

File No. 230867

Committee Item No. 7

Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Land Use and Transportation

Date: February 26, 2024

Board of Supervisors Meeting:

Date: \_\_\_\_\_

#### Cmte Board

- Motion
- Resolution
- Ordinance
- Legislative Digest
- Budget and Legislative Analyst Report
- Youth Commission Report
- Introduction Form
- Department/Agency Cover Letter and/or Report
- MOU
- Grant Information Form
- Grant Budget
- Subcontract Budget
- Contract / DRAFT Mills Act Agreement
- Form 126 – Ethics Commission
- Award Letter
- Application
- Public Correspondence

#### OTHER

- CEQA Determination – October 11, 2023
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

Prepared by: John Carroll

Date: February 23, 2024

Prepared by: \_\_\_\_\_

Date: \_\_\_\_\_

Prepared by: \_\_\_\_\_

Date: \_\_\_\_\_

1 [Public Works Code - Excavation by Microtrenching for Fiber]

2

3 **Ordinance amending the Public Works Code to allow the use of microtrenching to**  
4 **install fiber-optic facilities; and affirming the Planning Department’s determination**  
5 **under the California Environmental Quality Act.**

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

10

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

12

13 Section 1. Findings.

14 (a) The Planning Department has determined that the actions contemplated in this  
15 ordinance comply with the California Environmental Quality Act (California Public Resources  
16 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of  
17 Supervisors in File No. 230867 and is incorporated herein by reference. The Board affirms  
18 this determination.

19 (b) The City enacted Article 2.4 of the Public Works Code to regulate excavating in the  
20 public right-of-way under the jurisdiction of the Department of Public Works (“Department”). In  
21 addition to the requirements set forth in Article 2.4, the Department has the authority to adopt  
22 orders, regulations, standard plans, and specifications in order to preserve and maintain the  
23 public health, safety, welfare, and convenience. The Department has used this authority to  
24 regulate the technical means and methods of excavation through the adoption of various  
25 Department regulations and orders.

1 (c) Recently-enacted state law (California Government Code Section 65964.5)  
2 requires local governments to allow microtrenching in the public right-of-way for the  
3 installation of underground fiber-optic facilities, subject to certain conditions. This ordinance  
4 codifies the definitions and standards in state law to facilitate the Department's permitting of  
5 microtrenching for fiber-optic facilities, including the further implementation of this ordinance  
6 through the adoption of Department regulations and orders.

7  
8 Section 2. Article 2.4 of the Public Works Code, Subarticle I, is hereby amended by  
9 revising Sections 2.4.2, 2.4.3, and 2.4.4, to read as follows:

10  
11 **SEC. 2.4.2. PERMITS REQUIRED TO EXCAVATE.**

12 \* \* \* \*

13 (e) The Department shall issue permits to excavate that allow the permittee to use  
14 microtrenching to install fiber-optic facilities in the public right-of-way, subject to any orders,  
15 regulations, or standard plans and specifications the Department may adopt.

16  
17 **SEC. 2.4.3. DEPARTMENT ORDERS AND REGULATIONS.**

18 (a) In addition to the requirements set forth in this Article, the Department may adopt  
19 such orders or regulations as it deems necessary in order to preserve and maintain the public  
20 health, safety, welfare, and convenience. Each excavation in the public right-of-way pursuant  
21 to this Article shall be performed in accordance with the standard plans and specifications of  
22 the Department and any Department orders or regulations, except where the Director, in ~~his or~~  
23 ~~her~~ the Director's discretion, grants prior written approval to deviate from such standard plans  
24 and specifications, orders, or regulations. The Director shall develop guidelines to implement  
25 the granting of waivers authorized pursuant to this Article. Furthermore, excavation in the

1 public right-of-way shall conform to the orders, regulations, and rules of the Municipal  
2 Transportation Agency.

3 (b) The Department may adopt such orders, regulations, or standard plans and specifications  
4 as it deems necessary or appropriate to allow a permittee to use microtrenching to install fiber-optic  
5 facilities in the public right-of-way; provided, however, the Department shall (1) not require any  
6 increase in the requested width or depth of any microtrench unless it specifically finds that the increase  
7 would be necessary to preserve and maintain the public health, safety, welfare, and convenience, and  
8 (2) not require any restoral or modification to any area outside the microtrench, provided that the  
9 microtrenching complies with the orders, regulations, standard plans, specifications, and any other  
10 conditions imposed on the permit. In such orders, regulations, standard plans, specifications, and  
11 conditions, the Director may specify in an order those standard plans and specifications that the  
12 Department may waive in a permit that allows for the use of microtrenching.

13  
14 **SEC. 2.4.4. DEFINITIONS.**

15 \* \* \* \*

16 "Facility" or "facilities" shall include, but not be limited to, any and all cables, cabinets,  
17 ducts, conduits, converters, equipment, drains, handholds, manholes, pipes, pipelines, splice  
18 boxes, surface location markers, tracks, tunnels, utilities, vaults, and other appurtenances or  
19 tangible things owned, leased, operated, or licensed by an owner or person, that are located  
20 or are proposed to be located in the public right-of-way.

21 "Fiber-optic facilities" shall mean fiber-optic cables, and related ancillary equipment such as  
22 conduit, ancillary cables, hand holes, vaults, and terminals.

23 "Incremental cost" shall mean the cost associated with adding City communications  
24 infrastructure to an excavation project, including the cost of the materials needed by the City  
25 and any additional labor cost.

1           \* \* \* \*

2           "Medium excavation project" shall mean any excavation of more than 100 but no  
3 greater than 1,000 square feet.

4           "Microtrench" shall mean an open trench that is less than or equal to 4 inches in width and not  
5 less than 12 inches nor more than 26 inches in depth, and that is created for the purpose of installing a  
6 subsurface pipe or conduit for fiber-optic facilities.

7           "Microtrenching" shall mean excavation of a microtrench.

8           "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-year period.

10          \* \* \* \*

11  
12          Section 3. Effective Date. This ordinance shall become effective 30 days after  
13 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
14 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
15 of Supervisors overrides the Mayor's veto of the ordinance.

16  
17          //

18  
19          //

20  
21          //

22  
23          //

24  
25          //

1           Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
2 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
3 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
4 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
5 additions, and Board amendment deletions in accordance with the “Note” that appears under  
6 the official title of the ordinance.

7

8           APPROVED AS TO FORM:  
9           DAVID CHIU, City Attorney

10          By:    /s/ Giulia Gualco-Nelson  
11                GIULIA GUALCO-NELSON  
              Deputy City Attorney

12          n:\legana\as2023\2300393\01691831.docx

13

14

15

16

17

18

19

20

21

22

23

24

25

## **LEGISLATIVE DIGEST**

[Public Works Code - Excavation by Microtrenching for Fiber]

**Ordinance amending the Public Works Code to allow the use of microtrenching to install fiber-optic facilities; and affirming the Planning Department's determination under the California Environmental Quality Act.**

### **Existing Law**

Article 2.4 of the Public Works Code regulates excavating in the public right-of-way under the jurisdiction of the Department of Public Works ("Department"). In addition to the requirements set forth in Article 2.4, the Department has the authority to adopt orders, regulations, standard plans, and specifications in order to preserve and maintain the public health, safety, welfare, and convenience.

California Government Code Section 65964.5 requires local governments to allow microtrenching in the public right-of-way for the installation of underground fiber-optic facilities, subject to certain conditions.

### **Amendments to Current Law**

This ordinance would amend Section 2.4.4 of the Public Works Code to codify the definitions and standards in Government Code Section 65964.5. The ordinance would also amend Sections 2.4.2 and 2.4.3 of the Public Works Code to:

- codify the Department's authority to issue permits for excavation by microtrench to install fiber-optic facilities, subject to the adoption of standard plans and specifications;
- provide that the Department shall not require any increase in the requested width or depth of any microtrench unless it specifically finds that the increase would be necessary to preserve and maintain the public health, safety, welfare, and convenience;
- provide that the Department may not require any restoral or modification to any area outside the microtrench, as long as the microtrenching complies with the orders, regulations, standard plans, specifications, and any other conditions imposed on the permit; and
- authorize the Director to specify in an order the standard plans and specifications that the Department may waive in a permit that allows for the use of microtrenching.

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689
Tel. No. (415) 554-5184
Fax No. (415) 554-5163
TDD/TTY No. (415) 554-5227

MEMORANDUM

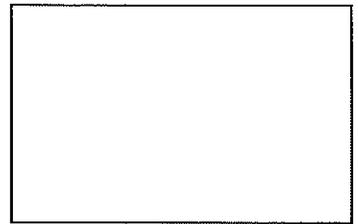
Date: August 8, 2023
To: Planning Department / Commission
From: Erica Major, Clerk of the Land Use and Transportation Committee
Subject: Board of Supervisors Legislation Referral - File No. 230867
Public Works Code - Excavation by Microtrenching for Fiber

- California Environmental Quality Act (CEQA) Determination (California Public Resources Code, Sections 21000 et seq.)
Ordinance / Resolution
Ballot Measure
Amendment to the Planning Code, including the following Findings:
Amendment to the Administrative Code, involving Land Use/Planning
General Plan Referral for Non-Planning Code Amendments
Historic Preservation Commission

Please send the Planning Department/Commission recommendation/determination to Erica Major at Erica.Major@sfgov.org.

**Introduction Form**

*(by a Member of the Board of Supervisors or the Mayor)*



I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee (Ordinance, Resolution, Motion or Charter Amendment)
- 2. Request for next printed agenda (For Adoption Without Committee Reference)  
*(Routine, non-controversial and/or commendatory matters only)*
- 3. Request for Hearing on a subject matter at Committee
- 4. Request for Letter beginning with "Supervisor [ ] inquires..."
- 5. City Attorney Request
- 6. Call File No. [ ] from Committee.
- 7. Budget and Legislative Analyst Request (attached written Motion)
- 8. Substitute Legislation File No. [ ]
- 9. Reactivate File No. [ ]
- 10. Topic submitted for Mayoral Appearance before the Board on [ ]

The proposed legislation should be forwarded to the following (please check all appropriate boxes):

- Small Business Commission     Youth Commission     Ethics Commission
- Planning Commission     Building Inspection Commission     Human Resources Department

General Plan Referral sent to the Planning Department (proposed legislation subject to Charter 4.105 & Admin 2A.53):

- Yes                       No

*(Note: For Imperative Agenda items (a Resolution not on the printed agenda), use the Imperative Agenda Form.)*

Sponsor(s):

Safai, Engardio

Subject:

Microtrenching: Public Works Code Amendments

Long Title or text listed:

See ordinance attached

Signature of Sponsoring Supervisor: