

SFPUC RIGHT OF WAY ENCROACHMENT POLICY

2007

As part of its utility system, the San Francisco Public Utilities Commission (SFPUC) operates and maintains approximately 1600 miles of water pipelines and tunnels, 160 miles of electrical transmission lines, 900 miles of sewer lines and other related appurtenances that run through real property (the "Right of Way") located in San Francisco, San Mateo, Santa Clara, Alameda, Tuolumne, Stanislaus and San Joaquin counties. Most of the Right of Way is owned by the City and County of San Francisco (the "City") in fee, although in some instances the City has only an easement interest for its right of way. Inside the City, most water and wastewater transmission lines are located within City streets.

Regardless of the nature of the City's property rights, it is vitally important that the SFPUC protect its water, wastewater, and power transmission facilities and ensure immediate access to all facilities for maintenance, repair, security and replacement. It is also important that the right of way be maintained so as to minimize any potential landowner liability and to prepare for the possibility of future capital improvements to the right of way.

Increased urbanization and development around the water transmission line right of way in particular has led to an increase in the number of encroachments onto the right of way. Water transmission pipelines are those that move water to SFPUC's wholesale customers located in Alameda, Santa Clara, San Mateo and to the City of San Francisco. These encroachments threaten access, impair new construction and maintenance efforts, and increase costs and potential liabilities. Houses, garages, driveways, fences, trees, landscaped areas, vehicles and other items currently encroach onto the right of way. The SFPUC has also noticed an increase in unauthorized uses such as temporary trespasses and garbage dumping. Therefore, on September 28, 1999, the San Francisco Public Utilities Commission adopted a Commercial Land Management Operating Manual that included a Right of Way (R/W) Encroachment Removal Policy published 12/14/01 and a R/W Vegetation Management Plan administered under the (R/W) Integrated Vegetation Management Policy attached hereto.

Since the original implementation of the R/W Encroachment Policy, security concerns have given additional impetus to the need to provide a safe and protected corridor for water transmission by the SFPUC. The SFPUC's concern for safety and security provides an additional foundation for the strict implementation of this policy.

Because of the length of the right of way and the importance of the encroachment removal effort, the SFPUC has determined that **intensified encroachment removal activities must commence** notwithstanding the failure to identify each and every encroachment. Accordingly, continuing identification, prevention and removal efforts shall occur simultaneously. In

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addition, due to limited resources and the variation in safety and other threats posed by different encroachments, the SFPUC shall continuously prioritize known encroachments to ensure that the encroachments that pose the greatest threat to pipeline access, construction, safety and security, and encroachments that can be easily removed are addressed first. Removal efforts shall initially focus on any encroachments which would:

- (1) endanger the existing or proposed water, sewer or electrical transmission lines and appurtenances;**
- (2) impair access to facilities for emergency repair, maintenance, or operational activity;**
- (3) be detrimental to the efficient and effective maintenance of the right of way;**
- (4) cause obstruction to the inspection and monitoring of equipment, and collection of land survey, corrosion control, and water quality data; and/or**
- (5) increase liabilities to the SFPUC. It shall be the policy of the SFPUC to take any and all necessary actions to cause the removal of, or to remove, such encroachments from the right of way in accordance with this policy.**

To prevent the unauthorized use of the right of way, the SFPUC **may install fences and other barriers where prudent** or necessary as authorized by the Water Enterprise Assistant General Manager after consultation with Real Estate Services (RES). The SFPUC's goal shall be to fence as much of the right of way as is necessary to protect the SFPUC's facilities and property rights. Said fencing shall be consistent with the SFPUC's standards at the time of fence installation. The Water Enterprise, working with RES, shall have broad discretion and authority to cause the installation of fences or other barriers along the right of way in any location deemed necessary or prudent.

Ancillary uses and encroachments in the right of way may be permitted only where the uses provide identifiable benefits to the SFPUC, as determined by SFPUC Water Enterprise and RES personnel. Approval of permitted uses shall be consistent with existing SFPUC policy and shall be processed by RES.

In specific cases, the SFPUC will allow use of the right of way by third parties in order to enhance maintenance efforts and reduce maintenance costs by the SFPUC. **For example, the SFPUC provides for the leasing or permitting of portions of the right of way with nominal revenue-generating potential**

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to property owners whose land is bi-sected by the SFPUC right of way, neighborhood associations, municipal governmental entities, non-profit groups and similar entities at little or no cost, provided they agree to maintain the surface of the right of way in a good and safe condition acceptable to the SFPUC and to indemnify the SFPUC for any injury or loss relating to such third-party use. It is contemplated that this effort will focus on non-commercial uses such as parks and recreation areas. Only portions of the right of way large enough to reduce the SFPUC's maintenance costs and efforts shall be considered in this regard. In areas where the right of way may be leased to private entities for parking or other commercial uses, this shall be a preferred use due to its revenue-generating capacity. All such third party rights in SFPUC property will be temporary in nature.

Policy Implementation

SFPUC RES staff will use available resources to identify and prioritize all existing unauthorized encroachments and uses. With regard to each encroachment, SFPUC RES staff will gather relevant, available information. Where any current use of right of way property is not permitted, SFPUC Water Enterprise personnel will contact RES and obtain ownership information of the encroaching party and survey information of the encroachment, if necessary. The SFPUC RES staff will notify the adjacent owner/encroacher that the use is not authorized, and such notice will identify the option or options available to the adjacent property owners/encroachers, consistent with an administrative procedure, acceptable to the SFPUC General Manager, to be prepared and implemented by RES. Depending on the nature of the encroachment, and at the sole discretion of the SFPUC, **options may include:**

- (1) immediate removal;**
- (2) removal within a specified period of time;**
- (3) possible modifications to the encroachment; and/or**
- (4) development of a permit agreement with provisions acceptable to the SFPUC.**

The administrative procedures will include attempts to resolve the encroachment through follow-up contact with the adjacent property owners/encroachers by RES. RES shall establish and chair an Internal Encroachment Review Committee (IERC) for the purpose of providing an administrative review of and proposed resolution to encroachments that may not be resolved via initial contacts between the SFPUC and the adjacent property owners/encroachers. Should administrative procedures fail or reach impasse, the SFPUC will, working with the City Attorneys'

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Office, avail itself of any available remedies, including but not limited to self-help remedies and/or litigation. In particular, where the encroachment consists of trees or vegetation, or the owner of the encroachment is unknown, SFPUC RES staff may determine to cause the removal of the encroachment following notice (posting and/or mail) of the date set for removal without first requesting that the removal be performed by adjoining property owners. The SFPUC RES staff will make every effort to recover the costs of such removal from the adjacent property owners/encroachers.

For Areas that Should be Fenced as Determined by the SFPUC Water Enterprise:

1. Staff from RES will gather relevant, available information to confirm the location of the applicable SFPUC property boundaries.
2. Staff from SFPUC Communications Group will notify neighboring property owners in advance, of the SFPUC Water Enterprise's decision to install fences in the specified areas.
3. The SFPUC Water Enterprise will cause the fence or other barrier to be installed in the specified locations at the times specified in the notice above.