

ORDINANCE NUMBER O- 20231 (NEW SERIES)

DATE OF FINAL PASSAGE JAN 02 2013

AN ORDINANCE AMENDING CHAPTER 6, ARTICLE 2, DIVISION 11 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 62.1102, 62.1103, 62.1104, 62.1105, 62.1107, 62.1108, 62.1109, 62.1110, 62.1111, 62.1112, 62.1113 AND 62.1114; AMENDING CHAPTER 6, ARTICLE 2, DIVISION 12 BY AMENDING SECTIONS 62.1201, 62.1202, 62.1203, 62.1204, 62.1206, 62.1207, 62.1208, 62.1209, 62.1210, AND 62.1211; AMENDING CHAPTER 6, ARTICLE 2, DIVISION 12 BY AMENDING SECTION 62.1205 BY DELETING THE TEXT OF THAT SECTION AND REPLACING THE LANGUAGE IN ITS ENTIRETY; AND BY ADDING SECTIONS 62.1212, 62.1213, 62.1214, 62.1215, 62.1216, 62.1217, AND 62.1218, ALL RELATING TO PUBLIC RIGHT-OF-WAY AND LAND DEVELOPMENT.

WHEREAS, the condition of the streets of the City of San Diego are of eminent importance to public safety and welfare; and

WHEREAS, excavations in the public right-of-way can cause permanent damage that reduces the useful life of City streets and result in increased life-cycle costs to the City; and

WHEREAS, this ordinance is intended to improve the City's management of the public right-of-way by enhancing cooperation between the City and Public Utilities, and clarifying the responsibilities of those who excavate in the public right-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, Division 11 of the San Diego Municipal Code is hereby amended by amending sections 62.1102, 62.1103,

62.1104, 62.1105, 62.1107, 62.1108, 62.1109, 62.1110, 62.1111, 62.1112,
62.1113, and 62.1114 to read as follows:

§62.1102 Definitions

[No change in text.]

Blockage Report means a report made on a City-created form indicating the area and type of work to be done in the *public right-of-way*.

California Coordinate System means the coordinate system used to establish horizontal control, based on the North American Datum of 1983 (NAD83), as established by the National Geodetic Survey pursuant to Public Resources Code sections 8801-8819.

Cathodic Protection means control of external corrosion on underground or submerged metallic systems.

City Engineer means the Chief Engineer of the City as designated by the Mayor.

City Standard Drawings means that document on file in the Office of the City Clerk as Document No. 769819.

Decorative Surface means any non-standard surface on the *public right-of-way* such as ceramic tile, concrete pavers, stamped concrete, or other surface using a unique treatment.

Dry Utilities means *public utilities* whose *facilities* are for electricity, cable, telephones, fiber optic, traffic signals, street lights, television, or other means of communication.

Exploratory Excavation means a limited excavation, not to exceed three feet by three feet, to determine the actual vertical and horizontal location of underground facilities.

Facility or Facilities means all cables, cabinets, ducts, conduits, converters, equipment, drains, handholds, manholes, pipes, pipelines, splice boxes, surface location markers, tracks, tunnels, utilities, vaults, and other appurtenances or tangible things owned, leased, operated, or licensed that are located or are proposed to be located in the *public right-of-way*.

Inspection Fee means the fee assessed pursuant to Section 62.1107 to reimburse the City for costs of inspecting work in the *public right-of-way* within the City.

Joint Trenches means the mechanism approved by the City Engineer for the shared use by *dry utilities* of limited space in the *public right-of-way*.

Markout means a marking on the pavement that identifies the type and approximate horizontal location of underground installations.

Pavement means the fully improved roadway surface within the *public right-of-way*, designed and constructed to support the movement of vehicular traffic.

Pavement typically consists of asphaltic concrete or Portland cement concrete.

Public right-of-way means public easements or public property that are or may be used for streets, alleys, or other public purpose.

Trenching means the type of excavation for the placement of installations in the *public right-of-way* in accordance with City's Standard Drawings.

Trench Plate means a temporary structural steel plate, secured in place, to safely support legal loads over excavations in the *public right-of-way*.

Underground Service Alert means the state-mandated agency responsible for, after receiving notice of a planned excavation, notifying all public utilities that have underground installations in the *public right-of-way* prior to an excavation.

Unimproved Rights-of-Way means City rights-of-way that do not have pavement and do not have a sidewalk, curb or gutters.

Wet Utilities means *Public Utilities* whose *Facilities* are for water, reclaimed water, sewer, storm drains, fire hydrants, and any other means of liquid or gaseous conveyance.

§62.1103 Authority of City Engineer and Duty to Obtain City Engineer Approval

The *City Engineer* is authorized to adopt procedures to implement this Division. All persons shall obtain written authorization from the *City Engineer* before commencing any work on *public right-of-way* within the City.

§62.1104 Records

(a) All persons with installations in the *public right-of-way* shall maintain accurate records relating to the location of that person's *facility*. For this purpose the person shall use the *California Coordinate System* or the current system used by the person, providing that such system can be readily understood by others. Such records may not be relied upon to provide information other than the approximate location of the person's installations.

(b) [No changes in text].

§62.1105 Installations

- (a) All persons wishing to work in the *public right-of-way* shall first call for *markout*.
- (b) All such persons shall give *Underground Service Alert* a minimum of two (2) working days advance notice before any markout or Exploratory Excavation is commenced.
- (c) If unforeseeable circumstances arise requiring immediate action, marking-out shall be done within twenty-four (24) hours after *Underground Service Alert* is notified.
- (d) All cuts shall be made with a sawcut, rockwheel or other method approved by the *City Engineer*.
- (e) New *facilities* placed in the *public right-of-way* shall occupy the locations indicated in the *plans submitted to the City* unless otherwise authorized by the *City Engineer*.
- (f) All installations placed in the *public right-of-way* shall comply with *City Standard Drawings*.

§62.1107 Documents Required for City Engineer Authorization

- (a) All persons placing installations in the *public right-of-way* shall file a *Blockage Report* with the *City Engineer* no later than two working days prior to commencing any work.
- (b) For any installations funded by a public utility, other than lateral installations or other minor installations as determined by the *City*

Engineer, at least two (2) months prior to beginning any cut, the public utility shall submit to the *City Engineer* copies of maps which indicate the area and location of facilities. For any *facilities* funded by public utility customers, the public utility shall provide the requisite number of copies of maps as soon as such *facility* is planned.

§62.1108 Inspection Fees; Inspections

- (a) All persons placing *facilities* in the *public right-of-way* shall pay an inspection fee to the *City Engineer*. The *City Engineer* has the authority to set the schedule of fees collected provided that such fees do not exceed the reasonable costs of conducting the inspections authorized by Section 62.1108(f). The *inspection fee* shall be paid either: (1) prior to each inspection, or (2) by making payment to the City within thirty (30) calendar days of having received an invoice from the City. Invoices will be sent by the City no more frequently than on a monthly basis.
- (b) If a person elects to make an annual deposit, upon request by the *City Engineer*, the person shall deposit additional money when the funds on deposit are exhausted.
- (c) [No change in text].
- (d) If a person makes a payment pursuant to Section 62.1108(b)(2), the *City Engineer* will, within thirty (30) days of receipt of payment, provide that person with a copy of the field reports from inspections and a detailed

accounting of the number of City staff hours performed on the inspections.

- (f) The *City Engineer* may conduct inspections of any work being done in the *public right-of-way*. The *City Engineer* may inspect the work for compliance with all applicable laws, ordinances and construction standards.
- (g) If a City inspection discloses nonconformance with any of the requirements of this Division, the City shall provide written notice of the nonconformance within five (5) working days. The person placing the installations shall implement the corrective work specified by the *City Engineer* within five (5) working days of receipt of written notice of nonconformance. If the corrective work is not completed within five (5) working days of receipt of written notice on nonconformance, the City may perform the necessary repairs and all costs related to the repair shall be charged to the person placing the installation.
- (h) The *City Engineer* shall have authority to stop work and to request that the excavation be uncovered to certify compliance with this Division.
- (i) [No change in text].
- (j) Any work which is the result of a City required project shall be exempt from the *inspection fee* requirement of Section 62.1108.

§62.1109 Pavement Restoration

- (a) All persons excavating in the *public right-of-way* shall restore *pavement* at the end of each day with either temporary or permanent *pavement*.
- (b) If permanent surfacing material cannot be installed within forty-eight (48) hours, by the end of each day all intersections, pedestrian crossings and other locations as required by the *City Engineer* shall be trench-plated or backfilled such that the excavation may be driven upon by vehicular traffic.
- (c) All damaged *pavement* shall be restored with surfacing materials which matches both the surface and the structural strength of the adjacent surface.
- (d) All *pavement* on the *public right-of-way* shall be restored with permanent surfacing material within seven (7) days where there are more than two lanes of travel, and within thirty (30) days where there are two or fewer lanes of travel.
- (e) [No change in text].

§62.1110 Restoration of Decorative Surfaces

In addition to the requirements of Section §62.1108, in any area where there is a *decorative surface* on the *pavement*:

- (a) Before disturbing any *decorative surface*, all persons excavating in the *public right-of-way* shall provide information to the *City Engineer* to establish that it is necessary to disturb the *decorative surface* because

other alternatives, such as rerouting, boring, jacking, or scoping, cannot be used.

- (b) Before commencing work on the *decorative surface*, specifications shall be prepared that are designed to minimize destruction and ensure restoration of the same quality of surface. The specifications shall be submitted to the *City Engineer* for approval.
- (c) Written notice shall be delivered to the *City Engineer* at least two (2) working days before starting construction or trenching that will involve any disturbance of *decorative surfaces*. The notice shall include the location and estimated start and completion dates.
- (d) If unforeseeable circumstances arise requiring immediate action, written notice shall be delivered to the *City Engineer* as soon as possible upon the start of construction.
- (e) If the unforeseeable circumstances requiring immediate work arise after normal business hours, written notice shall be delivered to the *City Engineer* at the beginning of the next regular working day.
- (f) If it is necessary to remove any *decorative surface*, it shall be removed without damaging adjacent surface material.
- (g) In the *public right-of-way* in the Centre City area of City, removable sections shall be designed and installed over any installations involving

a *decorative surface* to provide access to the installations without destroying the *decorative surface*.

- (h) *Decorative Surfaces* shall be restored, at no cost to the City, with surfacing material that matches both the surface and the structural strength of the adjacent surface.

§62.1111 Safety and Traffic Control

- (a) [No change in text].
- (b) The *City Engineer* shall be notified of scheduled construction at least two (2) working days before commencing work.
- (c) Signs, warning devices, traffic control plans and general conditions of safety, as described either in *City Standard Drawings* or other State standards, shall be maintained.
- (d) [No change in text].

§62.1112 Relocation of *Facilities*

- (a) All persons maintaining *facilities* in the *public right-of-way* shall relocate or remove their *facilities* whenever such relocation is necessary for a proper governmental purpose, whether or not that purpose is to be accomplished by a public entity or by a private entity on behalf of a public entity. In such cases, the cost of the relocation or removal shall be borne by the person.

- (b) When *facilities* need to be relocated or removed as a result of construction by a private entity, except as set forth in Section 62.1112(a), the cost of such relocation or removal shall be borne by the private entity undertaking the construction. That private entity shall contact the owner of the *facilities* affected by the work to advise them of proposed improvements. That private entity shall also make specific arrangements for the relocation of any conflicting *facilities*.

§62.1113 Cathodic Protection

- (a) Public utilities maintaining *facilities* in the *public right-of-way* shall provide *Cathodic Protection* in accordance with the practice of the National Association of Corrosion Engineers (NACE).
- (b) [No change in text].

§62.1114 Quality Control

- (a) [No change in text].
- (b) At the beginning of each calendar year, each public utility with *facilities* in the *public right-of-way* shall submit a quality control plan and emergency closure plan to the *City Engineer* for approval.
 - (1) The quality control plan shall indicate the number of inspectors and the areas to which they are assigned.
 - (2) Each emergency closure plan shall indicate steps to be taken during a flood or earthquake to address safety issues.

- (3) An emergency closure plan shall be filed with the *City Engineer* and with the City Emergency Operations Center.

Section 2. That Chapter 6, Article 2, Division 12 of the San Diego Municipal Code is hereby amended by amending division title, amending sections 62.1201, 62.1202, 62.1203, 62.1204, 62.1205, 62.1206, 62.1207, 62.1208, 62.1209, 62.1210, and 62.1211, to read as follows:

Article 2: *Public Right-of-Way* and Land Development

Division 12: Excavations in the *Public Right-of-Way*

§62.1201 Purpose

This Division shall govern excavation in the *public right-of-way* within the City. Excavations degrade and shorten the life of the sidewalks, roads and *facilities* within the *public right-of-way*. The purpose of this Division is to provide policies and procedures to facilitate excavation in the *public right-of-way*, while minimizing damage to public infrastructure and ensuring public safety. It is the further purpose of this Division to establish cost recovery mechanisms for all costs to the City resulting from excavations in the *public right-of-way*.

§62.1202 Departmental Orders and Regulations

The *City Engineer* may adopt such orders or regulations necessary to implement this Division and to preserve and maintain the public health, safety, welfare, and utility of the *public right-of-way*. Each excavation in the *public right-of-way* shall be performed in accordance with *City Standard Plans*, specifications, orders, and regulations, unless the *City Engineer*, in his or her discretion, grants prior written

approval to deviate from any such standard plans, specifications, orders, or regulations. The *City Engineer* shall develop and maintain guidelines to implement the approval of any deviations and shall document such deviations.

§62.1203 Definitions

For purposes of this Division, the definitions in Section 62.1102 apply. In addition, the following definitions apply:

Excavation Influence Area means the area that is impacted by the excavation as determined by the *City Engineer*.

Excavator means a person or party excavating within the *public right-of-way*.

Facility Owner means the *Public Utility* or other person that owns, controls, or is otherwise responsible for a *Facility* or *Facilities* within the *public right-of-way*.

Hazardous Material means any gas, material substance, or waste which, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety to the environment.

Moratorium Street means any street, or portion thereof, that has been reconstructed or resurfaced in the preceding five year period or slurry sealed in the preceding three year period.

Municipal Excavator means any agency, board, commission, department, or subdivision of the City that owns, installs, or maintains a *facility* or *facilities* in the *public right-of-way*.

Non-Linear Excavation means an excavation of no more than eighteen inches (18”) around substructures required to access existing *facility*, such as a manhole or vault.

Public right-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 agents, assigns, successors, contractors, subcontractors, employees or representatives.

Trenchless Technology means any method, material, equipment, technique, or combination thereof that can be used to install, replace, renew or repair underground infrastructure with minimal surface disturbance. *Trenchless Technology* includes drilling, auguring, boring and tunneling.

§62.1204 Coordination of Excavation

Public utilities shall coordinate planned infrastructure projects to minimize the damage to the *public right-of-way* caused by multiple excavations in the same area, by providing the City with a two-year plan for work they anticipate in the *public right-of-way*.

- (a) On April 1 and October 1 of each year, or on the first business day immediately thereafter, each *public utility* shall prepare and submit to the City a plan that shows all major work anticipated to be done in the *public right-of-way* in the next 24 months. Any *public utility* that does not

propose major work in the next 24 months shall submit a statement that no such major work is anticipated and shall immediately report any major work to the City as soon as it becomes reasonably foreseeable.

- (b) To the extent permissible by law, including but not limited to the California Public Records Act, the City shall not disclose to third parties proprietary, trade secret, or otherwise confidential information that is provided to the City by a *public utility* beyond what is necessary to facilitate coordination among *excavators* and to avoid unnecessary excavation of the *public right-of-way*. Any information provided to the City that a *public utility* deems proprietary, trade secret, or confidential must be clearly marked and identified as such. The *public utility* must also provide a specific and detailed legal basis establishing why the information is exempt from public disclosure. If the *public utility* fails to properly mark or identify proprietary, trade secret, or confidential information or provide the specific legal basis for non-disclosure, the City may release such information to the public.
- (c) *Public utilities* shall indemnify, defend, protect and hold harmless the City, including its departments, officers, agents and employees, from and against, any and all actions, claims, costs, damages, demands, expenses, fines, injuries, judgments, liabilities, losses, penalties, or suits arising from the City's non-disclosure of information deemed by a *public utility* as proprietary, trade secret, or confidential.

§62.1205 Duration of a *Public Right-of-Way Permit* to Excavate Within a Public Street

It shall be unlawful for any person or *public utility* to excavate within the roadway section of a street in the *public right-of-way* without a valid *Public Right-of-Way Permit* under Section 129.0702. Notwithstanding Chapter 12, Article 9, Division 7, Section 129.0743 and Section 129.0744, a *Public Right-of-Way Permit* to excavate within the roadway section of a public street shall be void if the excavation has not begun within ninety calendar days of the start date specified in the permit, if the excavation is not pursued diligently to its conclusion, or if the excavation and restoration has not been completed within one calendar year from the permit issuance.

§62.1206 Moratorium Streets

Excavations shall not be permitted in a *moratorium street* without a valid moratorium waiver.

§62.1207 Excavation Moratorium Waivers

The *City Engineer* may upon written request grant an excavation moratorium waiver. The *City Engineer* may place additional conditions on a *Public Right-of-Way Permit* subject to an excavation moratorium waiver. The *City Engineer* may approve or conditionally approve an excavation moratorium waiver only if the *City Engineer* makes a written finding that one or more of the following grounds are present:

- (a) A bona fide emergency exists that:
 - (1) endangers the health and safety or property of the citizenry; and
 - (2) requires excavation in order to remediate the emergency.
- (b) New Service to a specific location cannot be provided either:

- (1) through existing conduit;
 - (2) where *trenchless technology* is impractical due to one or more of the following:
 - (A) soil conditions;
 - (B) proximity of *facilities*;
 - (C) where *trenchless technology* is economically impractical compared to trenching and resurfacing performed in accordance with approved standards; or
 - (3) the *public utility* demonstrates to the *City Engineer's* satisfaction that the service cannot be provided from another location.
- (c) The installation or relocation of facilities by a non-government owned *public utility* is both:
- (1) required by the City, County, State or Federal Government; and
 - (2) not required as a result of an underground utility district established pursuant to Section 61.0501.
- (d) Only a *non-linear excavation* or *exploratory excavation* will be made. The *City Engineer* in his or her sole discretion may authorize an *exploratory excavation* with an area not to exceed five feet by five feet. Such authorization must be made in writing and signed by the *City Engineer*.

§62.1208 Excavations on Streets Under an Excavation Moratorium Due to Reconstruction or Resurfacing

Excavation approved with an excavation moratorium waiver under Section §62.1207, to occur on streets that were reconstructed or resurfaced within five years prior to the application for an excavation moratorium waiver, shall be resurfaced as directed by the *City Engineer* and in accordance with the following:

- (a) Where the excavation is in the direction of traffic, the *excavator* shall resurface the entire length of the excavation area, the *excavation influence area* on each end of the excavation area, and the entire width of the street from curb to curb, or where a raised median is present the *excavator* shall resurface from the curb-line to the raised median.
- (b) Where the excavation is perpendicular to the direction of traffic, the *excavator* shall resurface the length of the excavation from curb to curb, or for the length of the excavation plus the *excavation influence area* extending on each end of the excavation, whichever is less. This resurface 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 *excavator* shall resurface either from the raised median to the curb or for the length of the excavation plus the *excavation influence area* extending on each end of the excavation, whichever is less. The *excavator* shall also resurface the excavation plus the *excavation influence area* on each side of the excavation.

The *excavation influence area* extends around the perimeter of the excavation as follows:

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

§62.1209 Excavations on Streets Under a Excavation Moratorium Due to Slurry Seal

Excavations approved with an excavation moratorium waiver under Section §62.1207, on streets that had been slurry sealed within three years prior to the application for an excavation moratorium waiver, shall be slurry sealed as directed by the *City Engineer* and in accordance with the following:

- (a) Where the excavation is in the direction of traffic, the *excavator* shall slurry seal the entire length of the excavation area, the *excavation influence area* on each end of the excavation area, and the entire width of the street from curb-line to curb-line, or where a raised median is present the *excavator* shall resurface from the curb-line to the median.
- (b) Where the excavation is perpendicular to the direction of traffic, the *excavator* shall slurry seal 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. The *excavator* shall also slurry seal 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 *excavator* shall slurry seal 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. The *excavator* shall also slurry seal the excavation plus the *excavation influence area* on each side of the excavation.

The *excavation influence area* extends around the perimeter of the excavation as follows:

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

§62.1210 Excavations Not Under an Excavation Moratorium

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

- (1) Where the excavation is in the direction of the traffic, the *excavator* shall resurface the entire length of the excavation area, the *excavation influence area* on each end of the excavation area, and the entire width of the excavation area, and the *excavation*

influence area extending from each transverse side of the excavation area.

- (2) Where the excavation is perpendicular to the direction of traffic, the *excavator* shall resurface the length of the excavation from curb-line to curb-line, or for the length of the excavation and the *excavation influence area* extending on each end of the excavation, whichever is less. This resurface also shall include the excavation area and the *excavation influence area* on each side of the excavation along the axis of the street.
- (3) Where a raised median is present and the excavation is perpendicular to the direction of traffic, the *excavator* shall resurface either from the raised median to the curb-line, or for the length of the excavation and 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 along the axis of the street.

§62.1211 Emergency Excavation

Nothing contained in this Division shall be construed to prevent any *public utility* from taking the minimum actions necessary for the preservation of life or property or for the restoration of essential service provided by a *public utility* when such necessity arises when City offices are closed. In the event that any person or *public utility* takes any action to excavate, or causes to be excavated the *public*

right-of-way pursuant to this Section, such person shall notify the City's 24 hour Public Works Dispatch Center prior to excavation and then apply for a *Public Right-of-Way Permit* under Section 129.0702, no later than fourteen business days after excavation. The applicant for a *Public Right-of-Way Permit* under Section 129.0702, shall submit a written statement on the basis of the emergency action and describe the excavation performed and any work remaining to be performed. A *Public Right-of-Way Permit* under Section 129.0702 shall not be valid until a final inspection of the excavation is performed and approved by the City.

Section 3. That Chapter 6, Article 2, Division 12, of the San Diego Municipal Code is hereby amended by adding sections 62.1212, 62.1213, 62.1214, 62.1215, 62.1216, 62.1217, and 62.1218, and 62.19 to read as follows:

§62.1212 Excavation and Trench Liability

Each *facility owner* is responsible for the quality of the excavation performed in the *public right-of-way* and is liable for the consequences of any condition of such excavation and any *facilities* installed in the *public right-of-way*. The issuance of any permit, inspection, repair or suggestion, approval or acquiescence of any person affiliated with the City shall not excuse any owner or agent from such responsibility or liability.

§62.1213 Indemnification of the City

To the extent permissible by law, the City may require *excavators*, their agents, successors, and assigns, to indemnify, defend, protect and hold harmless the City, including, without limitation, each of its commissions, departments, officers, agents and employees from and against any and all actions, claims, costs,

damages, demands, expenses, fines, injuries, judgments, liabilities, losses, penalties, or suits including, without limitation, attorney's fees and costs (collectively, "claims") of any kind allegedly arising directly or indirectly from:

- (a) Any act of omission or negligence by an *excavator*, its agents, contractors, subcontractors, or the officers, agents or employees of such entities, while engaged in the performance of the excavation authorized by the *Public Right-of-Way Permit*, or while in or about the property subject to the *Public Right-of-Way Permit* for any reason connected in any way whatsoever with the performance of the excavation authorized by the *Public Right-of-Way Permit* or allegedly resulting directly or indirectly from the maintenance or installation of any equipment, *facility* or structures authorized under the *Public Right-of-Way Permit*;
- (b) Any accident, damage, death or injury to any *excavator* or its contractor or subcontractor, or any officer, agent or employee of either of them, while engaged in the performance of the excavation authorized by the *Public Right-of-Way Permit* or while in or about the property for any reason connected with the performance of the excavation authorized by the *Public Right-of-Way Permit* or arising from liens or claims for services rendered or labor or materials furnished in or for the performance of the excavation authorized by the *Public Right-of-Way Permit*;
- (c) Any accident, damage, death or injury to any persons or accident, damage or injury to any real or personal property upon, or in any way allegedly

connected with the excavation authorized by the *Public Right-of-Way Permit* from any cause or claims arising at any time; and

- (d) Any release or discharge, or threatened release or discharge, of any *hazardous material* caused or allowed by permittee about, in, on, or under the excavation site subject to the *Public Right-of-Way Permit*.

§62.1214 Insurance Requirements For Excavations in the *Public-Right-of-Way*

To the extent permissible by law, *excavators* shall maintain in full force and effect, throughout the term of the *Public Right-of-Way Permit*, an insurance policy or policies issued by an insurance company or companies covering all operations, vehicles, and employees as follows:

- (a) Commercial general liability insurance with a combined single limit of not less than \$1,000,000 per occurrence for bodily injury and property damage, including contractual liability; personal injury; explosion, collapse and underground products; and completed operations;
- (b) Contractors pollution liability insurance, on an occurrence form, with a combined single limit of not less than \$1,000,000 per occurrence for bodily injury and property damage and any deductible not to exceed \$25,000 per occurrence.
- (c) Should any of the required insurance be provided under a claims-made form, the insured owner or its agent shall maintain such coverage continuously throughout the term of the permit, and without lapse, for a period of three years beyond the expiration or termination of the *Public Right-of-Way Permit*, to the effect that should occurrences during the

term of the permit give rise to claims made after expiration or termination of the permit, such claims shall be covered by such claims-made policies.

- (d) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall be double the occurrence or claims limits specified in Sections §62.1214(a) and §62.1214(b).
- (e) Certificates of insurance, in the form satisfactory to the City, evidencing all coverage described above, shall be furnished to the City before issuance of a permit, with complete copies of policies furnished promptly upon the City's request.
- (f) Where an *excavator* is self-insured, the City may accept such self-insurance as satisfying the requirements of Section §62.1214, where the *excavator* evidences to the City such guarantee via a bond or other form of surety, no less broad and affording protection equivalent to the City as the requirements specified above.

§62.1215 Street Damage Fee

Each *excavator* shall pay to the City a Street Damage Fee to recover the increased repaving and reconstruction costs incurred by the City that are reasonably attributable to the impact of the excavation to the *public right-of-way*. The amount of the Street Damage Fee shall be established by resolution of the San Diego City

Council adopted pursuant to this Division and placed on file in the Office of the City Clerk. The Street Damage Fee shall not exceed an amount reasonably necessary to recover the estimated costs, including but not limited to all administration, investigation, inspection, monitoring, reconstruction, slurry seal and resurfacing necessary to fully mitigate the damage and degradation caused by the excavations. The fee shall be the amount in effect on the date of issuance of a *Public Right-of-Way Permit*, or for *Municipal Excavators* the amount in effect on the date of commencement of the excavation.

§62.1216 Restoration of the *Public Right-of-Way*

In any case in which the sidewalk, street, or other *public right-of-way* is to be excavated, the *excavator* shall restore or cause to be restored such excavation in the manner prescribed by the order, regulations, and *City Standard Drawings* and specifications of the City or any applicable permits.

§62.1217 Repair and Maintenance Obligation of Facility Owner

Facility owners of wet utilities shall maintain, repair, or reconstruct the site of any excavation and the surface condition per *City Standard Drawings* or as specified by the *City Engineer* for fifteen years after inspection and acceptance by the City. *Facility owners of dry utilities* shall maintain, repair, or reconstruct the site of any excavation and the surface condition per *City Standard Drawings* or as specified by the *City Engineer* for ten years after inspection and acceptance by the City.

§62.1218 Excavation Site Requirements

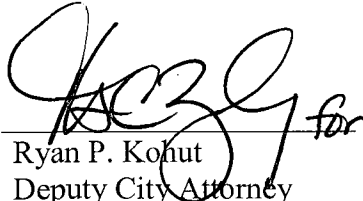
It shall be unlawful, with the exception of *municipal excavators*, to excavate in violation of the following requirements:

- (a) *Excavators* shall have the *Public Right-of-Way Permit*, or a true or legible copy, and any required Traffic Control Permit available for inspection at the site of of excavation.
- (b) *Excavators* shall not excavate without providing proper notice to the *Underground Service Alert* in accordance with Section §62.1105.
- (c) Excavations shall not exceed the scope of excavation described within the *Public Right-of-Way Permit* without the prior written approval of the *City Engineer*.

Section 4. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been available to the City Council and the public a day prior to its passage.

Section 5. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

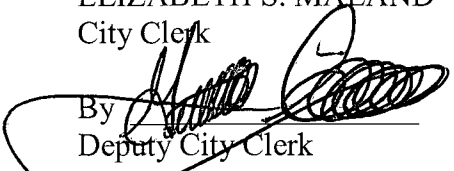
APPROVED: JAN I. GOLDSMITH, City Attorney

By  for
Ryan P. Kohut
Deputy City Attorney

RPK:cfq
1/31/2012
12/20/12 COR.COPY
Or.Dept:ECP
O-2032-51
Document Number: 313157

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: _____

1/2/13
(date)


BOB FILNER, Mayor

Vetoed: _____

(date)

BOB FILNER, Mayor