

FILE NO. 020051

ORDINANCE NO. **33-02**

[Ordinance Amending Article 2.4 of the Public Works Code and Sections 10-100.230 and 11.9 of the Administrative Code Concerning Excavation in the Public Right-of-Way.]

**Ordinance amending Sections 2.4.2, 2.4.4, 2.4.10, 2.4.20.1, 2.4.20.2, 2.4.20.3, 2.4.23, 2.4.40, 2.4.41, 2.4.42, 2.4.45, 2.4.46, 2.4.50, 2.4.53, 2.4.55, 2.4.70, 2.4.80, 2.4.81, 2.4.83, and 2.4.85 of Article 2.4 of the Public Works Code, adding Sections 2.4.20.4 to Article 2.4 of the Public Works Code, and amending Sections 10.100-230 and 11.9 of the Administrative Code to modify and adopt new definitions; modify and adopt new procedures for permit application submission, permit conditions, and permit modifications, and restoration of the public right-of-way; modify fees for administration of permit applications and inspection of excavations; provide for a report to the Board of Supervisors about such fees; create a process for inspection fee refunds; ~~authorize specified City officials to enforce violations of Article 2.4; increase the maximum assessment for administrative penalties and~~ **modify procedures for assessing penalties; establish a utility conditions permit fee; and make technical conforming amendments.****

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

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

Section 1. The San Francisco Public Works Code is hereby amended by amending Sections 2.4.2, 2.4.4, 2.4.10, 2.4.20.1, 2.4.20.2, 2.4.20.3, 2.4.23, 2.4.40, 2.4.41, 2.4.42, 2.4.45, 2.4.46, 2.4.50, 2.4.53, 2.4.55, 2.4.70, 2.4.80, 2.4.81, 2.4.83, and 2.4.85 and by adding Sections 2.4.20.4 to read as follows:

SUBARTICLE I

GENERAL PROVISIONS

- 1           Sec. 2.4.1.           Excavation in the Public Right-of-Way.
- 2           Sec. 2.4.2.           Permits Required to Excavate.
- 3           Sec. 2.4.3.           Department Orders and Regulations.
- 4           Sec. 2.4.4.           Definitions.

SUBARTICLE II

APPLICATIONS FOR PERMITS TO PERFORM AN EXCAVATION

- 7           Sec. 2.4.10.          Applications.
- 8           Sec. 2.4.11.          Coordination of Excavation.
- 9           Sec. 2.4.12.          Joint Excavation.

SUBARTICLE III

PERMITS TO EXCAVATE

- 12          Sec. 2.4.20.          Action on Applications for Permits to Excavate.
- 13          Sec. 2.4.20.1.        Terms and Limitations.
- 14          Sec. 2.4.20.2.        Duration and Validity.
- 15          Sec. 2.4.20.3.        Permit Amendments.
- 16          Sec. 2.4.20.4        Nontransferability of Permits.
- 17          Sec. 2.4.21.          Moratorium Streets.
- 18          Sec. 2.4.22.          Emergency Excavation.
- 19          Sec. 2.4.23.          Liability and Indemnification.
- 20          Sec. 2.4.24.          Permit to be Available at Excavation Site.

SUBARTICLE IV

DEPOSITS AND FEES

- 23          Sec. 2.4.40.          Deposit.
- 24          Sec. 2.4.41.          Administrative Fee.
- 25          Sec. 2.4.42.          Inspection Fee.

- 1           Sec. 2.4.43.           Additional Fees for Excavation.
- 2           Sec. 2.4.44.           Street Damage Restoration Fee.
- 3           Sec. 2.4.45.           Report to Board of Supervisors.
- 4           Sec. 2.4.46.           Collection, Return, and Refund of Deposit and Fees.

SUBARTICLE V

EXCAVATIONS

- 7           Sec. 2.4.50.           Notices.
- 8           Sec. 2.4.51.           Notice for Marking of Subsurface Facilities.
- 9           Sec. 2.4.52.           Limits upon Excavation in the Public Right-of-Way.
- 10          Sec. 2.4.53.           Regulations Concerning Excavation Sites.
- 11          Sec. 2.4.54.           Stop Work Order, Permit Modification, and Permit Revocation.
- 12          Sec. 2.4.55.           Restoration of the Public Right-of-Way.

SUBARTICLE VI

POST-EXCAVATION REPAIR, MAINTENANCE, AND PAVEMENT FAILURE

- 15          Sec. 2.4.70.           Repair and Maintenance Obligation of ~~Permittee~~ Owner and
- 16          Agent.
- 17          Sec. 2.4.71.           Subsurface or Pavement Failures.
- 18          Sec. 2.4.72.           Repair by the Department.
- 19          Sec. 2.4.73.           Emergency Remediation by the Department.

SUBARTICLE VII

VIOLATION OF ARTICLE

- 22          Sec. 2.4.80.           Violation of Article.
- 23          Sec. 2.4.81.           Administrative Penalties and Costs.
- 24          Sec. 2.4.82.           Civil Penalties and Fees.
- 25          Sec. 2.4.83.           Criminal Fines.

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

2           Sec. 2.4.85.           Suspension of Action on Applications.

3                                   SUBARTICLE VIII

4                                   MISCELLANEOUS PROVISIONS

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

6           Sec. 2.4.91.           Identification of Visible Facilities.

7           Sec. 2.4.92.           City's Obligation.

8           Sec. 2.4.93.           Time Limitation on Commencement of Actions.

9           Sec. 2.4.94.           Severability.

10  
11           SEC. 2.4.2. PERMITS REQUIRED TO EXCAVATE.

12                   (a)     It is unlawful for any person to make or to cause or permit to be made any  
13 excavation in any public right-of-way that is under the jurisdiction of the Department of Public  
14 Works without first obtaining from the Department a permit authorizing such excavation.

15                   (b)     The Department shall issue a permit to excavate only if the ~~applicant~~  
16 owner has the legal authority to occupy and use the public right-of-way for the purposes  
17 identified in the application for the permit ~~and the applicant~~ owner and its agent, if any, are in  
18 compliance with this Article.

19                   (c)     No permit to excavate shall be required when an excavation is to be  
20 completed within a period of 24 hours or less to install a parking meter, street light, street tree,  
21 traffic sign, traffic signal, or utility pole or to repair a utility box in a sidewalk; or when an  
22 excavation is in connection with the construction or maintenance of a subsidewalk basement;  
23 or when an excavation is performed for the sole purpose of repairing a sidewalk.

24                   (d)     Permit requirements pertaining to emergency excavation are addressed  
25 in Section 2.4.22.

1           SEC. 2.4.4 DEFINITIONS.

2           For purposes of this Article, the following terms shall have the following meanings:

3           (a)     ~~"Agent" shall mean a person or persons~~ who authorized to assist an owner in  
4 the permitting process or in the performance of an excavation.

5           (ab)    "Applicant" shall mean ~~any an owner or duly authorized agent of such owner,~~  
6 or duly authorized agent of such owner, who has submitted an application for a permit to  
7 excavate.

8           (bc)    "Article" shall mean this Article 2.4 of the Public Works Code.

9           (ed)    "Block" shall mean that part of the public right-of-way that includes the  
10 street area from the property line to the parallel property line in width and extending from the  
11 property line of an intersecting street to the nearest property line of the next intersecting street  
12 in length. For purposes of this definition, an intersection also shall be considered a "block."

13          (de)    "City" shall mean the City and County of San Francisco.

14          (ef)    "Department" shall mean the Department of Public Works.

15          (fg)    "Deposit" shall mean any bond, cash deposit, or other security provided  
16 by the applicant in accordance with Section 2.4.40 of this Article.

17          (gh)    "Director" shall mean the Director of the Department of Public Works or  
18 his or her designee.

19          (hi)    "Excavation" shall mean any work in the surface or subsurface of the  
20 public right-of-way, including, but not limited to opening the public right-of-way; installing,  
21 servicing, repairing or modifying any facility(ies) in or under the surface or subsurface of the  
22 public right-of-way, and restoring the surface and subsurface of the public right-of-way.

23          (ij)    "Facility" or "facilities" shall include, but not be limited to, any and all  
24 cables, cabinets, ducts, conduits, converters, equipment, drains, handholds, manholes, pipes,  
25 pipelines, splice boxes, surface location markers, tracks, tunnels, utilities, vaults, and other

1 appurtenances or tangible things owned, leased, operated, or licensed by an owner or person,  
2 that are located or are proposed to be located in the public right-of-way.

3 (k) "Large excavation project" shall mean any excavation of more than 1000 square  
4 feet.

5 (j) "Major work" shall mean any reasonably foreseeable excavation that will  
6 affect the public right- of-way for more than 15 consecutive calendar days.

7 (m) "Medium excavation project" shall mean any excavation of more than 100 but no  
8 greater than 1000 square feet.

9 (k) "Moratorium street" shall mean any block that has been reconstructed,  
10 repaved, or resurfaced by the Department or any other owner or person in the preceding five-  
11 year period.

12 (l) "Municipal excavator" shall mean any agency, board, commission,  
13 department, or subdivision of the City that owns, installs, or maintains a facility or facilities in  
14 the public right-of-way.

15 (m) "Owner" shall mean any person, including the City, who owns any facility  
16 or facilities that are or are proposed to be installed or maintained in the public right-of-way.

17 (n) "Permit" or "permit to excavate" shall mean a permit to perform an  
18 excavation as it has been approved, amended, or renewed by the Department.

19 (o) "Permittee" shall mean the applicant to whom a permit to excavate has  
20 been granted by the Department in accordance with this Article.

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

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

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 (u) "Responsible party" shall mean the owner for each excavation involving the  
4 owner's facility or facilities. In addition, it shall mean any person who performs an excavation or has a  
5 duty or right to manage or participate in the management of an excavation and whom the Director  
6 designates as responsible, in whole or in part, for such excavation.

7 (v) "Sidewalk" shall mean the area between the fronting property line and the  
8 back of the nearest curb.

9 (w) "Small excavation project" shall mean any excavation of 100 square feet or less.

10 (x) "Utility excavator" shall mean any owner whose facility or facilities in the  
11 public right-of-way are used to provide electricity, gas, information services, sewer service,  
12 steam, telecommunications, traffic controls, transit service, video, water, or other services to  
13 customers regardless of whether such owner is deemed a public utility by the California Public  
14 Utilities Commission.

15 SEC. 2.4.10. APPLICATIONS.

16 (a) Applications shall be submitted in a format and manner specified by the  
17 Department and shall contain:

18 (i) The name, address, telephone, and facsimile number of the applicant.  
19 Where an ~~applicant is not the owner of the facility to be installed, maintained, or repaired~~ applicant's  
20 agent will perform an excavation applicant is not the owner of the facility to be installed,  
21 maintained, or repaired in the public right-of-way, the application also shall include the name,  
22 address, telephone, and facsimile number of the ~~owner agent~~ owner;

23 (ii) A description of the location, purpose, method of excavation, and surface  
24 and subsurface area of the proposed excavation;

1 (iii) A plan showing the proposed location and dimensions of the excavation  
2 and the facilities to be installed, maintained, or repaired in connection with the excavation, and  
3 such other details as the Department may require;

4 (iv) A copy or other documentation of the franchise, easement, encroachment  
5 permit, license, or other legal instrument that authorizes the applicant ~~or owner~~ or owner to  
6 use or occupy the public right-of-way for the purpose described in the application. ~~Where the~~  
7 ~~applicant is not the owner of the facility or facilities to be installed, maintained, or repaired, the~~  
8 ~~applicant must demonstrate in a form and manner specified by the Department that the applicant is~~  
9 ~~authorized to act on behalf of the owner~~ . Where the applicant is not the owner of the facility or  
10 facilities to be installed, maintained, or repaired, the applicant must demonstrate in a form and  
11 manner specified by the Department that the applicant is authorized to act on behalf of the  
12 owner;

13 (v) The proposed start date of excavation;

14 (vi) The proposed duration of the excavation, which shall include the duration  
15 of the restoration of the public right-of-way physically ~~distribute~~ disturbed by the excavation;

16 (vii) Written ~~acknowledgment verification~~ acknowledgment that all material to  
17 be used in the excavation, installation, maintenance, or repair of facilities, and restoration of  
18 the public right-of-way will be on hand and ready for use so as not to delay the excavation and  
19 the prompt restoration of the public right-of-way;

20 (viii) Written ~~acknowledgment verification~~ acknowledgment that the applicant  
21 ~~and owner~~ owner and its agent, if any, are in compliance with all terms and conditions of this  
22 Article, the orders, regulations, and standard plans and specifications of the Department, and  
23 that the applicant ~~and owner~~ owner and its agent are not subject to any outstanding  
24 assessments, fees, penalties that have been finally determined by the City or a court of  
25 competent jurisdiction;



1 (ix) ~~Written verification, in a form and manner specified by the Department,~~  
2 ~~that the applicant has authorized an agent to act on behalf of the applicant with respect to an~~  
3 ~~application, the proposed excavation, or both.~~

4 ~~(x) A current Business Tax Registration Certificate issued by the San~~  
5 ~~Francisco Tax Collector pursuant to Section 1003 of Part III of the San Francisco Municipal~~  
6 ~~Code for the applicant and the ~~owner~~ applicant's agent owner and its agent, if any;~~

7 ~~(~~ix~~)~~ Evidence of insurance as required by Section 2.4.23 of this Article;

8 ~~(~~xix~~)~~ A deposit as required by Section 2.4.40 of this Article;

9 ~~(~~xix~~)~~ Any other information that may reasonably be required by the  
10 Department.

11 (b) The Department may allow an applicant to maintain documents  
12 complying with Subsections (iv), ~~(ix)~~, (ix), (x), (xi), and ~~(xii)~~ on file with the Department  
13 rather than requiring submission of such documents with each separate application.

14 SEC. 2.4.20.1. TERMS AND LIMITATIONS.

15 The permit shall specify the location, extent, and method of the excavation, the start  
16 date and duration of the excavation, the permittee to whom the permit is issued, and any  
17 conditions placed on the permit. The terms and conditions of the permit shall include the  
18 application, all information submitted therewith, and all Department orders and regulations applicable  
19 to the permit. The Department must approve any and all modifications to the permit.

20 SEC. 2.4.20.2 DURATION AND VALIDITY.

21 Permits shall be void if the excavation has not begun within 30 calendar days of the  
22 start date specified in the permit, if the excavation is not prosecuted diligently to its  
23 conclusion, or if the excavation, including restoration, has not been completed within the  
24 specified duration; provided, however, that the Director, ~~in~~ at his or her discretion, may issue  
25 extensions to the start date, the duration of excavation, or both upon written request from the

1 permittee. Such written requests must explain why the work could not be commenced on the start  
2 date, completed in the approved number of calendar days, or both; shall specify the additional number  
3 of calendar days required to complete the work; and shall be accompanied by applicable fees specified  
4 in Subarticle IV. All requests to modify the start date of an excavation shall be made at least five (5)  
5 calendar days prior to the excavation start date. All requests to modify the duration of the excavation  
6 shall be made at least five (5) calendar days prior to the permit expiration date. Any extension that the  
7 Director grants may be subject to additional special conditions, including, but not limited to, conditions  
8 that ensure timely completion and coordination of the project. The Director shall not grant requests  
9 for extensions to the start date after the permitted start date nor shall the Director grant requests for  
10 extensions to the duration of the excavation after the permit expiration date.

11 **SEC. 2.4.20.3. PERMIT AMENDMENTS.**

12 The Director, at his or her sole discretion, may allow amendments to the permit, such as to  
13 change the method of construction, to advance the start date of the excavation, or modify permit  
14 conditions, upon written request from the permittee. Such requests shall explain the basis for the  
15 permit amendment and shall be accompanied by applicable fees specified in Subarticle IV. Any  
16 amendments that the Director grants may be subject to additional special conditions, including, but not  
17 limited to, conditions that ensure timely completion and coordination of the project. The Director shall  
18 not grant requests for amendments to the excavation after the permit expiration date.

19 **SEC. 2.4.20.4 NONTRANSFERABILITY OF PERMITS.**

20 Permits are not transferable ~~from owner to owner.~~

21 **SEC. 2.4.23. LIABILITY AND INDEMNIFICATION.**

22 Each permit, except one obtained by a municipal excavator, shall incorporate by  
23 reference and require the permittee and ~~owner~~ owner and its agent, if any, to comply with the  
24 liability, indemnity, insurance, and taxable possessory interest provisions set forth below in  
25 this Section; provided, however, that the Director, with the concurrence of the City Controller

1 and City Risk Manager, may modify the indemnity and insurance provisions as they pertain to  
2 a particular permit.

3 (a) Liability upon ~~Owner and Permittee~~ Owner and Agent. Each ~~owner and~~  
4 ~~permittee~~ owner and its agent is wholly responsible for the quality of the excavation performed  
5 in the public right-of-way and both the ~~owner and permittee~~ owner and agent are jointly and  
6 severally liable for all consequences of any condition of such excavation and any facilities  
7 installed in the public right-of-way. The issuance of any permit, inspection, repair, or  
8 suggestion, approval, or acquiescence of any person affiliated with the Department shall not  
9 excuse any ~~owner or permittee~~ owner or agent from such responsibility or liability.

10 (b) Indemnification, Defense, and Hold Harmless.

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

18 (1) Any act by, omission by, or negligence of, ~~owner or permittee~~ owner or its  
19 agent, contractors, subcontractors, or the officers, agents, or employees of ~~either~~ such entities,  
20 while engaged in the performance of the excavation authorized by the permit, or while in or  
21 about the property subject to the permit for any reason connected in any way whatsoever with  
22 the performance of the excavation authorized by the permit, or allegedly resulting directly or  
23 indirectly from the maintenance or installation of any equipment, facility(ies), or structures  
24 authorized under the permit;

1 (2) Any accident, damage, death, or injury to any contractor or subcontractor,  
2 or any officer, agent or employee of either of them, while engaged in the performance of the  
3 excavation authorized by the permit, or while in or about the property for any reason  
4 connected with the performance of the excavation authorized by the permit, or arising from  
5 liens or claims for services rendered or labor or materials furnished in or for the performance  
6 of the excavation authorized by the permit;

7 (3) Any accident, damage, death, or injury to any person(s) or accident,  
8 damage, or injury to any real or personal property in, upon, or in any way allegedly connected  
9 with the excavation authorized by the permit from any cause or claims arising at any time;  
10 and,

11 (4) Any release or discharge, or threatened release or discharge, of any  
12 hazardous material caused or allowed by permittee about, in, on, or under the excavation site  
13 subject to the permit or the environment. As used herein, "hazardous material" means any  
14 gas, material, substance, or waste which, because of its quantity, concentration, or physical or  
15 chemical characteristics, is deemed by any federal, state, or local governmental authority to  
16 pose a present or potential hazard to human health or safety or to the environment. "Release"  
17 when used with respect to hazardous materials shall include any actual or imminent  
18 disposing, dumping, emitting, emptying, escaping, injecting, leaching, leaking, pumping,  
19 pouring, or spilling.

20 (ii) Upon the request of San Francisco, the ~~owner or permittee~~ owner or its  
21 agent, at no cost or expense to San Francisco, must indemnify, defend, and hold harmless  
22 San Francisco against any claims, regardless of the alleged negligence of San Francisco or  
23 any other party, except only for claims resulting directly from the sole negligence or wilful  
24 misconduct of San Francisco. Each ~~owner and permittee~~ owner and its agent specifically  
25 acknowledges and agrees that it has an immediate and independent obligation to defend San

1 Francisco from any claims which actually or potentially fall within the indemnity provision,  
2 even if the allegations are or may be groundless, false, or fraudulent, which obligation arises  
3 at the time such claim is tendered to owner or ~~permittee~~ its agent by San Francisco and  
4 continues at all times thereafter. In addition, San Francisco shall have a cause of action for  
5 indemnity against each ~~owner and permittee~~ owner and its agent for any costs San Francisco  
6 may be required to pay as a result of defending or satisfying any claims that arise from or in  
7 connection with the permit, except only for claims resulting directly from the sole negligence or  
8 wilful misconduct of San Francisco. ~~Owner and p~~ Permittee Owner and its agent agree that the  
9 indemnification obligations assumed under the permit shall survive expiration of the permit or  
10 completion of excavation.

11 (c) Insurance.

12 (i) Each ~~owner or permittee~~ owner or its agent shall maintain in full force and  
13 effect, throughout the term of the permit, an insurance policy or policies issued by an  
14 insurance company or companies satisfactory to the City's Controller and Risk Manager.  
15 Policy or policies shall afford insurance covering all operations, vehicles, and employees, as  
16 follows:

17 (1) Workers' Compensation with employers' liability limits not less than  
18 \$1,000,000 each accident;

19 (2) Commercial general liability insurance with limits not less than  
20 \$1,000,000 each occurrence combined single limit for bodily injury and property damage,  
21 including contractual liability; personal injury; explosion, collapse, and underground (xcu);  
22 products; and completed operations;

23 (3) Business automobile liability insurance with limits not less than  
24 \$1,000,000 each occurrence combined single limit for bodily injury and property damage,  
25 including owned, nonowned, and hired auto coverage, as applicable;

1 (4) Contractors' pollution liability insurance, on an occurrence form, with  
2 limits not less than \$1,000,000 each occurrence combined single limit for bodily injury and  
3 property damage and any deductible not to exceed \$25,000 each occurrence.

4 (ii) Said policy or policies shall include the City and its officers and  
5 employees jointly and severally as additional insureds, shall apply as primary insurance, shall  
6 stipulate that no other insurance effected by the City will be called on to contribute to a loss  
7 covered thereunder, and shall provide for severability of interests. Said policy or policies shall  
8 provide that an act or omission of one insured, which would void or otherwise reduce  
9 coverage, shall not reduce or void the coverage as to any other insured. Said policy or  
10 policies shall afford full coverage for any claims based on acts, omissions, injury, or damage  
11 which occurred or arose, or the onset of which occurred or arose, in whole or in part, during  
12 the policy period. Said policy or policies shall be endorsed to provide 30 calendar days  
13 advance written notice of cancellation or any material change to the Department.

14 (iii) Should any of the required insurance be provided under a claims-made  
15 form, the insured ~~owner or permittee~~ owner or its agent shall maintain such coverage  
16 continuously throughout the term of the permit, and, without lapse, for a period of three years  
17 beyond the expiration or termination of the permit, to the effect that, should occurrences  
18 during the term of the permit give rise to claims made after expiration or termination of the  
19 permit, such claims shall be covered by such claims-made policies.

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

1 (v) Such insurance shall in no way relieve or decrease ~~permittee's and~~  
2 ~~owner's~~ owner's and its agent's obligation to indemnify the City under Subsection (b) or any  
3 other provision of this Article.

4 (vi) Certificates of insurance, in the form satisfactory to the Department,  
5 evidencing all coverages above, shall be furnished to or maintained on file with the  
6 Department before issuance of a permit, with complete copies of policies furnished promptly  
7 upon the Department's request.

8 (vii) Where ~~a permittee who is an owner~~ an owner is self-insured, and such  
9 insurance is no less broad and affords no less protection to the City than the requirements  
10 specified above in Subsection (c), the Department, in consultation with the City's Controller  
11 and Risk Manager, may accept such insurance as satisfying the requirements of Subsection  
12 (c). Evidence of such insurance shall be provided in the manner specified in Subsection  
13 (c)(vi).

14 (d) Taxable Possessory Interest. Each ~~owner and permittee~~ owner shall  
15 acknowledge on its behalf and that of any successor or assign that its permit incorporates the  
16 following statements: The ~~owner of the facility(ies) for which the permit to excavate was obtained~~  
17 ~~and the permittee~~ owner of the facility(ies) for which the permit to excavate was obtained  
18 recognizes and understands that the permit may create a possessory interest subject to  
19 property taxation and that ~~owner and permittee~~ owner may be subject to the payment of  
20 property taxes levied on such interest under applicable law. ~~Owner and p~~ Permittee Owner  
21 agrees to pay taxes of any kind, including possessory interest taxes, if any, that may be  
22 lawfully assessed on ~~owner's and permittee's~~ owner's interest under the permit to excavate or  
23 for use of the public right-of-way and to pay other excises, licenses, taxes, or permit charges  
24 or assessments based on ~~owner's and permittee's~~ owner's usage of the public right-of-way that  
25

1 may be imposed on ~~owner and permittee~~ owner by applicable law. ~~Owner and p~~ Permittee  
2 Owner shall pay all of such charges when they become due and before delinquency.

3 SEC. 2.4.40. DEPOSIT.

4 Each applicant shall submit and maintain with the Department a bond, cash deposit, or  
5 other security acceptable to the Department securing the faithful performance of the  
6 obligations of the ~~owner and applicant~~ owner and its agent under any permit(s) to excavate and  
7 the compliance with all terms and conditions of this Article (the "deposit"). The deposit shall be  
8 in the sum of \$25,000 in favor of the "Department of Public Works, City and County of San  
9 Francisco." Utility and municipal excavators and other frequent applicants may submit a single  
10 deposit for multiple excavations so long as a constant balance of \$25,000 is maintained on file  
11 with the Department. If the Director has deducted from such a deposit pursuant to Section  
12 2.4.46(c), the utility or municipal excavator or other frequent applicant must restore the full  
13 amount of the deposit prior to the Department's issuance of a subsequent permit.

14 SEC. 2.4.41 ADMINISTRATIVE FEE.

15 Each applicant shall pay to the Department a fee of ~~\$25 75~~ 66 for each *block*  
16 *permit issued for a small excavation project, in which excavation is proposed to compensate the*  
17 *Department for the cost incurred to administer the provisions of this Article. a fee of \$75 83 for each*  
18 *block contained in a medium excavation project, or a fee of \$100 110 for each block contained in a*  
19 *large excavation project. Said fees shall compensate the Department for the cost incurred to*  
20 *administer the provisions of this Article. If the Director grants a permit extension or amendment*  
21 *pursuant to Sections 2.4.20.2 or 2.4.20.3, the permittee shall pay a fee of \$60 66 for any block for*  
22 *which the permit has been extended or amended to cover the cost of additional permit review and*  
23 *administration.*

24 SEC. 2.4.42 INSPECTION FEE.



1 Each applicant shall pay to the Department a fee of ~~\$0.80~~ 15 16 *for each permit issued for*  
2 *a small excavation project, a fee of \$50* 55 *for each calendar day of a medium excavation project, or a*  
3 *fee of \$75* 81 *for each calendar day of a large excavation project. Said fee shall compensate the*  
4 *Department for* ~~*square foot of pavement to be excavated for*~~ *the cost of the inspection and*  
5 *regulatory services provided to such applicant when he or she becomes a permittee pursuant*  
6 *to this Article. No inspection fees shall be collected from a municipal excavator when: (a) the*  
7 *municipal excavator pays the Department to manage and inspect the construction or (b) the*  
8 *excavation is to construct, replace, or repair Municipal Railway tracks. If the Director grants a*  
9 *permit extension pursuant to Section 2.4.20.2, the permittee shall pay \$15* 16 *for a small excavation*  
10 *project or the appropriate fees for a medium or large excavation project for each additional calendar*  
11 *day for which the permit is extended to cover the cost of additional permit inspection. If the Director*  
12 *grants a permit amendment pursuant to Section 2.4.20.3 that results in additional permit inspection, the*  
13 *permittee shall pay the fees specified above for permit extensions.*

14 SEC. 2.4.45. REPORT TO BOARD OF SUPERVISORS.

15 Within one year after adoption or amendment of the street damage restoration fee  
16 or other fees set forth in this Subarticle, and every three years thereafter, the Director shall  
17 review the proceeds of the street damage restoration fee and such other fees, the costs of  
18 repaving and reconstruction reasonably attributed to excavation in City streets, the City's costs  
19 to administer this Article and inspect excavations, and any other new information that shall  
20 become available, and prepare a report to the Board of Supervisors. Based upon the result of  
21 the review, the Director shall recommend to the Board of Supervisors any necessary  
22 adjustments to the fees, along with written justification for the recommended adjustment and  
23 any necessary legislation. In the event that fee proceeds have exceeded, or are anticipated to  
24 exceed, the costs for street repaving and reconstruction reasonably attributable to excavation  
25 or the City's costs to administer this Article or inspect excavations, the Director shall recommend

1 legislation to the Board of Supervisors that modifies the applicable fee to ensure that fee  
2 proceeds do not exceed the costs for street repaving and reconstruction reasonably  
3 attributable to excavation or the City's costs to administer this Article or inspect excavations. In the  
4 event that fee proceeds have undercollected, or are anticipated to undercollect, for the costs  
5 for street repaving and reconstruction reasonably attributable to excavation or the City's costs to  
6 administer this Article or inspect excavations, the Director may recommend legislation to the  
7 Board of Supervisors that modifies the applicable fee to more accurately recover the costs for  
8 street repaving and reconstruction reasonably attributable to excavation or the City's costs to  
9 administer this Article or inspect excavations.

10 SEC. 2.4.46. COLLECTION, RETURN, AND REFUND OF DEPOSIT AND FEES.

11 (a) Collection of Deposit and Fees. The Director shall establish procedures  
12 for billing, collection, and refund of a deposit(s), fees, and other charges provided for in this  
13 Article. The Director shall deposit all funds in accordance with Sections 10.117-119 and  
14 10.117-120 of the San Francisco Administrative Code.

15 (b) Refunds.

16 (i) When an application is either withdrawn by the applicant or denied by the  
17 Department before the start of construction, the applicant's administrative fee assessed under  
18 Section 2.4.41 shall be retained and those fees assessed under Sections 2.4.42, 2.4.43, and  
19 2.4.44 shall be returned to the applicant.

20 (ii) In the event that the Director determines, after preparing a report  
21 pursuant to Section 2.4.45, that there has been an overcollection of ~~the street damage~~  
22 ~~restoration fee assessed under Section 2.4.44~~ any of the fees identified in this Subarticle, the Director  
23 shall establish procedures to refund excess fee proceeds in a manner which fairly and  
24 reasonably reimburses those excavators who paid the fee during the relevant period  
25 consistent with their level of excavation.

1                    (iii) In the event that a project is completed prior to the permit expiration date, a  
2 permittee may make a written request for a refund of the inspection fee that is proportionate to the  
3 number of calendar days the project was completed early. Prior to the issuance of any refund, the  
4 Department shall verify the date of completion, that the project has been satisfactorily completed, that  
5 all punch list work has been completed, and that there are no outstanding fines or penalties pending  
6 against the permittee or its agent. The Department shall not release the requested refund until any and  
7 all outstanding fines or penalties pending against the permittee and its agent have been paid. The  
8 permittee seeking a refund shall pay the Department a fee of \$110 for the cost of the calculation and  
9 processing of the refund.

10                    (c) Deductions for Deposits. The Director may make deductions from the  
11 balance of a permittee's deposit(s) to ensure the faithful performance of the obligations under  
12 a permit to excavate, to pay fees, to offset the costs for any excavation done or repairs made  
13 by the Department, or to pay any assessed penalties or costs associated with violations of this  
14 Article.

15                    (d) Retention of Deposit for Three Years. Each deposit made pursuant to  
16 Section 2.4.40 shall be retained by the City for a period of three years after the satisfactory  
17 completion of the excavation to secure the obligations in the permit and this Article.

18                    (e) Return of Deposit. Upon expiration of three years from the satisfactory  
19 completion of the excavation, a permittee's deposit(s), less the deductions made pursuant to  
20 Subsection (c), shall be returned to the permittee or to its assigns.

21                    SEC. 2.4.50. NOTICES.

22                    Any permittee who excavates or causes to be made an excavation in the public  
23 right-of-way shall provide notice as follows:

24                    (a) Two to Fourteen-Day Excavations. For excavations that will be completed  
25 and restored in a period exceeding 24 hours but within 14 calendar days of commencement,

1 the permittee shall post and maintain notice at the site of the excavation. The notice shall  
2 include the name, telephone number, and address of the ~~owner and permittee~~ owner and its  
3 agent, a description of the excavation to be performed, and the duration of the excavation. The  
4 notice shall be posted at least every 100 feet along any block where the excavation is to take  
5 place at least 72 hours prior to commencement of the excavation.

6 (b) Notice for Major Work.

7 (i) At least 30 calendar days prior to commencement of the excavation, the  
8 permittee shall provide written notice delivered by United States mail to each property owner  
9 on the block(s) affected by the excavation and each affected neighborhood and merchant  
10 organization that is listed in the City Planning Department's Directory of Neighborhood  
11 Organizations and Service Agencies. The latest City-wide assessor's roll for names and  
12 addresses of owners shall be used for the mailed notice. This notice shall include the same  
13 information that is required for the posted notice pursuant to Subsection (a) and the name,  
14 address, and 24-hour telephone number of a person who will be available to provide  
15 information to and receive complaints from any member of the public concerning the  
16 excavation.

17 (ii) The permittee shall post and maintain notice at the site of the excavation  
18 at least 10 calendar days prior to commencement of the excavation in the same manner and  
19 with the same information as required for posted notice pursuant to Subsection (a). At least 10  
20 calendar days prior to commencement of the excavation, the permittee also shall deliver a  
21 written notice to each dwelling unit on the block(s) affected by the excavation. This written  
22 notice shall include the same information that is required for the written notice pursuant to this  
23 Subsection (i).

24 (iii) Before commencement of construction, a permittee for major work shall  
25 post and maintain excavation project signs at the site of the excavation that describe the

1 excavation being done and bear the name, address, and 24-hour telephone number of a  
2 contact person for the ~~owner and permittee~~ owner and its agent. Said excavation project signs  
3 shall be in format, quantity, and size specified by the Department.

4 (c) Notice of Emergency Excavation. For emergency excavation, the  
5 permittee, or the applicant if a permit has not been issued, shall post and maintain notice at  
6 the site of the excavation during the construction period. The notice shall include the name,  
7 telephone number, and address of the ~~owner and permittee~~ or owner, permittee, applicant, and  
8 its agent, a description of the excavation to be performed, and the duration of the excavation.  
9 The notice shall be posted at least every 100 feet along any block where the excavation is to  
10 take place.

#### 11 SEC. 2.4.53. REGULATIONS CONCERNING EXCAVATION SITES.

12 Each ~~owner and permittee~~ owner and its agent shall be subject to requirements for  
13 excavation sites that are set forth in Department orders or regulations. Such orders or  
14 regulations shall include, but not be limited to, the following measures:

15 (a) Protection of the Excavation. Each ~~permittee~~ owner and its agent shall  
16 cover open excavation with steel plates ramped to the elevation of the contiguous street,  
17 pavement, or other public right-of-way, or otherwise protected in accordance with guidelines  
18 prescribed by the Department.

19 (b) Housekeeping and Removal of Excavated Material. Each ~~permittee~~  
20 owner and its agent shall keep the area surrounding the excavation clean and free of loose dirt  
21 or other debris in a manner deemed satisfactory to the Department. Excavation sites shall be  
22 cleaned at the completion of each work day. In addition, the ~~permittee~~ owner and its agent  
23 shall remove all excavated material from the site of the excavation no later than the end of  
24 each work day.

1 (c) Storage of Materials and Equipment. Materials and equipment that are to  
2 be used for the excavation within seven calendar days may be stored at the site of the  
3 excavation, except that fill material, sand, aggregate, and asphalt-coated material may be  
4 stored at the site only if it is stored in covered, locked containers.

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

15 SEC. 2.4.55. RESTORATION OF THE PUBLIC RIGHT-OF-WAY.

16 (a) Restoration. In any case in which the sidewalk, street, or other public  
17 right-of-way is or is caused to be excavated, the ~~owner and permittee~~ owner and its agent shall  
18 restore or cause to be restored such excavation in the manner prescribed by the orders,  
19 regulations, and standard plans and specifications of the Department. At a minimum, trench  
20 restoration shall include resurfacing to a constant width equal to the widest part of the  
21 excavation in accordance with the following diagram; provided, however, that the width of  
22 resurfacing need not exceed 13 feet;

23 (b) Backfill, Replacement of Pavement Base, and Finished Pavement.  
24 Activities concerning backfilling, replacement of pavement base, and finished pavement shall  
25 be performed in a manner specified by the orders, regulations, and standard plans and

1 specifications of the Department. In addition, these activities shall be subject to the following  
2 requirements:

3 (i) Backfill. Each excavation shall be backfilled and compacted within ~~72~~ 24  
4 72 hours from the time the construction related to the excavation is completed.

5 (ii) Replacement of pavement base. Replacement of the pavement base  
6 shall be completed within ~~72~~ 48-72 hours from the time the excavation is backfilled.

7 (iii) Finished pavement. Finished pavement restoration shall be completed  
8 within ~~72~~ 24-72 hours of replacement of the pavement base.

9 (c) Modification to Requirements. Upon written request from the permittee,  
10 the Director may grant written approval for modifications to the requirements of Subsection  
11 (b).

12 (d) Incomplete Excavation; Completion by the Department. In any case  
13 where an excavation is not completed or restored in the time and manner specified in the  
14 permit, this Article, or the orders, regulations, and standard plans and specifications of the  
15 Department, the Director shall order the ~~owner or permittee~~ owner or its agent to complete the  
16 excavation as directed within 24 hours. If the ~~owner or permittee~~ owner or its agent should fail,  
17 neglect, or refuse to comply with the order, the Director may complete or cause to be  
18 completed such excavation in such manner as the Director deems expedient and appropriate.  
19 The ~~owner or permittee~~ owner or its agent shall compensate the Department for any costs  
20 associated with the administration, construction, consultants, equipment, inspection,  
21 notification, remediation, repair, restoration, or any other actual costs incurred by the  
22 Department or other agencies, board, commissions, or departments of the City that were  
23 made necessary by said excavation. The cost of such work also may be deducted from the  
24 permittee's deposit pursuant to Section 2.4.46(c). The Director's determination as to the cost  
25 of any work done or repairs made shall be final. In addition, the ~~owner or person permittee,~~

1 owner, its agent, or other responsible party may be subject to those enforcement actions set forth  
2 in Subarticle VII.

3 (e) Subject to the limitation set forth in Section 2.4.70, completion of an  
4 excavation or restoration by the Department in accordance with Subsection (d) shall not  
5 relieve the ~~owner or permittee~~ owner or its agent from liability for future pavement failures at  
6 the excavation site.

7 SEC. 2.4.70. REPAIR AND MAINTENANCE OBLIGATION OF PERMITTEE OWNER  
8 AND AGENT.

9 Each ~~owner and permittee~~ owner and its agent that excavates or causes to be  
10 made an excavation in the public right-of-way shall be responsible to maintain, repair, or  
11 reconstruct the site of the excavation so as to maintain a condition acceptable to the Director  
12 until such time as the public right-of-way is reconstructed, repaved, or resurfaced by the  
13 Department.

14 SEC. 2.4.80. VIOLATION OF ARTICLE.

15 (a) The Director shall have authority to enforce this Article against violations  
16 thereof. Upon the Director's determination that a person has violated any provision of this  
17 Article, the standard plans and specifications, notices, orders, or regulations of the  
18 Department; any term, condition, or limitation of any permit; or is subject to any outstanding  
19 fees, deposits, or other charges, the Director shall serve notice on said person to abate the  
20 violation. Any person whom the Director determines to be a responsible party for violating this  
21 ~~Article~~ may be subject to any or all of the enforcement mechanisms specified in Section  
22 2.4.81-, 2.4.82, and 2.4.83.

23 (b) Municipal ~~E~~xcavators are not subject to the penalties and fines specified in  
24 Sections 2.4.82 and .83; however, ~~M~~municipal ~~E~~xcavators that violate Article 2.4 may be  
25 subject to administrative penalties and costs as specified in Section 2.4.81. The Director is



1 empowered to charge ~~M~~municipal ~~E~~excavators with such penalties and costs, abate violations  
2 by ~~M~~municipal ~~E~~excavators, or both. The Director may assess such penalties, costs, and  
3 abatement charges against the ~~D~~deposit or budget of the ~~M~~municipal ~~E~~excavator, take other  
4 appropriate action against such ~~E~~excavator within the Director's authority, or both.

5 (c) ~~In addition to the Director, the Executive Director of the Department of~~  
6 ~~Parking and Traffic and the General Managers of the Municipal Railway, Public Utilities~~  
7 ~~Commission, and the Recreation and Park Department may determine when a permittee or~~  
8 ~~responsible party who is not a municipal excavator violates this Article. When one of said City~~  
9 ~~officials makes a determination concerning a violation, he or she shall forward such~~  
10 ~~determination to the Department for appropriate action.~~

#### 11 SEC. 2.4.81. ADMINISTRATIVE PENALTIES AND COSTS.

12 (a) Notice of Violation. Except as specified in Subsections (1) through (3) below,  
13 ~~The~~ Director shall notify the ~~person~~ responsible party for a violation that he or she has  
14 seventy-two (72) hours to correct or otherwise remedy the violation or be subject to the  
15 imposition of administrative penalties The Director's notice of violation shall be a written,  
16 electronic, or facsimile communication and shall specify the manner in which the violation shall be  
17 remedied.

18 (1) For those violations subject to the incomplete excavation provisions of  
19 Section 2.4.55(d), the ~~Person~~-responsible party shall have twenty-four (24) hours to remedy  
20 the violation or be subject to the imposition of administrative penalties.

21 (2) For violations that create an imminent danger to public health, safety, or  
22 welfare or are otherwise subject to Section 2.4.73, the Director shall notify the ~~Person~~  
23 responsible party to immediately remedy the violation or be subject to the imposition of  
24 administrative penalties.

1                   (3) For violations that cannot be cured within seventy-two (72) hours, including, but  
2 not limited to, excavating without a permit, the Director shall notify the responsible party of the  
3 Director's imposition of administrative penalties pursuant to Subsection (e).

4                   *The Director's notice of violation shall be a written, electronic, or facsimile*  
5 *communication and shall specify the manner in which the violation must be remedied.*

6                   (b) Amount of Administrative Penalties. Administrative penalties assessed  
7 pursuant to Subsection (a) shall not exceed ~~one~~ five one thousand dollars (\$~~1~~ 5 1,000) per  
8 day, per violation commencing with the first day of the violation. Notwithstanding the penalty  
9 limitation set forth above, a ~~P~~person who excavates without a valid ~~P~~permit may be assessed  
10 a penalty not to exceed ten thousand dollars (\$10,000.00) per day, per violation commencing  
11 with the first day of the violation. In assessing the amount of the administrative penalty, the  
12 Director may consider any one or more of the following: the nature and seriousness of the  
13 misconduct, the number of violations, the persistence of the misconduct, the length of time  
14 over which the misconduct occurred, the wilfulness of the violator's misconduct, and the  
15 violator's assets, liabilities, and net worth.

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

21                   (d) Accrual of Penalties and Costs. Penalties and costs assessed under this  
22 Section shall continue to accrue against ~~the Person~~ a responsible party ~~for the violation~~ until the  
23 violation of this Article is corrected or otherwise remedied in the judgment of the Director or  
24 the responsible party pays the assessed penalties and costs. If such penalties and costs are  
25 the subject of a request for administrative review or an appeal, then the accrual of such

1 penalties and costs shall be stayed until the determination concerning the administrative  
2 penalties is final.

3 (e) Notice Imposing Administrative Penalties. If the *Person designated as the*  
4 responsible party fails to remedy the violation within the time specified in the notice of violation  
5 *or if the violation is incurable pursuant to Section 2.4.81(a)(3)*, the Director shall notify in writing  
6 the responsible party of the Director's imposition of administrative penalties. This notice shall  
7 include the amount of the penalties and costs and declare that such penalties and costs are  
8 due and payable to the City Treasurer within thirty (30) calendar days. The notice also shall  
9 state that the ~~P~~person designated as the responsible party has the right, pursuant to  
10 Subsection (g), to request administrative review of the Director's determination as to the  
11 designation of the responsible party and the assessment of penalties.

12 (f) Finality of the Director's Determination and Collection of Assessed  
13 Penalties. If no request for administrative review is filed pursuant to Subsection (g), the  
14 Director's determination is final. Thereafter, if the penalties and costs are not paid within the  
15 time specified in Subsection (e), the Director is empowered to pursue any method of collection  
16 of such penalties and costs authorized by local law including, but not limited to deductions of  
17 the ~~P~~permittee's ~~D~~deposit pursuant to Section 2.4.46(c).

18 (g) Administrative Review. Any Person that is designated as the *responsible*  
19 party ~~responsible~~ for a violation or is subject to an administrative penalty may seek  
20 administrative review of the designation or the assessment of the penalty *or cost* within ten  
21 (10) calendar days of the date of ~~notification~~ *the notice* imposing administrative penalties.  
22 Administrative review shall be initiated by filing with the Director a request for review that  
23 specifies in detail the basis for contesting the designation of the responsible party or the  
24 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  
9 hearing 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 by  
18 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) Director's Decision on the Hearing Officer's Recommendation. The  
22 decision of the hearing officer shall be a recommendation to the Director, and the Director,  
23 within five (5) calendar days of receipt of such recommendation, shall adopt, modify, or deny  
24 such recommendation. The Director's decision on the hearing officer's recommendation is  
25

1 final. Such decision shall be served upon the parties to the hearing and posted in the same  
2 manner as the hearing officer's decision as set forth in Subsection (j).

3 ~~———— (l) ——— Finality of Director's Decision. The Director's decision shall be deemed final. If~~  
4 any imposed administrative penalties and costs have not been deposited at this time, the  
5 Director may proceed to collect the penalties and costs pursuant to Subsection (f).

6 (l) Additional Procedures. The Director, by Departmental order, may adopt  
7 additional procedures to implement this Section.

8 **SEC. 2.4.83. CRIMINAL FINES.**

9 (a) The Director is authorized to enforce the criminal provisions of this Article,  
10 to call upon the Chief of Police and authorized agents to assist in the enforcement of this  
11 Article, or both.

12 (b) Any person who violates this Article shall be deemed guilty of an  
13 infraction. Every violation determined to be an infraction is punishable by (1) a fine not  
14 exceeding \$100 for the first violation within one year; (2) a fine not exceeding \$200 for a  
15 second violation within one year from the date of the first violation; (3) a fine not exceeding  
16 \$500 for the third and each additional violation within one year from the date of the first  
17 violation.

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

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

- 24 (i) Excavation without a valid permit;  
25 (ii) Excavation without proof of the permit issuance on site;

- 1 (iii) Excavation without proper notice to the Underground Service Alert;
- 2 (iv) Excavation without proper public notice;
- 3 (v) Excavation that violates the San Francisco Traffic Code;
- 4 (vi) Excavation that violates the regulations concerning excavation sites
- 5 (Section 2.4.53), which include, but are not limited to, protection of the excavation,
- 6 housekeeping and removal of excavated material, and hazardous material;
- 7 (vii) Excavation that does not meet the ~~72-hour~~ requirements for restoration
- 8 concerning backfill, replacement of pavement base, and finished pavement (Section
- 9 2.4.55(b)); or
- 10 (viii) Excavation that exceeds the scope of the permit, including, but not limited
- 11 to, obstructing the path of automobile or pedestrian travel in excess of the permitted area.

12 ~~(e) — The nonpayment of fines or citations imposed to this Section, or the continued~~

13 ~~existence of a condition in violation of this Section, shall be grounds for the Director to deny a permit~~

14 ~~to the responsible person until such fines or citations have been paid and the condition corrected.~~

15 SEC. 2.4.85. SUSPENSION OF ACTION ON APPLICATIONS.

16 A person who is in wilful noncompliance with this Article shall not apply for nor

17 be issued a ~~subsequent~~ permit to excavate in the public right-of-way unless the Director, by

18 written authorization, grants a waiver to this prohibition. Wilful noncompliance shall include,

19 without limitation, deliberate acts that result in failure to: (a) satisfy any terms and conditions of this

20 Article, the orders, regulations, or standard plans and specifications of the Department or (b) pay any

21 outstanding assessments, fees, penalties that have been finally determined by the City or a court of

22 competent jurisdiction.

23 Section 2. The San Francisco Administrative Code is hereby amended by amending

24 Sections 10.100-230 to read as follows:

25 Sec. 10.100-230. Public Works Excavation Fund

1 (a) Establishment of Fund. The Public Works Excavation Fund is established as a  
2 category eight fund to receive all amounts paid pursuant to Section 11.9 of the Administrative  
3 Code and Article 2.4 of the Public Works Code (Part II, Chapter 10 of the San Francisco  
4 Municipal Code) with the exception of Street Damage Restoration Fees paid pursuant to  
5 Section 2.4.44 of the Public Works Code .

6 (b) Use of Fund. Monies in the Excavation Fund shall be used exclusively to  
7 defray City costs in connection with excavation and the administration of Article 2.4. of the  
8 Public Works Code, including, but not limited to, administration, construction, consultants,  
9 equipment, inspection, legal services, remediation, repair, restoration, training, travel, and  
10 other costs incurred by the City as well as to defray City costs in connection with the administration  
11 of Section 11.9 of the Administrative Code.

12 Section 3. The San Francisco Administrative Code is hereby amended by amending  
13 Section 11.9 to read as follows:

14 SEC. 11.9. UTILITY CONDITIONS PERMIT.

15 (a) Telephone Corporations. The Department of Public Works may require a  
16 Person, including a Grantee of an existing Franchise, to obtain a Utility Conditions Permit prior  
17 to their construction, installation, or maintenance of Telephone Lines (as defined in the  
18 California Public Utilities Code) in the Public Rights-of-Way. UCPs shall be issued by the  
19 Department of Public Works in a manner consistent with Applicable Law to Persons who have  
20 authority as a Telephone Corporation (as defined in the California Public Utilities Code) to  
21 occupy the Public Rights-of-Way pursuant to California Public Utilities Code Section 7901 and  
22 who are willing to comply with the City's requirements regarding the physical use and  
23 occupation of the Public Rights-of-Way. Persons intending to construct, install, or maintain  
24 Telephone Lines to provide Telecommunications Services shall prove their legal right to  
25 occupy and use the Public Rights-of-Way by providing the Department of Public Works a

1 current copy of their certificate of public convenience and necessity issued by the CPUC, or  
2 otherwise demonstrate that they have been authorized to occupy the Public Rights-of-Way by  
3 the CPUC ("CPCN"). Such "CPCN" shall expressly state the Person's authority to provide  
4 facilities-based Telecommunications Service. The UCP shall set forth such conditions, in  
5 addition to those already set forth in Applicable Law, as may be required to govern the  
6 construction, installation, or occupancy in the Public Rights-of-Way to protect and benefit the  
7 public health, safety and welfare. The terms and conditions of a UCP shall be limited to those  
8 areas consistent with the City's authority under Applicable Law. A UCP shall expressly limit  
9 the services which may be offered using the Telephone Lines to those services that do not  
10 require a Franchise and shall have a term of no longer than two (2) years.

11 (b) Persons Subject To Franchise Requirements. Where a Person seeks to  
12 construct or install Facilities that will be used to provide both Telecommunications Service and  
13 Service requiring a Franchise pursuant to Section 11.3 above, a UCP may be issued only if  
14 (1) the Person has obtained or has submitted a Proposal to obtain any required Franchise;  
15 and (2) the Person agrees not to provide Service requiring a Franchise until a Franchise has  
16 been granted by the Board. Where a Person has not already obtained any required  
17 Franchise, the term of its UCP shall be limited to six (6) months and shall not be extended  
18 more than twice. A UCP shall not be issued to a Person seeking to construct or install  
19 Facilities to provide only Service requiring a Franchise.

20 (c) ~~Cost Recovery. The Department of Public Works may assess a Person obtaining~~  
21 ~~a UCP a charge to recover the costs incurred by the City to process and grant a UCP. A UCP shall~~  
22 ~~not assess a charge for use of the Public Rights-of-Way. UCP Fee. Any person required to obtain or~~  
23 ~~renew a UCP shall pay to the Department of Public Works a fee of \$2000 to compensate the City for~~  
24 ~~the City Attorney's costs related to: 1) establishing the applicants' authority to occupy the public right-~~  
25 ~~of-way, 2) establishing the terms on which applicants may occupy the public right-of-way, and 3)~~



1 granting, monitoring, enforcing, renewing, revising or revoking UCPs. These fees shall be deposited in  
2 the Public Works Excavation Fund established by Section 10.100-230 of the San Francisco  
3 Administrative Code.

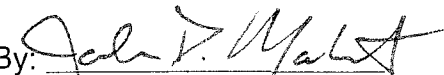
4  
5 RECOMMENDED:  
6 DEPARTMENT OF PUBLIC WORKS

DESCRIPTION APPROVED:  
DEPARTMENT OF PUBLIC WORKS

7 (SEE FILE FOR SIGNATURE)  
8 Edwin M. Lee  
9 Director of Public Works

(SEE FILE FOR SIGNATURE)  
Harlan L. Kelly, Jr.  
Deputy Director for Engineering  
and City Engineer

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

12 By:   
13 John D. Malamut  
14 Deputy City Attorney



# City and County of San Francisco

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

## Tails Ordinance

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**File Number:** 020051

**Date Passed:**

Ordinance amending Sections 2.4.2, 2.4.4, 2.4.10, 2.4.20.1, 2.4.20.2, 2.4.20.3, 2.4.23, 2.4.40, 2.4.41, 2.4.42, 2.4.45, 2.4.46, 2.4.50, 2.4.53, 2.4.55, 2.4.70, 2.4.80, 2.4.81, 2.4.83, and 2.4.85 of Article 2.4 of the Public Works Code, adding Sections 2.4.20.4 to Article 2.4 of the Public Works Code, and amending Sections 10.100-230 and 11.9 of the Administrative Code to modify and adopt new definitions; modify and adopt new procedures for permit application submission, permit conditions, and permit modifications; modify fees for administration of permit applications and inspection of excavations; provide for a report to the Board of Supervisors about such fees; create a process for inspection fee refunds; modify procedures for assessing penalties; establish a utility conditions permit fee; and make technical conforming amendments.

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March 18, 2002 Board of Supervisors — PASSED ON FIRST READING

Ayes: 11 - Ammiano, Daly, Gonzalez, Hall, Leno, Maxwell, McGoldrick,  
Newsom, Peskin, Sandoval, Yee

March 25, 2002 Board of Supervisors — FINALLY PASSED

Ayes: 11 - Ammiano, Daly, Gonzalez, Hall, Leno, Maxwell, McGoldrick,  
Newsom, Peskin, Sandoval, Yee

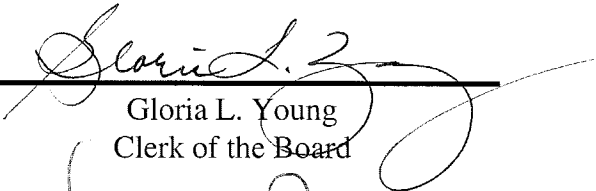
File No. 020051

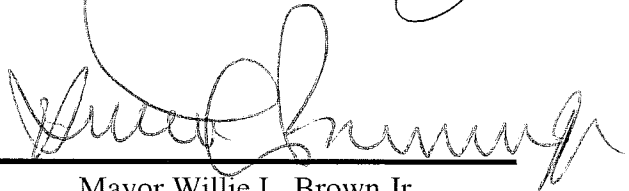
I hereby certify that the foregoing Ordinance  
was **FINALLY PASSED** on March 25, 2002  
by the Board of Supervisors of the City and  
County of San Francisco.

MAR 28 2002

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**Date Approved**

  
Gloria L. Young  
Clerk of the Board

  
Mayor Willie L. Brown Jr.