage Excavation in older Blocks and those with lower pavement
25

1 condition scores: (i) No Fee will be assessed for Excavation in Blocks with a recorded
2 pavement condition score of 53 or less, or a recorded age of greater than 20 years.

3 (ii) No Fee will be assessed for Excavation in a Block scheduled to be
4 completed by an Applicant less than two (2) years prior to the Department's scheduled
5 repaving of that Block.

6 (c) **Fee waived for Excavation that includes repaving.** The Street Damage
7 Restoration Fee ~~may~~ ^{shall} be waived for an Excavation where an Applicant proposes to

8 reconstruct and repave the entire Block affected by the Excavation or any and all traffic lanes
9 affected by the Excavation. ~~Such~~ ^{Where such} reconstruction and repaving ~~shall~~ ^{is} be performed consistent
10 with all of the standards set forth in orders, rules, plans and specifications of the Department.

11 (d) **Fee waiver for in kind payment of fee - installation of conduit.** With the
12 approval of the Director of the Department of Public Works and the Director of the
13 Department of Telecommunications and Information Services, where it would minimize
14 neighborhood disruption, and where savings in street resurfacing costs through avoidance of
15 future Excavation are anticipated to exceed amounts that would otherwise be due from the
16 Street Damage Restoration Fee, some portion or all of the otherwise applicable Street
17 Damage Restoration Fee may be waived for an Excavation in which the Applicant installs: (i)
18 conduit for City use or control or (ii) conduit made available via approval and coordination with
19 the Department and Department of Telecommunications and Information Services to other
20 subsequent Applicants or excavators such that future Excavation is permanently avoided.
21 The City shall make any available space in such conduit available to subsequent Applicants
22 to avoid future Excavation in the Block. The Departments of Public Works and
23 Telecommunications and Information Services shall adopt orders or regulations prescribing
24 circumstances under which in-kind payment of all or some portion of the fee shall be
25 permitted, prescribing specifications for the conduit to be installed, and prescribing terms

1 under which the conduit shall be made available to interested parties on a competitively
2 neutral and non-discriminatory basis.

3 (e) **Exception for Excavation in Sidewalks, concrete Blocks, or unaccepted**
4 **Blocks.** No Street Damage Restoration Fee shall be assessed with respect to Excavation in
5 a Sidewalk, Block constructed solely of portland cement concrete, or a Block that the City has
6 not accepted for maintenance purposes.

7 (f) **Exception for Excavation to accommodate the City's use.** No Street Damage
8 Restoration Fee shall be assessed for Excavation performed to relocate the Facilities of a
9 Utility Excavator to accommodate the City's use of the Block.

10 **SEC. 2.4.45. REPORT TO BOARD OF SUPERVISORS.**

11 Within one (1) year after adoption of the Street Damage Restoration Fee, and every
12 three (3) years thereafter, the Director shall review the proceeds of the Street Damage
13 Restoration Fee, the costs of repaving and reconstruction reasonably attributed to Excavation
14 in City streets, and any other new information that shall become available, and prepare a
15 report to the Board of Supervisors. Based upon the results of the review, the Director shall
16 recommend to the Board of Supervisors any necessary adjustments to the Fee, along with
17 written justification for the recommended adjustment and any necessary legislation. In the
18 event that Fee proceeds have exceeded, or are anticipated to exceed, the costs for street
19 repaving and reconstruction reasonably attributable to Excavation, the Director shall
20 recommend legislation to the Board of Supervisors that modifies the Fee to ensure that Fee
21 proceeds do not exceed the costs for street repaving and reconstruction reasonably
22 attributable to Excavation. In the event that Fee proceeds have undercollected, or are
23 anticipated to undercollect, for the costs for street repaving and reconstruction reasonably
24 attributable to Excavation, the Director may recommend legislation to the Board of
25

1 Supervisors that modifies the Fee to more accurately recover the costs for street repaving
2 and reconstruction reasonably attributable to Excavation.

3 **SEC. 2.4.46. COLLECTION, RETURN, AND REFUND OF DEPOSIT AND FEES.**

4 (a) **Collection of Deposit and fees.** The Director shall establish procedures for
5 billing, collection, and refund of a Deposit(s), fees, and other charges provided for in this
6 Article. The Director shall deposit all funds in accordance with Sections 10.117-119 and
7 10.117-120 of the San Francisco Administrative Code.

8 (b) **Refunds.** (i) When an application is either withdrawn by the Applicant or denied
9 by the Department before the start of construction, the Applicant's administrative fee
10 assessed under Section 2.4.41 shall be retained and those fees assessed under Sections
11 2.4.42, 2.4.43, and 2.4.44 shall be returned to the Applicant.

12 (ii) In the event that the Director determines, after preparing a report pursuant
13 to Section 2.4.45, that there has been an overcollection of the Street Damage Restoration
14 Fee assessed under Section 2.4.44, the Director shall establish procedures to refund excess
15 Fee proceeds in a manner which fairly and reasonably reimburses those Excavators who paid
16 the Fee during the relevant period consistent with their level of Excavation.

17 (c) **Deductions from Deposit.** The Director may make deductions from the balance
18 of a Permittee's Deposit(s) to ensure the faithful performance of the obligations under a
19 Permit to Excavate, to pay fees, to offset the costs for any Excavation done or repairs made
20 by the Department, or to pay any assessed penalties or costs associated with violations of
21 this Article.

22 (d) **Retention of Deposit for three (3) years.** Each Deposit made pursuant to
23 Section 2.4.40 shall be retained by the City for a period of three (3) years after the
24 satisfactory completion of the Excavation to secure the obligations in the Permit and this
25 Article.

1 (e) **Return of Deposit.** Upon expiration of three years from the satisfactory
2 completion of the Excavation, a Permittee's Deposit(s), less the deductions made pursuant to
3 Subsection (c), shall be returned to the Permittee or to its assigns.

4 **SUBARTICLE V - EXCAVATIONS**

5 **SEC. 2.4.50. NOTICES.** Any Permittee who Excavates or causes to be made an
6 Excavation in the Public Right-of-Way shall provide notice as follows:

7 (a) **Two to fourteen-day Excavations.** For Excavations that will be completed and
8 restored in a period exceeding twenty-four (24) hours but within fourteen (14) calendar days
9 of commencement, the Permittee shall post and maintain notice at the site of the Excavation.
10 The notice shall include the name, telephone number, and address of the Owner and
11 Permittee, a description of the Excavation to be performed, and the duration of the
12 Excavation. The notice shall be posted at least every 100' along any Block where the
13 Excavation is to take place at least seventy-two (72) hours prior to commencement of the
14 Excavation.

15 (b) **Notice for Major Work.** (i) At least thirty (30) calendar days prior to
16 commencement of the Excavation, the Permittee shall provide written notice delivered by
17 United States mail to each property owner on the Block(s) affected by the Excavation and
18 each affected neighborhood and merchant organization that is listed in the City Planning
19 Department's Directory of Neighborhood Organizations and Service Agencies. The latest
20 City-wide Assessor's roll for names and addresses of owners shall be used for the mailed
21 notice. This notice shall include the same information that is required for the posted notice
22 pursuant to this Subsection (a) and the name, address, and 24-hour telephone number of a
23 person who will be available to provide information to and receive complaints from any
24 member of the public concerning the Excavation.

1 (ii) The Permittee shall post and maintain notice at the site of the Excavation at
2 least ten (10) calendar days prior to commencement of the Excavation in the same manner
3 and with the same information as required for posted notice pursuant to Subsection (a). At
4 least ten (10) calendar days prior to commencement of the Excavation, the Permittee also
5 shall deliver a written notice to each dwelling unit on the Block(s) affected by the Excavation.
6 This written notice shall include the same information that is required for the written notice
7 pursuant to this Subsection (i).

8 (iii) Before commencement of construction, a Permittee for Major Work shall
9 post and maintain Excavation project signs at the site of the Excavation that describe the
10 Excavation being done and bear the name, address, and 24-hour telephone number of a
11 contact person for the Owner and Permittee. Said Excavation project signs shall be in format,
12 quantity, and size specified by the Department.

13 (c) **Notice for emergency Excavation.** For emergency Excavation, the Permittee, or
14 the Applicant if a Permit has not been issued, shall post and maintain notice at the site of the
15 Excavation during the construction period. The notice shall include the name, telephone
16 number, and address of the Owner and Permittee, a description of the Excavation to be
17 performed, and the duration of the Excavation. The notice shall be posted at least every 100'
18 along any Block where the Excavation is to take place.

19 **SEC. 2.4.51. NOTICE FOR MARKING OF SUBSURFACE FACILITIES.** In
20 accordance with State law, any Person excavating in the Public Right-of-Way shall comply
21 with the requirements of the Underground Service Alert ("USA") regarding notification of
22 Excavation and marking of subsurface Facilities. Such Person shall provide USA with the
23 assigned number for the Permit to Excavate or other information as may be necessary to
24 properly identify the proposed Excavation.

25 **SEC. 2.4.52. LIMITS UPON EXCAVATION IN THE PUBLIC RIGHT-OF-WAY.**

1 (a) **Scope.** It is unlawful for any Permittee to make, to cause, or permit to be made,
2 any Excavation in the Public Right-of-Way outside the boundaries, times, and description set
3 forth in the Permit.

4 (b) **Rock wheel and trenchless technology.** Use of a rock wheel or trenchless
5 technology to excavate in the Public Right-of-Way is unlawful without prior written approval of
6 the Director.

7 (c) **Single Excavation maximum of 1,200 feet.** No single Excavation site shall be
8 longer than one thousand two hundred (1,200) feet in length at any time except with the prior
9 written approval of the Director.

10 **SEC. 2.4.53. REGULATIONS CONCERNING EXCAVATION SITES.** Each Owner
11 and Permittee shall be subject to requirements for Excavation sites that are set forth in
12 Department orders or regulations. Such orders or regulations shall include, but not be limited
13 to, the following measures:

14 (a) **Protection of the Excavation.** Each Permittee shall cover open Excavation with
15 steel plates ramped to the elevation of the contiguous street, pavement, or other Public Right-
16 of-Way, or otherwise protected in accordance with guidelines prescribed by the Department.

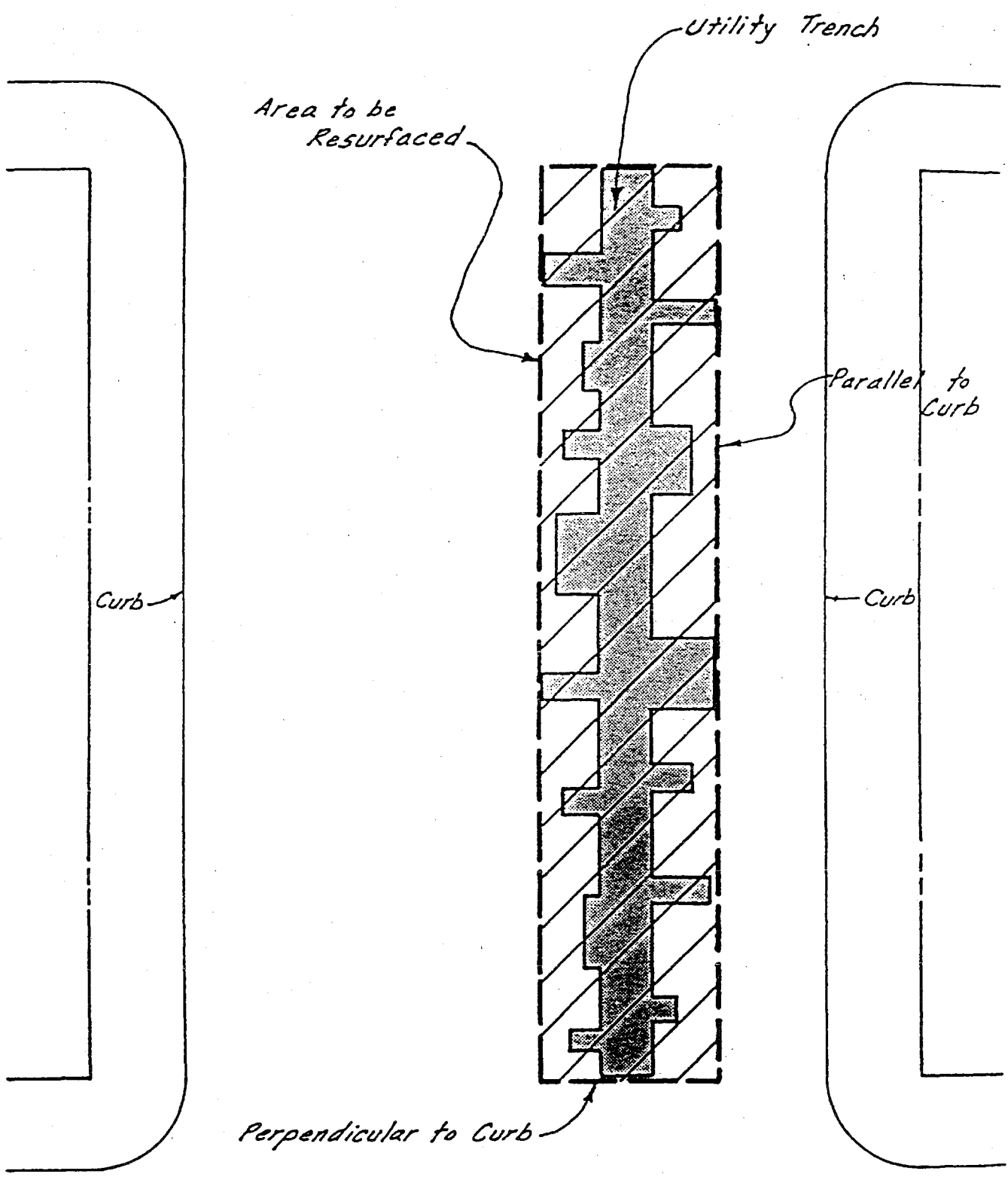
17 (b) **Housekeeping and removal of excavated material.** Each Permittee shall keep
18 the area surrounding the Excavation clean and free of loose dirt or other debris in a manner
19 deemed satisfactory to the Department. Excavation sites shall be cleaned at the completion
20 of each work day. In addition, the Permittee shall remove all excavated material from the site
21 of the Excavation no later than the end of each work day.

22 (c) **Storage of Materials and Equipment.** Materials and equipment that are to be
23 used for the Excavation within seven (7) calendar days may be stored at the site of the
24 Excavation, except that fill material, sand, aggregate, and asphalt-coated material may be
25 stored at the site only if it is stored in covered, locked containers.

1 (d) **Hazardous material.** Each Permittee shall be subject to hazardous material
2 guidelines for data collection; disposal, handling, release, and treatment of hazardous
3 material; site remediation; and worker safety and training. The Department, in consultation
4 with the Department of Public Health, shall develop, prescribe, and update such hazardous
5 material guidelines. The guidelines shall require the Permittee to comply with all federal,
6 state, and local laws regarding hazardous material. For purposes of this Subsection,
7 hazardous material shall mean any gas, material, substance, or waste which, because of its
8 quantity, concentration, or physical or chemical characteristics, is deemed by any federal,
9 state, or local governmental authority to pose a present or potential hazard to human health
10 or safety or to the environment.

11 **SEC. 2.4.54. STOP WORK ORDER, PERMIT MODIFICATION, AND PERMIT**
12 **REVOCATION.** When the Director has determined that a Person has violated this Article or
13 that an Excavation poses a hazardous situation or constitutes a public nuisance, public
14 emergency, or other threat to the public health, safety, or welfare, or when the Director
15 determines that there is a paramount public purpose, the Director is authorized to issue a
16 stop work order, to impose new conditions upon a Permit, or to suspend or revoke a Permit
17 by notifying the Permittee of such action in a written, electronic, or facsimile communication.

18 **SEC. 2.4.55. RESTORATION OF THE PUBLIC RIGHT-OF-WAY.** (a) **Restoration.**
19 In any case in which the Sidewalk, street, or other Public Right-of-Way is or is caused to be
20 Excavated, the Owner and Permittee shall restore or cause to be restored such Excavation in
21 the manner prescribed by the orders, regulations, and Standard Plans and Specifications of
22 the Department. At a minimum, trench restoration shall include resurfacing to a constant
23 width equal to the widest part of the Excavation in accordance with the following diagram:
24 provided, however, that the width of resurfacing need not exceed thirteen (13) feet:



1 **(b) Backfill, replacement of pavement base, and finished pavement.** Activities
2 concerning backfilling, replacement of pavement base, and finished pavement shall be
3 performed in a manner specified by the orders, regulations, and Standard Plans and
4 Specifications of the Department. In addition, these activities shall be subject to the following
5 requirements:

6 (i) **Backfill.** Each Excavation shall be backfilled and compacted within seventy-
7 two (72) hours from the time the construction related to the Excavation is completed.

8 (ii) **Replacement of pavement base.** Replacement of the pavement base shall
9 be completed within seventy-two (72) hours from the time the Excavation is backfilled.

10 (iii) **Finished pavement.** Finished pavement restoration shall be completed
11 within seventy-two (72) hours of replacement of the pavement base.

12 (c) **Modification to requirements.** Upon written request from the Permittee, the
13 Director may grant written approval for modifications to the requirements of Subsection (b).

14 (d) **Incomplete Excavation; completion by the Department.** In any case where an
15 Excavation is not completed or restored in the time and manner specified in the Permit, this
16 Article, or the orders, regulations, and Standard Plans and Specifications of the Department,
17 the Director shall order the Owner or Permittee to complete the Excavation as directed within
18 twenty-four (24) hours. If the Owner or Permittee should fail, neglect, or refuse to comply with
19 the order, the Director may complete or cause to be completed such Excavation in such
20 manner as the Director deems expedient and appropriate. The Owner or Permittee shall
21 compensate the Department for any costs associated with the administration, construction,
22 consultants, equipment, inspection, notification, remediation, repair, restoration, or any other
23 actual costs incurred by the Department or other agencies, boards, commissions, or
24 departments of the City that were made necessary by said Excavation. The cost of such
25 work also may be deducted from the Permittee's Deposit pursuant to Section 2.4.46(c). The

1 Director's determination as to the cost of any work done or repairs made shall be final. In
2 addition, the Owner or Person may be subject to those enforcement actions set forth in
3 Subarticle VII.

4 (e) Subject to the limitation set forth in Section 2.4.70, completion of an Excavation or
5 restoration by the Department in accordance with Subsection (d) shall not relieve the Owner
6 or Permittee from liability for future pavement failures at the Excavation site.

7 **SUBARTICLE VI - POST-EXCAVATION REPAIR, MAINTENANCE, AND PAVEMENT**
8 **FAILURE**

9 **SEC. 2.4.70. REPAIR AND MAINTENANCE OBLIGATION OF PERMITTEE.** Each
10 Owner and Permittee that excavates or causes to be made an Excavation in the Public Right-
11 of-Way shall be responsible to maintain, repair, or reconstruct the site of the Excavation so as
12 to maintain a condition acceptable to the Director until such time as the Public Right-of-Way is
13 reconstructed, repaved, or resurfaced by the Department.

14 **SEC. 2.4.71. SUBSURFACE OR PAVEMENT FAILURES.** In the event that
15 subsurface material or pavement over or immediately adjacent to any Excavation should
16 become depressed, broken, or fail in any way at any time after the Excavation has been
17 completed, the Director shall exercise his or her best judgment to determine the Person(s)
18 responsible, if any, for the failure in the subsurface or surface of the Public Right-of-Way and
19 shall designate such Person as the responsible party. The Director shall notify said Person(s)
20 of the condition, its location, and the required remedy, and such Person(s) shall repair or
21 restore, or cause to be repaired or restored, such condition to the satisfaction of the Director
22 within seventy-two (72) hours of the notification. The Director may extend the time for the
23 responsible party to repair or restore the affected Public Right-of-Way.

24 **SEC. 2.4.72. REPAIR BY THE DEPARTMENT.** (a) In the event that any Person(s)
25 fails, neglects, or refuses to repair or restore any condition pursuant to the Director's notice as

1 set forth in Section 2.4.71, the Director may repair or restore, or cause to be repaired or
2 restored, such condition in such manner as the Director deems expedient and appropriate.
3 The Person(s) identified by the Director as the responsible party shall compensate the
4 Department for any costs associated with the administration, construction, consultants,
5 equipment, inspection, notification, remediation, repair, restoration, or any other actual costs
6 incurred by the City that were made necessary by reason of the repair or restoration
7 undertaken by the Department. The cost of such work also may be deducted from the
8 Permittee's Deposit pursuant to Section 2.4.46(c). The Director's determination as to the cost
9 of the repair or restoration performed shall be final. In addition, the responsible party may be
10 subject to those enforcement actions set forth in Subarticle VII.

11 (b) Subject to the limitation set forth in Section 2.4.70, repair or restoration by the
12 Department in accordance with this Section shall not relieve the Person(s) from liability for
13 future pavement failures at the site of the repair or restoration.

14 **SEC. 2.4.73. EMERGENCY REMEDIATION BY THE DEPARTMENT.** (a) If, in the
15 judgment of the Director, the site of an Excavation is considered hazardous or if it constitutes
16 a public nuisance, public emergency, or other imminent threat to the public health, safety, or
17 welfare that requires immediate action, the Director may order the condition remedied by a
18 written, electronic, or facsimile communication to the Person(s) responsible, if any, for
19 remedying the condition and shall designate such Person as the responsible party.

20 (b) If the responsible party is inaccessible or fails, neglects, or refuses to take
21 immediate action to remedy the condition as specified in said communication, the Director
22 may remedy the condition or cause the condition to be remedied in such manner as the
23 Director deems expedient and appropriate. The Person(s) identified by the Director as the
24 responsible party shall compensate the Department for any reasonable costs associated with
25 the administration, construction, consultants, equipment, inspection, notification, remediation,

1 repair, restoration, or any other actual costs incurred by the Department or other agencies,
2 boards, commissions, or departments of the City that were made necessary by reason of the
3 emergency remediation undertaken by the Department. The cost of such work also may be
4 deducted from the Permittee's Deposit pursuant to Section 2.4.46(c). The Director's
5 determination as to the cost of any remediation performed shall be final. In addition, the
6 responsible party may be subject to those enforcement actions set forth in Subarticle VII.

7 (c) Subject to the limitation set forth in Section 2.4.70, remediation by the Department
8 in accordance with this Section shall not relieve the Person(s) from liability for future
9 pavement failures at the site of the remediation.

10 **SUBARTICLE VII - VIOLATION OF ARTICLE**

11 **SEC. 2.4.80. VIOLATION OF ARTICLE.** (a) The Director shall have authority to
12 enforce this Article against violations thereof. Upon the Director's determination that a
13 Person has violated any provision of this Article, the Standard Plans and Specifications,
14 notices, orders, or regulations of the Department; any term, condition, or limitation of any
15 Permit; or is subject to any outstanding fees, Deposits, or other charges, the Director shall
16 serve notice on said Person to abate the violation. Any Person whom the Director determines
17 to be responsible for violating this Article may be subject to any or all of the enforcement
18 mechanisms specified in Sections 2.4.81, 82, and 83.

19 (b) Violations by Municipal Excavators are not subject to the penalties and fines
20 specified in Sections 2.4.81, 82, and 83. The Director is empowered to abate violations by
21 Municipal Excavators and may charge the cost of such abatement to the Deposit or budget of
22 the Municipal Excavator, take other appropriate action against such Excavator within the
23 Director's authority, or both.

24 **SEC. 2.4.81. ADMINISTRATIVE PENALTIES AND COSTS.**

1 (a) **Notice of violation.** The Director shall notify the Person responsible for a violation
2 that he or she has seventy-two (72) hours to correct or otherwise remedy the violation or be
3 subject to the imposition of administrative penalties. For those violations subject to the
4 incomplete Excavation provisions of Section 2.4.55(d), the Person responsible shall have
5 twenty-four (24) hours to remedy the violation or be subject to the imposition of administrative
6 penalties. For violations that create an imminent danger to public health, safety, or welfare or
7 are otherwise subject to Section 2.4.73, the Director shall notify the Person responsible to
8 immediately remedy the violation or be subject to the imposition of administrative penalties.
9 The Director's notice of violation shall be a written, electronic, or facsimile communication and
10 shall specify the manner in which the violation must be remedied.

11 (b) **Amount of administrative penalties.** Administrative penalties assessed pursuant
12 to Subsection (a) shall not exceed one thousand dollars (\$1,000.00) per day, per violation. In
13 assessing the amount of the administrative penalty, the Director may consider any one or
14 more of the following: the nature and seriousness of the misconduct, the number of
15 violations, the persistence of the misconduct, the length of time over which the misconduct
16 occurred, the willfulness of the violator's misconduct, and the violator's assets, liabilities, and
17 net worth.

18 (c) **Enforcement costs.** In addition to the administrative penalty assessed pursuant
19 to Subsection (a), the Director may assess enforcement costs to cover the reasonable costs
20 incurred in enforcing the administrative penalty, including reasonable attorneys' fees. Any
21 enforcement costs imposed and recovered shall be distributed according to the purpose for
22 which the Director imposed them.

23 (d) **Accrual of penalties and costs.** Penalties and costs assessed under this
24 Section shall continue to accrue against the Person responsible for the violation until the
25 violation of this Article is corrected or otherwise remedied in the judgment of the Director or

1 the responsible party pays the assessed penalties and costs. If such penalties and costs are
2 the subject of a request for administrative review or an appeal, then the accrual of such
3 penalties and costs shall be stayed until the determination concerning the administrative
4 penalties is final.

5 _____ (e) **Notice imposing administrative penalties.** If the Person designated as the
6 responsible party fails to remedy the violation within the time specified in the notice of
7 violation, the Director shall notify in writing the responsible party of the Director's imposition of
8 administrative penalties. This notice shall include the amount of the penalties and costs and
9 declare that such penalties and costs are due and payable to the City Treasurer within thirty
10 (30) calendar days. The notice also shall state that the Person designated as the responsible
11 party has the right, pursuant to Subsection (g), to request administrative review of the
12 Director's determination as to the designation of the responsible party and the assessment of
13 penalties.

14 _____ (f) **Finality of the Director's determination and collection of assessed penalties.**
15 If no request for administrative review is filed pursuant to Subsection (g), the Director's
16 determination is final. Thereafter, if the penalties and costs are not paid within the time
17 specified in Subsection (e), the Director is empowered to pursue any method of collection of
18 such penalties and costs authorized by local law including, but not limited to deductions of the
19 Permittee's Deposit pursuant to Section 2.4.46(c).

20 _____ (g) **Administrative review.** Any Person that is designated as the party responsible
21 for a violation or is subject to an administrative penalty may seek administrative review of the
22 designation or the assessment of the penalty within ten (10) calendar days of the date of
23 notification imposing administrative penalties. Administrative review shall be initiated by filing
24 with the Director a request for review that specifies in detail the basis for contesting the
25 designation of the responsible party or the assessment of the penalty or cost.

1 (h) **Notice for and scheduling of administrative hearing.** Whenever an
2 administrative review hearing is requested pursuant to Subsection (g), the Director, within ten
3 (10) calendar days of the date of receipt of the request, shall notify the affected parties of the
4 date, time, and place of the hearing by certified mail. Such hearing shall be held no later than
5 thirty (30) calendar days after the Director received the request for administrative review,
6 unless extended by mutual agreement of the affected parties. The Director shall appoint a
7 hearing officer for such hearing.

8 (i) **Submittals for the administrative review hearing.** The parties to the hearing
9 shall submit written information to the hearing officer including, but not limited to, the
10 following: the statement of issues to be determined by the hearing officer and a statement of
11 the evidence to be offered at the hearing.

12 (j) **Conduct of the administrative review hearing.** The administrative review
13 hearing is a public hearing and shall be tape recorded. Any party to the hearing may at his or
14 her own expense, cause the hearing to be recorded by a certified court reporter. During the
15 hearing, evidence and testimony may be presented to the hearing officer. Written decisions
16 and findings shall be rendered by the hearing officer within ten (10) calendar days of the
17 hearing. Copies of the findings and decision shall be served upon the parties to the hearing
18 by certified mail. A notice that a copy of the findings and decisions is available for inspection
19 between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday shall be posted at the
20 offices of the Department of Public Works.

21 (k) **Appeals of the Director's decision on the hearing officer's recommendation.**
22 The decision of the hearing officer shall be a recommendation to the Director, and the
23 Director, within five (5) calendar days of receipt of such recommendation, shall adopt, modify,
24 or deny such recommendation. The Director's decision on the hearing officer's
25 recommendation is final. Such decision shall be served upon the parties to the hearing and

1 posted in the same manner as the hearing officer's decision as set forth in Subsection (j).
2 Within twenty (20) calendar days after service of the Director's decision, any aggrieved party
3 may seek review of the decision by the municipal court according to the procedures set forth
4 in California Government Code Section 53069.4.

5 (l) **Finality of Director's decision.** If no notice of appeal of the Director's decision is
6 timely filed, the decision shall be deemed final. If any imposed administrative penalties and
7 costs have not been deposited at this time, the Director may proceed to collect the penalties
8 and costs pursuant to Subsection (f).

9 **SEC. 2.4.82. CIVIL PENALTIES AND FEES.** (a) The Director may call upon the City
10 Attorney to maintain an action for injunction to restrain or summary abatement to cause the
11 correction or abatement of the violation of this Article, and for assessment and recovery of a
12 civil penalty and reasonable attorneys' fees for such violation.

13 (b) Any person who violates this Article may be liable for a civil penalty, not to exceed
14 five hundred dollars (\$500.00) for each day such violation is committed or permitted to
15 continue, which penalty shall be assessed and recovered in a civil action brought in the name
16 of the people of the City by the City Attorney in any court of competent jurisdiction. In
17 assessing the amount of the civil penalty, the court may consider any one or more of the
18 relevant circumstances presented by any of the parties to the case, including, but not limited
19 to, the following: the nature and seriousness of the misconduct, the number of violations, the
20 persistence of the misconduct, the length of time over which the misconduct occurred, the
21 willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net
22 worth. The City Attorney also may seek recovery of the attorneys fees and costs incurred in
23 bringing a civil action pursuant to this Section.

1 SEC. 2.4.83. CRIMINAL FINES. (a) The Director is authorized to enforce the criminal
2 provisions of this Article, to call upon the Chief of Police and authorized agents to assist in the
3 enforcement of this Article, or both.

4 (b) Any Person who violates this Article shall be deemed guilty of an infraction. Every
5 violation determined to be an infraction is punishable by (1) a fine not exceeding \$100 for the
6 first violation within one (1) year; (2) a fine not exceeding \$200 for a second violation within
7 one (1) year from the date of the first violation; (3) a fine not exceeding \$500 for the third and
8 each additional violation within one (1) year from the date of the first violation.

9 (c) When a government official authorized to enforce this Article pursuant to
10 Subsection (a) has reasonable cause to believe that any Person has committed an infraction
11 in the official's presence that is a violation of this Article, the official may issue a citation to
12 that Person pursuant to California Penal Code, Part II, Title 3, Chapters 5, 5C, and 5D.

13 (d) Among other violations, citations may be issued for the following specific
14 violations:

15 (i) Excavation without a valid Permit;

16 (ii) Excavation without proof of the Permit issuance on site;

17 (iii) Excavation without proper notice to the Underground Service Alert;

18 (iv) Excavation without proper public notice;

19 (v) Excavation that violates the San Francisco Traffic Code;

20 (vi) Excavation that violates the regulations concerning Excavation sites

21 (Section 2.4.53), which include, but are not limited to, protection of the Excavation,

22 housekeeping and removal of excavated material, and hazardous material;

23 (vii) Excavation that does not meet the 72-hour requirements for restoration

24 concerning backfill, replacement of pavement base, and finished pavement (Section

25 2.4.55(b)); or

1 (viii) Excavation that exceeds the scope of the Permit, including, but not limited
2 to, obstructing the path of automobile or pedestrian travel in excess of the permitted area.

3 (e) The nonpayment of fines or citations imposed pursuant to this Section, or the
4 continued existence of a condition in violation of this Section, shall be grounds for the Director
5 to deny a Permit to the responsible Person until such fines or citations have been paid and
6 the condition corrected.

7 **SEC. 2.4.84. DEPOSIT OF PENALTIES INTO EXCAVATION FUND.** Any penalty
8 assessed and recovered in an action brought pursuant to Sections 2.4.81 or 82 shall be
9 deposited in the Excavation Fund, as provided in Section 10.117-120 of the San Francisco
10 Administrative Code.

11 **SEC. 2.4.85. SUSPENSION OF ACTION ON APPLICATIONS.** A Person who is in
12 willful noncompliance with this Article shall not apply for nor be issued a subsequent Permit to
13 Excavate in the Public Right-of-Way unless the Director, by written authorization, grants a
14 waiver to this prohibition.

15 **SUBARTICLE VIII - MISCELLANEOUS PROVISIONS**

16 **SEC. 2.4.90. ABANDONMENT OF UNDERGROUND FACILITIES, REPORTS, AND**
17 **MAPS.** (a) Whenever any Facility(ies) is abandoned in the Public Right-of-Way, the Person
18 owning, using, controlling or having an interest therein, shall, within thirty (30) calendar days
19 after such abandonment, file in the office of the Director a statement in writing, giving in detail
20 the location of the Facility(ies) so abandoned. Each map, set of maps, or plans filed pursuant
21 to the provisions of this Article, including those maps or plans required by Section 2.4.11 shall
22 show in detail the location of each such Facility(ies) abandoned subsequent to the filing of the
23 last preceding map, set of maps, or plans.

24 (b) It shall be unlawful for any Person to fail, refuse, or neglect to file any map or set of
25 maps at the time, and in all respects as required by this Section.

1 **SEC. 2.4.91. IDENTIFICATION OF VISIBLE FACILITIES.** Each visible Facility
2 installed in the Public Right-of-Way shall be clearly identified with the name of the Owner of
3 the Facility. The Department shall adopt orders or regulations to specify other appropriate
4 methods for identification.

5 **SEC. 2.4.92. CITY'S OBLIGATION.** In undertaking enforcement of this Article, the
6 City is assuming an undertaking only to promote the general welfare. It is not assuming, nor
7 is it imposing on its officers and employees, an obligation for breach of which it is liable in
8 money damages to any person who claims that such breach proximately caused injury.

9 **SEC. 2.4.93. TIME LIMITATION ON COMMENCEMENT OF ACTIONS.** Any action
10 or proceeding to attack, review, set aside, void or annul this Article or any provision thereof
11 shall be commenced within one hundred twenty (120) calendar days from the effective date of
12 the ordinance approving this Article; otherwise, the provisions of this Article shall be held to
13 be valid and in every respect legal and incontestable.

14 **SEC. 2.4.94. SEVERABILITY.** If any part of this Article, or the application thereof to
15 any person or circumstance, is held invalid, the remainder of this Article, including the
16 application of such part of provision to other persons or circumstances, shall not be affected
17 thereby and shall continue in full force and effect. To this end, provisions of this Article are
18 severable.

19
20 Section 5. Part II, Chapter 10 of the San Francisco Municipal Code (Public Works
21 Code) is hereby amended by adding to Article 2.4 (Excavation in the Public Right-of-Way) the
22 following uncodified language:

23 (a) The Director is authorized to establish the Street Construction Coordination
24 Center, which shall be responsible for planning and coordinating Excavation in the Public
25 Right-of-Way.

1 (b) The Director shall meet with Utility and Municipal Excavators and other affected
2 parties six (6) and twelve (12) months after passage of this legislation to review the results of
3 this legislation's implementation. At such meetings, the Director shall review programs
4 adopted by California cities, such as Sacramento and Los Angeles, that create incentives for
5 Excavators to coordinate work and reduce construction and fee costs. Based upon such
6 review, the Director may recommend modifications to this legislation.

7 (c) Eighteen (18) months after passage of this legislation, the Director shall submit to
8 the Board of Supervisors a written report that describes the results achieved by this
9 legislation and recommends appropriate modifications to the legislation.

10
11 Section 6. Article XIII of Chapter 10 of the San Francisco Administrative Code is
12 hereby amended by adding Sections 10.117-119 and 10.117-120 to read as follows:

13 **SEC. 10.117-119. STREET DAMAGE RESTORATION FUND.**

14 (a) **Establishment of Fund.** There is hereby established a special fund in the City
15 Treasury for the purpose of receiving Street Damage Restoration Fee amounts paid pursuant
16 to Section 2.4.44 of the Public Works Code (Part II, Chapter 10 of the San Francisco
17 Municipal Code). This special fund shall be known as the Street Damage Restoration Fund.
18 The Fund shall be administered by the Department of Public Works. All donations of money,
19 gifts, grant, and bequests which may be offered to the Street Damage Restoration Fund are
20 hereby accepted.

21 (b) **Use of Monies.** Monies in the Street Damage Restoration Fund shall be used
22 exclusively for street resurfacing and reconstruction. Notwithstanding the foregoing, the
23 Director of the Department of Public Works may order refunds to be made from the Street
24 Damage Restoration Fund consistent with procedures adopted pursuant to Section 2.4.46 of
25 the Public Works Code.

1 (c) **Interest; Accrual of Monies in Fund.** Interest earned on monies in the Fund shall
2 become part of the principal thereof and shall not be expended for any purpose other than
3 those set forth in subsection (b). The balance remaining in the Fund at the close of any fiscal
4 year shall be deemed to have been provided for a specific purpose within the meaning of
5 Section 9.113 of the Charter and shall be carried forward and accumulated in the fund for the
6 purposes set forth in subsection (b).

7 **SEC. 10.117-120. EXCAVATION FUND.**

8 (a) **Reestablishment of Fund.** There is hereby reestablished the Excavation Fund for
9 the purpose of receiving all amounts paid pursuant to Article 2.4 of the Public Works Code
10 (Part II, Chapter 10 of the San Francisco Municipal Code) with the exception of Street
11 Damage Restoration Fees paid pursuant to Section 2.4.44 of the Public Works Code. The
12 Fund shall be relocated from the Department of Public Works to the City Treasury. The Fund
13 shall be administered by the Department of Public Works. All donations of money, gifts,
14 grant, and bequests which may be offered to the Excavation Fund are hereby accepted.

15 (b) **Use of Monies.** Monies in the Excavation Fund shall be used exclusively to
16 defray City costs in connection with Excavation and the administration of Article 2.4 of the
17 Public Works Code, including, but not limited to, administration, construction, consultants,
18 equipment, inspection, legal services, remediation, repair, restoration, training, travel, and
19 other costs incurred by the City.


20
21 [Remainder of page left blank intentionally]
22
23
24
25

1 (c) Interest; Accrual of Monies in Fund. Interest earned on monies in the
2 Fund shall become part of the principal thereof and shall not be expended for any purpose
3 other than those set forth in subsection (b). The balance remaining in the Fund at the close
4 of any fiscal year shall be deemed to have been provided for a specific purpose within the
5 meaning of Section 9.113 of the Charter and shall be carried forward and accumulated in the
6 fund for the purposes set forth in subsection (b).

7
8 APPROVED AS TO FORM:

9 LOUISE H. RENNE, City Attorney

10
11 By:


12 John D. Malamut
13 Deputy City Attorney



City and County of San Francisco

Veterans Building
401 Van Ness Avenue, Room 308
San Francisco, CA 94102-4532

Tails

Ordinance

File Number: 981038

Date Passed:

Ordinance amending Public Works Code by repealing Article 8 (Excavations in Streets), repealing Sections 672 and 673 of Article 14 (Underground Pipes, Wires and Conduits), and adding Article 2.4 (Excavation in the Public Right-of-Way), including Section 2.4.44 to impose a new street damage restoration fee; authorizing establishment of the Street Construction Coordination Center and requesting other official actions in connection therewith; making findings for these amendments; and amending Article XIII of Chapter 10 of the Administrative Code by adding Section 10.117-119 to create a fund for collection of street damage restoration fees and adding Section 10.117-120 to reestablish the excavation fund for the collection of other deposits, fees, and penalties imposed by Article 2.4.

October 26, 1998 Board of Supervisors — AMENDED

Ayes: 11 - Ammiano, Bierman, Brown, Katz, Kaufman, Leno, Medina, Newsom, Teng, Yaki, Yee

October 26, 1998 Board of Supervisors — PASSED ON FIRST READING AS AMENDED

Ayes: 11 - Ammiano, Bierman, Brown, Katz, Kaufman, Leno, Medina, Newsom, Teng, Yaki, Yee

November 2, 1998 Board of Supervisors — FINALLY PASSED

Ayes: 11 - Ammiano, Bierman, Brown, Katz, Kaufman, Leno, Medina, Newsom, Teng, Yaki, Yee

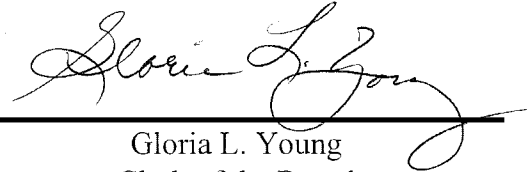
File No. 981038

I hereby certify that the foregoing Ordinance was **FINALLY PASSED** on November 2, 1998 by the Board of Supervisors of the City and County of San Francisco.

NOV 13 1998

~~NOV 13 1997~~

Date Approved



Gloria L. Young
Clerk of the Board



Mayor Willie L. Brown Jr.