

1 [Public Works Code - Installation of Communications Infrastructure in Excavation Projects]

2 **Ordinance amending the Public Works Code to require the installation of City-owned**
3 **communications infrastructure in excavation projects where the City has determined**
4 **that it is both financially feasible and consistent with the City's long-term goals to**
5 **develop the City's communications infrastructure.**

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.

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

14 Section 1. The Public Works Code is hereby amended by revising Section 2.4.4, to
15 read as follows:

16 **SEC. 2.4.4. DEFINITIONS.**

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

18 (a)—"Agent" shall mean a person or persons authorized to assist an owner in the
19 permitting process or in the performance of an excavation.

20 (b)—"Applicant" shall mean an owner or duly authorized agent of such owner, who
21 has submitted an application for a permit to excavate.

22 (c)—"Article" shall mean this Article 2.4 of the Public Works Code.

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

1 (e)—"City" shall mean the City and County of San Francisco.

2 "City communications infrastructure" shall mean conduits, pull boxes, and other facilities that
3 are used by the City to provide communications services.

4 (f)—"Department" shall mean the Department of Public Works.

5 "Department of Technology" shall mean the Department of Technology or any successor City
6 agency that is responsible for managing City communications infrastructure.

7 "Department of Technology Requirements" shall mean the Department of Technology's
8 regulations implementing the Department of Technology's participation in excavation projects by
9 installing City communications infrastructure.

10 (g)—"Deposit" shall mean any bond, cash deposit, or other security provided by the
11 applicant in accordance with Section 2.4.40 of this Article.

12 (h)—"Director" shall mean the Director of the Department of Public Works or his or
13 her designee.

14 (i)—"Excavation" shall mean any work in the surface or subsurface of the public
15 right-of-way, including, but not limited to opening the public right-of-way; installing, servicing,
16 repairing or modifying any facility(ies) in or under the surface or subsurface of the public right-
17 of-way, and restoring the surface and subsurface of the public right-of-way.

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

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 and any
25 additional labor costs.

1 ~~(k)~~—"Large excavation project" shall mean any excavation of more than 1000 square
2 feet.

3 ~~(l)~~—"Major work" shall mean any reasonably foreseeable excavation that will affect
4 the public right-of-way for more than 15 consecutive calendar days.

5 ~~(m)~~—"Medium excavation project" shall mean any excavation of more than 100 but no
6 greater than 1,000 square feet.

7 ~~(n)~~—"Moratorium street" shall mean any block that has been reconstructed, repaved,
8 or resurfaced by the Department or any other owner or person in the preceding five-year
9 period.

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

13 ~~(p)~~—"Owner" shall mean any person, including the City, who owns any facility or
14 facilities that are or are proposed to be installed or maintained in the public right-of-way.

15 ~~(q)~~—"Permit" or "permit to excavate" shall mean a permit to perform an excavation as
16 it has been approved, amended, or renewed by the Department.

17 ~~(r)~~—"Permittee" shall mean the applicant to whom a permit to excavate has been
18 granted by the Department in accordance with this Article.

19 ~~(s)~~—"Person" shall mean any natural person, corporation, partnership, any municipal
20 excavator, or any governmental agency, including the State of California or United States of
21 America.

22 ~~(t)~~—"Public right-of-way" shall mean the area across, along, beneath, in, on, over,
23 under, upon, and within the dedicated public alleys, boulevards, courts, lanes, roads,
24 sidewalks, spaces, streets, and ways within the City, as they now exist or hereafter will exist
25 and which are or will be under the permitting jurisdiction of the Department of Public Works.

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

5 (v)—"Sidewalk" shall mean the area between the fronting property line and the back
6 of the nearest curb.

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

8 "Standard City communications infrastructure specifications" shall mean the type, size, and
9 quantity of conduits, the size and frequency of pull boxes, and any other facilities that the Department
10 of Technology determines are necessary to serve the City's communications needs.

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

16
17 Section 2. The Public Works Code is hereby amended by revising Section 2.4.13, to
18 read as follows:

19 **SEC. 2.4.13. TRANSIT, PEDESTRIAN, BICYCLE, ~~AND~~ STORMWATER, AND**
20 **COMMUNICATIONS INFRASTRUCTURE IMPROVEMENTS AS PART OF PLANNING,**
21 **CONSTRUCTION, RECONSTRUCTION, AND REPAVING PROJECTS.**

22 (a) Whenever the Department or other Municipal Excavator undertakes a project
23 involving the planning, construction, reconstruction, or repaving of a public right-of-way, such
24 project shall include, to the maximum extent practicable and feasible, the following transit,
25 pedestrian, bicycle, ~~and~~ stormwater, and communications infrastructure improvements:

- 1 (1) Street and pedestrian-scale sidewalk lighting;
- 2 (2) Pedestrian and bicycle safety improvement measures, as established in
3 any official City adopted bicycle or pedestrian safety plan or other City adopted planning
4 documents;
- 5 (3) Appropriate access in accordance with the Americans with Disabilities
6 Act;
- 7 (4) Public transit facilities accommodation, including, but not limited to
8 designation of the right-of-way as a transit preferential street designation or bus rapid transit
9 corridor;
- 10 (5) Traffic calming devices;
- 11 (6) Landscaping;
- 12 (7) Low-impact design stormwater facilities consistent with the Stormwater
13 Design Guidelines;
- 14 (8) Other pedestrian and streetscape elements listed as appropriate to the
15 relevant street type as identified and defined in the Better Streets Plan; *and*
- 16 (9) Other street and sidewalk improvements consistent with the City’s
17 “Transit First” Policy” (Section ~~16.102~~ 8A.115 of the City Charter) and “Better Streets Policy”
18 (~~Chapter~~ Section 98.1 of the ~~San Francisco~~ Administrative Code); *-and*
- 19 (10) Communications infrastructure.
- 20 (b) The Director, in consultation with the Directors of the San Francisco Municipal
21 Transportation Agency, Department of Public Health, Planning Department, Department ~~on~~ *of*
22 the Environment, San Francisco Public Utilities Commission, Department of Technology, and
23 Mayor’s Office on Disability shall develop orders, regulations, or amendments to the
24 Department’s Standard Plans and Specifications that address the improvements set forth in
25 Subsection (a).

1 (c) To the maximum extent practicable and feasible, the Director shall condition all
2 excavation and street improvement permits on the inclusion of the improvements set forth in
3 Subsection (a). If such conditions would exceed the Director's regulatory authority, the
4 Director shall coordinate with other City departments to provide, to the maximum extent
5 practicable and feasible, said improvements on behalf of the City. As part of the decision on
6 any permit or authorization pursuant to the Public Works Code, the Director shall take into
7 account the permit activity's positive and negative impacts on the integration, enhancement,
8 or preservation of the improvements set forth in Subsection (a).

9
10 Section 3. The Public Works Code is hereby amended by adding Section 2.4.14, to
11 read as follows:

12 **SEC. 2.4.14. COORDINATION WITH DEPARTMENT OF TECHNOLOGY.**

13 (a) "Dig Once." To facilitate the Department of Technology's efforts to develop City
14 communications infrastructure, and limit excavation in the public right-of-way, an applicant for a
15 permit under Section 2.4.10 for the installation of underground conduits shall comply with the
16 requirements of this Section 2.4.14.

17 (b) Notice Required.

18 (1) An applicant for a permit to install underground conduits shall notify the
19 Department of Technology of its application in the manner set forth in the Department of Technology
20 Requirements at least 14 days before submitting the application to the Department.

21 (2) Notice is only required when the minimum length of the proposed
22 excavation will be at least 900 linear feet, or such longer distance as the Department of
23 Technology may establish in the Department of Technology Requirements.

24 (c) Approval of Application.

1 (1) Where the Department of Technology Will Participate. The Department may
2 approve an application and issue a permit if the Department finds that all of the following have
3 occurred:

4 (A) The applicant has complied with the Department of Technology
5 Requirements for notice of its application;

6 (B) The Department of Technology has not notified the applicant and the
7 Department that the Department of Technology will not participate in the proposed excavation project;
8 and

9 (C) The applicant has submitted plans consistent with the standard City
10 communications infrastructure specifications.

11 (2) Where the Department of Technology Will Not Participate. The Department
12 may approve an application and issue a permit if the Department finds that both of the following have
13 occurred:

14 (A) The applicant has complied with the Department of Technology
15 Requirements for notice of its application; and

16 (B) The Department of Technology has notified the applicant and the
17 Department that the Department of Technology will not participate in the proposed excavation project.

18 (d) Denial of Application. The Department shall deny an application for a permit if the
19 Department determines that the applicant has failed to comply with the Department of Technology
20 Requirements.

21 (e) Applicant's Incremental Costs. The Department of Technology shall be responsible for
22 the applicant's incremental costs when the Department of Technology participates in an excavation
23 project by installing City communications infrastructure.

24 (f) Exception. The requirements of this Section 2.4.14 shall not apply to an application for
25 an emergency permit under Section 2.4.22.

1 Section 4. The Public Works Code is hereby amended by adding Subarticle IX,
2 Sections 2.4.95, ~~and 2.4.96,~~ and 2.4.97, to read as follows:

3 **SUBARTICLE IX**

4 **OBLIGATIONS OF THE DEPARTMENT OF TECHNOLOGY**

5 **SEC. 2.4.95. INSTALLATION OF CITY COMMUNICATIONS INFRASTRUCTURE.**

6 (a) Need for City Communications Infrastructure. The Department of Technology shall
7 consider adding City communications infrastructure to any permit issued for an excavation project
8 under this Article 2.4 to create more efficient delivery of communications services to the public and for
9 the City's needs.

10 (b) Response to Notice. Upon receipt of a notice issued pursuant to Section 2.4.14 that a
11 utility or municipal excavator intends to apply for an excavation permit to install underground conduit,
12 the Department of Technology shall review the application to determine whether it is both financially
13 feasible and consistent with the City's long-term goals to add City communications infrastructure to the
14 proposed excavation project.

15 (1) If the determination is affirmative, the Department of Technology does not need
16 to notify the applicant and the Department that the Department of Technology intends to
17 participate in the excavation project. The presumption will be that the Department of Technology
18 will participate in the excavation project by requiring the excavator to installing City
19 communications infrastructure.

20 (2) If the determination is negative, the Department of Technology shall notify the
21 applicant and the Department in the time required by within 7 days of issuance of the notice that
22 the Department of Technology does not intend to participate in the excavation project.

23 **SEC. 2.4.96. DEPARTMENT OF TECHNOLOGY REQUIREMENTS.**

24 (a) Adoption of Requirements. The Department of Technology, in consultation with the
25 Department, shall by order develop and implement the Department of Technology Requirements. The

1 Department of Technology shall use a process to adopt the Department of Technology Requirements
2 that ensures that municipal excavators, utility excavators, and the general public have a meaningful
3 opportunity to comment on the provisions to be contained therein before they are formally adopted by
4 the Department of Technology.

5 (b) Purpose of Requirements. The Department of Technology Requirements shall specify
6 the manner in which the Department of Technology will participate in excavation projects by installing
7 City communications infrastructure that meets the City's needs at a reasonable cost.

8 (c) Minimum Requirements. At a minimum, the Department of Technology Requirements
9 shall contain the following procedural and substantive requirements for the installation of City
10 communications infrastructure in excavation projects:

11 (1) The process for the Department of Technology to review planned excavation
12 projects in a timely manner to determine if City participation is feasible and to verify its participation
13 by informing the applicant and the Department within 7 days of receiving notice;

14 (2) The criteria to be used by the Department of Technology to decide whether to
15 decline to participate in excavation projects;

16 (3) The standard technical specifications for City communications infrastructure;

17 (4) The standard methodology for determining the incremental costs associated with
18 installing City communications infrastructure in excavation projects;

19 (5) The requirements and process for excavators to seek exemptions from using the
20 City's standard methodology for determining incremental costs when installing standard City
21 communications infrastructure in excavation projects; and

22 (6) Alternative methodologies for determining the City's incremental costs when
23 exemptions are granted.

24 **SEC. 2.4.97. REPORTING REQUIREMENTS.**

1 The Department of Technology shall file quarterly reports with the Board of Supervisors
2 and Mayor containing the following information: (a) the number of excavation permits issued
3 by the Department for projects meeting the criteria for Department of Technology participation
4 set forth in Section 2.4.14(b)(2); (b) the locations of the excavations identified in the
5 excavation projects; (c) the identities of the applicants for the excavation permits; (d) whether
6 the Department of Technology received any objections to its participation in the excavation
7 projects from the municipal or utility excavators submitting the applications; (e) whether the
8 Department of Technology opted to participate in the excavation projects by installing City
9 communications infrastructure; (f) the City's costs to participate in the excavation projects by
10 installing City communications infrastructure; and (g) the status of the installation of City
11 communications infrastructure in the excavation projects.

12
13 Section 5. Effective Date. This ordinance shall become effective 30 days after
14 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
15 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
16 of Supervisors overrides the Mayor's veto of the ordinance.

17
18 Section 6. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
19 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
20 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
21 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
22 additions, and Board amendment deletions in accordance with the "Note" that appears under
23 the official title of the ordinance.

1 Section 7. Department of Technology Implementation. The Department of Technology
2 shall adopt the order required by Section 2.4.96 of the Public Works Code within 90 days of
3 the effective date of this ordinance.

4
5 APPROVED AS TO FORM:
6 DENNIS J. HERRERA, City Attorney

7
8 By: _____
9 WILLIAM K. SANDERS
Deputy City Attorney

10 n:\legana\as2013\1300289\00961652.doc