

ORDINANCE NUMBER O- 19215 (NEW SERIES)

ADOPTED ON SEP 22 2003

AN ORDINANCE AMENDING CHAPTER 6, ARTICLE 2, BY ADDING DIVISION 12, TITLED "EXCAVATION FEES," SECTIONS 62.1201, 62.1202, 62.1203, 62.1204, 62.1205, 62.1206, 62.1207, 62.1208, AND 62.1209 ALL RELATING TO PAYMENT OF EXCAVATION FEES.

WHEREAS, capitalized terms used in these recitals are defined in Section 1 of this ordinance (to be codified in Section 62.1202); and

WHEREAS, the City of San Diego spends millions of dollars annually to improve and maintain Public Rights-of-Way in the City's geographical boundaries, and the City holds these Public Rights-of-Way as assets for its citizens; and

WHEREAS, Public Utilities will, from time to time, be required to make Excavations in Public Rights-of-Way as necessary for installation of utility lines, performing maintenance, and for other related purposes; and

WHEREAS, studies undertaken for the cities of Austin, Kansas City, Burlington, Cincinnati, Phoenix, San Francisco, Sacramento, and Los Angeles have concluded that:

- (a) Excavations in the Pavement of the Public Rights-of-Way degrade and shorten the life of the Pavement of the Public Rights-of-Way; and
- (b) This degradation occurs no matter how well the Excavation is restored; and

(c) This degradation increases the frequency and cost of Resurfacing, maintenance, and repair of the Public Rights-of-Way; and

(d) Even if the Excavation restoration is accomplished in accordance with existing standards, Excavations damage the strength and life of the adjacent Pavement, which is defined as the Excavation Influence Area in the "Technical Report by Engineering & Research International, Inc. [Firm]: Evaluation of Utility Cut Patching on Pavements in the City of San Diego," on file with the Office of the City Clerk as document number OO- 19215 [Technical Report]; and

(e) Excavation in the Pavement of the Public Rights-of-Way permits water to seep into the Pavement, which weakens Pavement support around the patch, thereby allowing deterioration at an accelerated rate; and

WHEREAS, in order to determine the extent to which the Pavement degradation found by studies in other cities occurs in the City of San Diego, the City retained the Firm to determine the effect of Excavations on the Pavement of the Public Rights-of-Way in the City of San Diego; and

WHEREAS, the Firm provided the City with the Technical Report and states that, even if Pavement restoration in the Excavation is structurally adequate, Excavations reduce the strength and life of the Pavement located adjacent to where the Excavation occurs, and that the potential for damage to the Pavement is magnified when a Public Right-of-Way is subject to multiple Excavations and is repaired numerous times before the next scheduled Resurfacing; and

WHEREAS, it is desirable to adopt regulations that will help protect the structural integrity of City Public Rights-of-Way, thereby safeguarding the value of the City's Public

Rights-of-Way for the benefit of all City residents by requiring that Public Utilities who make Excavations remedy the damage caused to the integrity and life of the Public Rights-of-Way;

NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 6, Article 2, of the San Diego Municipal Code is hereby amended by adding a new Division 12, titled "Excavation Fees," and new Sections 62.1201, 62.1202, 62.1203, 62.1204, 62.1205, 62.1206, 62.1207, 62.1208, and 62.1209 to read as follows:

## DIVISION 12

### EXCAVATION FEES

#### §62.1201 Findings and Purpose.

The City Council finds that Excavations degrade and shorten the life of the Public Rights-of-Way. It is the purpose and intent of this Division to provide policies and procedures for Excavation in the Public Rights-of-Way in order to establish cost recovery mechanisms for all costs resulting from Public Utilities' Excavations. In addition, the policies and procedures of this Division are intended to deter and reduce the number of excessive, repeated Excavations in the Public Rights-of-Way, thereby minimizing damage to the Public Rights-of-Way, traffic safety concerns as well as inconvenience to the community.

#### §62.1202 Definitions.

For purposes of this Article, the following definitions apply:

"Arterial Street" means a Public Right-of-Way that: (1) primarily provides a network connecting vehicles and transit to other primary Public Rights-of-Way and to the freeway system; (2) carries heavy vehicular movement up to 50,000 Average Daily Trips [ADT];

and (3) typically has a curb-to-curb width of 102 feet, or a curb to curb width as defined in the current City's Standard Drawings.

"As-Builts" means plans modified from the original design to reflect the actual product built, the purpose of which is to provide factual information on changes to the work, visible or not visible, to enable future design to proceed with accurately represented existing improvements.

"City Engineer" means the Chief Engineer of the City, or other person designated by the City Council, City Manager, or City Engineer.

"City's Standard Drawings" means the current version of that document titled "City's Standard Drawings No. 769332" which includes San Diego area regional standard drawings on file at the Maps and Records Section of the City of San Diego Development Services Department or available through the City Engineer.

"Collector Street" means a Public Right-of-Way that: (1) primarily provides movement between Residential Streets and larger Public Rights-of-Way, (2) secondarily provides access to abutting property; (3) carries low-to-moderate vehicular movement up to 20,000 ADT; and, (4) typically has a curb-to-curb width of between 36 and 82 feet, or a curb-to-curb width as defined in the current City's Standard Drawings.

"Decorative Surface" means any surface other than unadorned concrete or asphalt on the Public Rights-of-Way such as ceramic tile, concrete pavers, stamped concrete, or other surface using a unique treatment.

"Dry Utilities" means all Public Utilities including, but not limited to, Public Utilities whose Installations are for gas, electric, cable, telephones, fiber optic, traffic signals, street lights, and television. It excludes Wet Utilities.

“Excavation” means any operation in which earth, sand, gravel, rock, or other material in the ground is moved, by using tools for grading, trenching, digging, ditching, scraping, cable or pipe plowing, drawing, brushing, or other similar activity.

“Excavation Influence Area” means the mandatory minimum areas for Resurfacing an Excavation.

“Installations” means any legally authorized type of structure, apparatus, plant, equipment, or other property installed in the Public Rights-of-Way.

“Major Street” means a Public Right-of-Way that: (1) primarily provides a network connecting vehicles and transit to other Major Streets, to Arterial Streets, and to the freeway system; (2) secondarily provides access to abutting commercial and industrial property; (3) carries moderate-to-heavy vehicular movement up to 40,000 ADT; and (4) typically has a curb-to-curb width of between 78 and 112 feet, or a curb-to-curb width as defined in the current City’s Standard Drawings.

“Non-Linear Excavation” means an Excavation which is no larger than five feet by five feet, or an Excavation eighteen inches or less around substructures, required to access existing Installations for new service, or maintenance of existing Installations.

“Notice” means a written notification which is deemed to have been received on the date on which it was faxed, two days after the date on which it was mailed.

“Pavement” means the fully improved roadway surface of the Public Rights-of-Way, designed and constructed to support the movement of vehicular traffic. Pavement typically consists of asphaltic concrete or cement concrete and it includes any sub-grade Installations.

“Person” has the same meaning as in Section 11.0210 of this Code.

“Pothole” means a limited Excavation used to determine the actual vertical and horizontal location of underground Installations.

“Public Rights-of-Way” means public easements or public property that are or may be used for streets, alleys or other public purpose.

“Public Utility” means Wet Utilities and Dry Utilities which provide service for, or the commodity is delivered to, the public or any portion thereof. It also includes any City department and utilities defined in California Public Utilities Code Section 216. It includes their respective contractors, subcontractors, agents, employees or representatives.

“Raised Median” means a raised separation made of berms or concrete curbs or other material which separates traffic flowing in opposite directions.

“Residential Street” means a Public Right-of-Way that: (1) provides direct access to abutting property; (2) carries up to 2,200 ADT; (3) typically has a curb-to-curb width of: (i) between 26 to 38 feet on Public Rights-of-Way where parking is allowed on only one side or as defined in the current version of the City’s Design Standards; or (ii) typically has a curb-to-curb width between 30 to 44 feet on Public Rights-of-Way where parking is allowed on both sides, or as defined in the current City’s Standard Drawings.

“Resurface” or “Resurfacing” means any or all of the following as directed by the City Engineer:

(1) Any removal and replacement necessary for sub-base repairs using either Portland cement concrete, or full depth base asphaltic concrete.

(2) Cold planing/milling the gutterline, and making horizontal header cuts to a minimum depth of one-inch, for a minimum of six feet in width, or if required by the City Engineer, cold planing/milling of the entire street width.

- (3) Replacement of any damaged traffic signal detection loops.
- (4) Placement of Pavement reinforcing fabrics, if required by the City

Engineer.

(5) The placement of hot mix asphaltic concrete upon the existing roadbed, in varying thicknesses as directed by the City Engineer and any Decorative Surfaces, as required by the City Engineer.

- (6) The adjustment of any affected City manholes and gate valve covers.
- (7) The permanent layout and installation of Pavement markings.

“Slurry” means the placement of a slurry seal coating onto existing Public Rights-of-Way surfaces. It can be referred to as “Slurrying” or “Slurried.”

“Trenchless Technology” means methods, material, equipment and techniques that can be used to install, replace, renew or repair underground infrastructure with minimal surface disturbance. Trenchless Technology includes drilling, auguring, boring and tunneling.

“Warranty” means a written agreement elected to be entered into by a Public Utility in lieu of paying the Excavation Fee in which a Public Utility agrees to Resurface the Public Right-of-Way under this Division.

“Wet Utilities” means all Public Utilities whose Installations are for water (both main and lateral), reclaimed water, sewer (both main and lateral), storm drains, and fire hydrants. It excludes Dry Utilities.

**§62.1203 Three Year Moratorium on Resurfaced Public Rights-of-Way.**

(a) Public Utilities shall not Excavate in Public Rights-of-Way which have been Resurfaced three years or less prior to the permit application date, or the Excavation date

where a permit is not required, unless the Public Utility obtains a written determination by the City Engineer prior to Excavation that one of the following is present:

(1) A bona fide emergency that:

(A) endangers the health and safety or property of the citizenry;

and

(B) requires Excavation in order to remediate the emergency; or

(2) New service to a specific location cannot be provided:

(A) through existing conduit; or

(B) where Trenchless Technology is impractical due to one or

more of the following:

(i) soil conditions; or

(ii) proximity of Installations; or

(iii) where a large conduit package is being installed; or

(iv) where Trenchless Technology is economically

impractical compared to trenching and Resurfacing performed in accordance with approved standards; or

(C) the Public Utility demonstrates to the City Engineer that the service cannot be provided from another location.

(3) Installation relocation by non-government owned Public Utilities is both:

(A) required by the City, County, State or Federal Government;

and



(B) not required as a result of an underground utility district established pursuant to Section 61.0501, et seq.

(4) Only a Non-Linear Excavation will be made.

(b) All Public Utilities who have obtained a written determination from the City that their proposed Excavation meets one or more of the criteria of Section 62.1203(a)(1)-(3) shall Resurface as directed by the City Engineer and in accordance with the following:

(1) Resurfacing shall include but is not limited to:

(A) Where the Excavation is in the direction of traffic, the Public Utility shall Resurface the entire length of the Excavation area plus the Excavation Influence Area on each end, and the entire width of the Public Right-of-Way from curb-line to curb-line, or where a Raised Median is present the Public Utility shall Resurface from the curb-line to the Median.

(B) Where the Excavation is perpendicular to the direction of traffic, the Public Utility shall Resurface the length of the Excavation from curb-line to curb-line, or for the length of the Excavation plus the Excavation Influence Area extending on each end of the Excavation, whichever is less. This Resurface also shall include the Excavation area plus the Excavation Influence Area on each side of the Excavation.

(C) Where a Raised Median is present and the Excavation is perpendicular to the direction of traffic, the Public Utility shall Resurface either from the Raised Median to the curb-line, or for the length of the Excavation plus the Excavation Influence Area extending on each end of the Excavation, whichever is less. This Resurface also shall include the Excavation plus the Excavation Influence Area on each side of the Excavation.

(c) It is unlawful for any Public Utility to violate any provision or to fail to comply with any requirements of Section 62.1203. Violations of this Division are misdemeanors as prescribed by San Diego Municipal Code section 12.0201.

**§62.1204 Moratorium on Slurried Public Rights-of-Way.**

(a) Public Utilities shall not Excavate in Public Rights-of-Way which have been Slurried one year or less prior to the permit application date, or the Excavation date where a permit is not required, unless the Public Utility obtains a written determination by the City Engineer prior to Excavation that one of the following is present:

(1) A bona fide emergency that:

(A) endangers the health and safety or property of the citizenry;

and

(B) requires Excavation in order to remediate the emergency; or

(2) New service to a specific location cannot be provided:

(A) through existing conduit;

(B) or where Trenchless Technology is impractical due to:

(i) soil conditions,

(ii) proximity of Installations,

(iii) where a large conduit package is being installed, or

(iv) where Trenchless Technology is economically

impractical compared to trenching and Resurfacing performed in accordance with approved standards, or

(C) the Public Utility demonstrates to the City Engineer that the service cannot be provided from another location.

(3) Installation relocation by non-government owned Public Utilities is both:

(A) required by the City, County, State or Federal Government; and

(B) not required as a result of an underground utility district established pursuant to Section 61.0501, et seq.

(4) Only a Non-Linear Excavation will be made.

(b) All Public Utilities who have obtained a written determination from the City that their proposed Excavation meets one or more of the criteria of Section 62.1203(a)(1)-(3) shall Slurry as directed by the City Engineer and in accordance with Section 62.1204(d).

(c) Public Utilities may Excavate in Public Rights-of-Way which have been Slurried greater than one year but less than two years prior to the permit application date, or the Excavation date where a permit is not required, but the Public Utility shall Slurry as directed by the City Engineer and in accordance with Section 62.1204(d).

(d) Slurrying shall include but is not limited to:

(1) Where the Excavation is in the direction of traffic, the Public Utility shall Slurry the entire length of the Excavation area plus the Excavation Influence Area on each end, and the entire width of the Public Right-of-Way from curb-line to curb-line, or where a Raised Median is present the Public Utility shall Slurry from the curb-line to the Median.

(2) Where the Excavation is perpendicular to the direction of traffic, the Public Utility shall Slurry the length of the Excavation from curb-line to curb-line, or for the length of the Excavation plus the Excavation Influence Area extending on each end of the

Excavation, whichever is less. This Slurry also shall include the Excavation area plus the Excavation Influence Area on each side of the Excavation.

(3) Where a Raised Median is present and the Excavation is perpendicular to the direction of traffic, the Public Utility shall Slurry either from the Raised Median to the curb-line, or for the length of the Excavation plus the Excavation Influence Area extending on each end of the Excavation, whichever is less. This Slurry also shall include the Excavation plus the Excavation Influence Area on each side of the Excavation.

§62.1205 Excavation Fee.

(a) All Public Utilities required to obtain a permit to Excavate under this Code, shall pay an Excavation Fee as a condition precedent to obtaining a permit to Excavate a Public Right-of-Way, unless one or more of the following conditions is met:

(1) A Public Utility elects to execute one of the following:

- (A) a Resurface Agreement under Section 62.1206; or
- (B) a Warranty under Section 62.1207; or

(2) The Pavement within the Public Right-of-Way has not been Resurfaced or Slurried within the past specified number of years from the date of Excavation.

This number shall be determined by the City Council and established by resolution; or

(3) The Public Utility needs only to Pothole; or

(4) Installation relocation by non-government owned Public Utilities is

both:

(A) required by the City, County, State or Federal Government;

and

(B) not required as a result of an underground utility district pursuant to Section 61.0501, et seq.

(5) The Public Utility has an agreement with the City which addresses payment of the Excavation Fee.

(b) All Public Utilities that are not required to obtain a permit to Excavate under this Code shall pay an Excavation Fee as a condition precedent to Excavation unless one or more of the conditions described in Section 62.1205(a)(1)-(5) is met.

(c) The Excavation Fee amount:

(1) Shall be established by the City Council by resolution adopted pursuant to this Division and placed on file in the Office of the City Clerk.

(2) Shall not exceed an amount reasonably necessary to recover the estimated costs for including, but not limited to all administration, investigation, inspection, monitoring, maintenance, repair, reconstruction, Slurrying and Resurfacing necessary to fully mitigate the damage and degradation caused by Excavations.

(3) Shall be the amount in effect on the date of issuance of a City permit to Excavate, or for Public Utilities that are not required to obtain a permit to Excavate, the amount in effect on the date of commencement of Excavation.

(d) The City may not issue a permit and it is unlawful to Excavate until:

(1) The Excavation Fee has been paid; or

(2) One of the conditions in Section 62.1205(a)(1)-(4) is met; or

(3) The Public Utility has submitted an executed Resurface

Agreement or Warranty.

(e) Public Utilities shall pay the Excavation Fee in addition to any Encroachment permit, administrative fee, or any other fee required by this Code, and is in addition to any inspection, special backfill, compaction, and Pavement replacement, or other requirements imposed by this Code or by any City Department as a condition of a permit.

**§62.1206 Resurface Agreement.**

(a) In lieu of paying the Excavation Fee under Section 62.1205, a Public Utility that is required to obtain a permit to Excavate under this Code may execute a Resurface Agreement prior to City's issuance of a permit. Submission of a fully executed agreement is a condition precedent to obtaining a permit.

(b) In lieu of paying the Excavation Fee under Section 62.1205, a Public Utility that is not required to obtain a permit to Excavate under this Code may execute a Resurface Agreement prior to commencement of Excavation. Submission of a fully executed agreement is a condition precedent to Excavation.

(c) The Resurface Agreement will be prepared by the City and require all of the following including, but not limited to:

(1) A scope of work describing the nature of Resurfacing required under Section 62.1208; and

(2) An indemnification provision requiring that the Public Utility defend and indemnify the City; and

(3) A provision requiring that if a Public Utility has not previously provided to the City Engineer all documents required under Section 62.1107, then the Public Utility shall make available to the City all records described in Section 62.1104(a); and

(4) A provision requiring the Public Utility to pay liquidated damages due to default; and

(5) A provision that the Public Utility, shall annually submit a Performance Bond which meets all of the requirements of Section 129.0119(a)(1)-(6), and 129.0119(b). In contrast to Section 129.0119(a), this Section applies to all Public Utilities whether or not required to obtain a permit under this Code.

(d) A Public Utility may elect to execute an annual and continuing Resurface Agreement prepared by the City covering more than one Excavation. All of the requirements of this Section 62.1206 shall also apply to an annual Resurface Agreement.

**§62.1207 Excavation Warranty.**

(a) In lieu of paying the Excavation Fee under Section 62.1205, a Public Utility may elect to execute a Warranty only if all of the following conditions are met:

(1) The Public Utility has done business in the City of San Diego within the last five years; and

(2) The Public Utility demonstrates within the past five years that upon Notice they have repaired any failed Excavations to the satisfaction of the City Engineer and the City has not had to repair any Excavation made by the Public Utility; and

(3) The Public Utility submits an executed Warranty either:

(A) prior to the City's issuance of a permit to Excavate, where the Public Utility is required to obtain a permit to Execute under this Code; or

(B) prior to Excavation, where the Public Utility is not required to obtain a permit to Excavate under this Code.

(c) The Warranty will be prepared by the City, and require all of the following, including but not limited to:

(1) A provision describing the Public Utility's sole responsibility to repair, restore, Slurry and/or Resurface under Section 62.1208, no later than thirty calendar days from Notice by the City Engineer; and

(2) An indemnification provision requiring that the Public Utility defend and indemnify the City; and

(3) A provision requiring that if a Person has not previously provided to the City Engineer all documents required under Section 62.1106, then the Person shall make available to the City all records described in Section 62.1104(a); and

(4) A provision requiring the Public Utility to pay liquidated damages due to default;

(5) A Warranty term equivalent to the remaining service life of the Public Right-of-Way prior to the Excavation, as determined by the City; and

(6) A provision that the Public Utility, shall submit a one year Performance Bond which meets all of the requirements of Section 129.0119(a)(1)-(6) and 129.0119(b). In contrast to Section 129.0119(a), this Section applies to all Public Utilities whether or not required to obtain a permit under this Code; and

(d) Any Public Utility that fails to execute a Warranty acceptable to the City shall not be issued a permit, nor be allowed to Excavate where no permit is required, unless the Public Utility pays the Excavation Fee in Section 62.1205.



**§62.1208 Resurfacing Public Rights-of-Way.**

(a) Where a Public Utility is required to or elects to Resurface under this Division, the quality, quantity, and extent to which the Public Utility is required to Resurface will be determined by the City Engineer after consideration of the condition of the Public Right-of-Way to be Excavated.

(b) Resurfacing shall include the Excavation Influence Area extending the following distances around the perimeter of the Excavation:

Street Classification	Wet Utilities	Dry Utilities
Arterial Streets	62 inches	51 inches
Major Streets	71 inches	55 inches
Collector Streets	82 inches	43 inches
Residential Streets	74 inches	46 inches

(c) Resurfacing shall include but is not limited to:

(1) Where the Excavation is in the direction of traffic, the Public Utility shall Resurface the entire length of the Excavation area plus the Excavation Influence Area on each end, and the entire width of the Excavation area plus the Excavation Influence Area extending from each side of the Excavation area.

(2) Where the Excavation is perpendicular to the direction of traffic, the Public Utility shall Resurface the length of the Excavation from curb-line to curb-line, or for the length of the Excavation plus the Excavation Influence Area extending on each end of the

Excavation, whichever is less. This Resurface also shall include the Excavation area plus the Excavation Influence Area on each side of the Excavation.

(3) Where a Raised Median is present and the Excavation is perpendicular to the direction of traffic, the Public Utility shall Resurface either from the Raised Median to the curb-line, or for the length of the Excavation plus the Excavation Influence Area extending on each end of the Excavation, whichever is less. This Resurface also shall include the Excavation plus the Excavation Influence Area on each side of the Excavation.

**§62.1209** Repair of City Excavation.

Upon Notice of failure of an Excavation made by the City, the City department responsible for the work shall repair the Excavation within thirty days.

**§62.1210** Establishment of Fund.

(a) All Excavation Fees collected pursuant to this Division shall be deposited into a special fund and shall be expended solely for all administration, investigation, inspection, monitoring, maintenance, repair, reconstruction, Slurrying, or Resurfacing, of the Public Rights-of-Way.

(b) All interest earned on the monies that have been deposited into such fund shall be retained in that fund and shall be used solely for the purpose of implementing this Division.

**§62.1211** Strict Compliance with Division Required.

It is unlawful for any Public Utility, Person, firm, or corporation to violate any provision or to fail to comply with any of the requirements of this Division. Violations of this Division are misdemeanors as prescribed by Section 12.0201.

Section 2. The City Council of the City of San Diego hereby declares that if any section, subsection, sentence, clause, phrase, portion or provision of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Council of the City hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, portion or provision thereof, irrespective of the fact that any one or more sections, subsections, clauses, phrases, portions or provisions was declared invalid or unconstitutional.

Section 3. A full reading of this Ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the Public a day prior to its final passage.

Section 4. This Ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: CASEY GWINN, City Attorney

By  \_\_\_\_\_  
Jacqueline Lindsay  
Deputy City Attorney

JL:sc:Civ.

Or.Dept:E&CP  
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