

ORDINANCE NUMBER O- 21701 (NEW SERIES)

DATE OF FINAL PASSAGE AUG 08 2023

AN ORDINANCE AMENDING CHAPTER 6, ARTICLE 2, DIVISION 11 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 62.1102, 62.1104, AND 62.1105; RETITLING AND AMENDING SECTION 62.1106; AMENDING SECTIONS 62.1107 AND 62.1108; REPEALING SECTIONS 62.1109 AND 62.1110; AMENDING AND RENUMBERING SECTION 62.1111 TO SECTION 62.1109; AMENDING AND RENUMBERING SECTION 62.1112 TO SECTION 62.1110; AMENDING AND RENUMBERING SECTION 62.1113 TO SECTION 62.1111; AND AMENDING AND RENUMBERING SECTION 62.1114 TO SECTION 62.1112; BY AMENDING CHAPTER 6, ARTICLE 2 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING THE TITLE OF DIVISION 12; AND BY AMENDING CHAPTER 6, ARTICLE 2, DIVISION 12 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 62.1202 AND 62.1203; RETITLING AND AMENDING SECTION 62.1204; AMENDING SECTIONS 62.1205, 62.1206, AND 62.1207; ADDING NEW SECTION 62.1208; RETITLING, AMENDING, AND RENUMBERING EXISTING SECTION 62.1208 TO SECTION 62.1209; RETITLING, AMENDING, AND RENUMBERING SECTION 62.1209 TO SECTION 62.1210; RETITLING, AMENDING, AND RENUMBERING SECTION 62.1210 TO SECTION 62.1211; AMENDING AND RENUMBERING SECTION 62.1211 TO SECTION 62.1212; AMENDING AND RENUMBERING SECTION 62.1212 TO SECTION 62.1213; AMENDING AND RENUMBERING SECTION 62.1213 TO SECTION 62.1214; RETITLING, AMENDING, AND RENUMBERING SECTION 62.1214 TO SECTION 62.1215; AMENDING AND RENUMBERING SECTION 62.1215 TO SECTION 62.1216; REPEALING EXISTING SECTION 62.1216; AMENDING SECTIONS 62.1217 AND 62.1218; AND ADDING NEW SECTION 62.1219 TO THE SAN DIEGO MUNICIPAL CODE, ALL RELATING TO EXCAVATIONS IN THE PUBLIC RIGHT-OF-WAY.

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

WHEREAS, excavations in the public right-of-way cause permanent damage that reduces the useful life of City streets and increases the City's life-cycle costs; and

WHEREAS, the Council of the City of San Diego approved Ordinance O-20231 (Jan. 2, 2013), known as the Street Preservation Ordinance (SPO), 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; and

WHEREAS, the City seeks continued improvement in the management of the public right-of-way under the framework established by the SPO; and

WHEREAS, the Council intends that this Ordinance further clarify the responsibilities of all excavators, provide updated policies for coordination of all excavations, provide a mechanism for the City to recover its increased costs caused by the excavations, and provide for an alternative method for excavators to repair damage caused to the City's streets in lieu of paying a fee; and

WHEREAS, the Office of the City Attorney has drafted this Ordinance based on the information provided by City staff, with the understanding that this information is complete, true, and accurate; 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 amended by amending sections 62.1102, 62.1104, and 62.1105, to read as follows:

**§62.1102      Definitions**

For purposes of this Division, defined terms appear in italics. The following definitions apply in this Division:

*AMPP* means the Association for Materials Protection and Performance.

*Blockage Report* [No change in text.]

*California State Plane 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 under California Public Resources Code sections 8801-8819, as may be amended.

*Cathodic Protection* [No change in text.]

*City Adopted Standard* means the current engineering standards adopted by the *City Engineer*.

*City Engineer* [No change in text.]

*Dry utilities* [No change in text.]

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

*Facility or Facilities* [No change in text.]

*Inspection Fee* means the fee assessed under San Diego Municipal Code (Municipal Code) section 62.1108 to reimburse the City for costs of inspecting work in the *public right-of-way* within the City.

*Joint Trenches* [No change in text.]

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

*Person* has the same meaning as in Municipal Code section 11.0210, as may be amended.

*Plans* mean engineering drawings for the proposed work in the *public right-of-way* that are prepared, signed, and stamped by a professional engineer or architect

licensed in California, unless applicable state law exempts the *person* submitting the engineering drawings from having a licensed professional engineer or architect prepare, sign, and stamp the drawings.

*Public right-of-way* [No change in text.]

*Public utility* means *wet utilities* and *dry utilities* which provide services for, or deliver a commodity to, the public or any portion thereof. This includes any City Department engaged in providing such services and utilities defined in the California Public Utilities Code section 216, as may be amended, including their agents, assigns, successors, contractors, subcontractors, employees, and representatives.

*Trenching* means a type of excavation for the placement of *facilities* in the *public right-of-way* in accordance with *City Adopted Standards*.

*Trench Plate* [No change in text.]

*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.

#### **§62.1104      **Records****

- (a) All *persons* with *facilities* in the *public right-of-way* shall maintain accurate records relating to the location of that *person's facilities* using either the *California State Plane Coordinate System* or the current system used by the *person* if such system can be readily understood by others. Such records may only be relied upon by the City to provide information regarding the approximate location of the *person's facilities*.

- (b) Within 15 calendar days of receipt of a written request from the City, all *persons* shall make these records available to the City.

**§62.1105 Installations**

- (a) 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*. If the *City Engineer* authorizes a deviation from the *plans*, the *person* granted the deviation shall supplement the plans as needed and to the *City Engineer's* satisfaction to show the accurate location of the *person's facilities*. This is required for final approval of the plans.
- (b) All *facilities* placed in the *public right-of-way* shall comply with *City Adopted Standards*.
- (c) All cuts shall be made with a sawcut, rockwheel, or other *City Engineer* approved method.

Section 2. That Chapter 6, Article 2, Division 11 of the San Diego Municipal Code is amended by retitling and amending section 62.1106, to read as follows:

**§62.1106 Coordination of Excavation by Public Utilities**

- (a) *Public utilities* shall coordinate the installation of their *facilities* with the City to minimize the damage to the *public right-of-way*.

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 document that shows all planned *trenching* in the *public right-of-way* to be done in the next 24 months. The document shall be in a geospatial data format, or other *City Engineer* approved format. Any *public utility* that does

not anticipate *trenching* in the next 24 months shall submit a statement that no *trenching* is anticipated. A *public utility* shall immediately report any anticipated *trenching* to the City as soon as it becomes reasonably foreseeable that the *trenching* will occur. A project will not be issued a *Public Right-of-Way* Permit until it has been coordinated in the City's digital coordination system. *Public utilities* may submit amendments to previously submitted coordination documents at any time.

- (b) The City will use the information provided by a *public utility* to facilitate coordination among *excavators* to avoid unnecessary excavation of the *public right-of-way*. To the extent that a *public utility* claims that any information provided under Municipal Code section 62.1106 is a trade secret, or is proprietary or confidential information, the *public utility* shall clearly mark every page containing such information as confidential. 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 elected officials, 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.

Section 3. That Chapter 6, Article 2, Division 11 of the San Diego Municipal Code is amended by amending sections 62.1107 and 62.1108, to read as follows:

**§62.1107 Documents Required for City Engineer Authorization**

- (a) All *persons* placing *facilities* 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 *public utility facilities*, other than lateral installations or other minor installations as determined by the *City Engineer*, at least two months prior to beginning any cut, the *public utility* shall submit to the *City Engineer* *plans* which indicate the area and location of facilities.

**§62.1108 Inspection Fees; Inspections**

- (a) All *persons* placing *facilities* in the *public right-of-way* shall pay an inspection fee to the City prior to permit issuance and prior to any inspection needed for the project. The *City Engineer* will establish a schedule of fees that do not exceed the reasonable costs of conducting the inspections. The *inspection fee* shall be calculated and invoiced according to the current fee schedule.
- (b) The City Manager shall direct the manner of payment for *inspection fees*.
- (c) The *City Engineer* may halt inspections on a project if *inspection fees* are not paid or are insufficient.

- (d) If a *person* makes a payment under Municipal Code section 62.1108(a), the *City Engineer* will, upon request, provide that *person* with a copy of the field reports from inspections performed and a detailed accounting of the number of City staff hours performed on the project. The *City Engineer* shall provide this information within 30 business days of a request.
- (e) 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.
- (f) If a City inspection discloses nonconformance with any of the requirements of this Division that does not endanger public safety, the City shall provide written notice of the nonconformance within five working days. The *person* placing the *facilities* in the *public right-of-way* shall implement the corrective work specified by the *City Engineer* as soon as possible but no later than five working days of receipt of written notice of nonconformance. If the corrective work is not completed within five working days of receipt of written notice of nonconformance, the City may perform the necessary repairs and all costs related to the repair shall be charged to the *person* installing the *facilities*.
- (g) If a City inspection discloses nonconformance with any of the requirements of this Division that endangers public safety, the City shall provide notice of the nonconformance immediately. The *person* placing the *facilities* in the *public right-of-way* shall secure the site immediately and implement the corrective work specified by the *City Engineer* as soon as possible to make



the site safe. Corrective work must be completed as soon as possible but no later than within five working days. If the *person* placing the facilities does not secure the site as required, the City may take necessary actions to secure the site and any costs related to securing the site shall be charged to the *person* installing the *facilities*. If the corrective work is not completed within five working days of notice of nonconformance, the City may perform the necessary repairs and all costs related to the repair shall be charged to the *person* installing the *facilities*.

- (h) The *City Engineer* shall have authority to stop work and to request that the excavation be uncovered to certify compliance with this Division at no cost to the City.
- (i) Any City work done directly or indirectly to ensure compliance with the provisions of this Division shall be charged to the *person* placing the *facilities* that require the City work.
- (j) Any work which is the result of a City required project shall be exempt from the *inspection fee* requirement of Municipal Code section 62.1108.

Section 4. That Chapter 6, Article 2, Division 11 of the San Diego Municipal Code is amended by repealing sections 62.1109 and 62.1110.

Section 5. That Chapter 6, Article 2, Division 11 of the San Diego Municipal Code is amended by amending and renumbering section 62.1111 to section 62.1109, to read as follows:

**§62.1109      Safety and Traffic Control**

- (a) All *persons* working in the *public right-of-way* shall be responsible for the safe movement of both vehicular and non-vehicular traffic through that *person's* construction and maintenance operations.
- (b) The *City Engineer* shall be notified of scheduled construction at least two working days before work commences.
- (c) All *persons* performing work in the *public right-of-way* shall maintain signs, warning devices, traffic control plans, and general conditions of safety, as described either in *City Adopted Standards* or other State standards.
- (d) All *persons* performing work in the *public right-of-way* shall identify itself with on-site signs indicating the name of the *person* and the phone number to call in case of a complaint or emergency. Such signs shall remain on-site for two weeks after completion of work.

Section 6. That Chapter 6, Article 2, Division 11 of the San Diego Municipal Code is amended by amending and renumbering section 62.1112 to section 62.1110, to read as follows:

**§62.1110      Relocation of Installations**

- (a) All *persons* maintaining *facilities* in the *public right-of-way* shall relocate or remove their *facilities* within the timelines provided by the City whenever such relocation is necessary for a proper governmental purpose, whether 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 Municipal Code section 62.1110(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*.

Section 7. That Chapter 6, Article 2, Division 11 of the San Diego Municipal Code is amended by amending and renumbering section 62.1113 to section 62.1111, to read as follows:

**§62.1111      Cathodic Protection**

- (a) *Public utilities* maintaining *facilities* in the *public right-of-way* shall provide *Cathodic Protection* in accordance with the practice of the *AMPP*.
- (b) If the *AMPP* standards conflict with either the California Department of Transportation or California Public Utilities Commission's requirements, the most stringent requirements shall govern.

Section 8. That Chapter 6, Article 2, Division 11 of the San Diego Municipal Code is amended by amending and renumbering section 62.1114 to section 62.1112, to read as follows:

**§62.1112      Quality Control**

- (a) All *persons* performing work in the *public right-of-way* are solely responsible for ensuring that the work performed, whether by that *person*, contractors, subcontractors, employees, agents or representatives, complies with all applicable City and State standards.
- (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) through (3) [No change in text.]

Section 9. That Chapter 6, Article 2 of the San Diego Municipal Code is amended by amending the title of Division 12, to read as follows:

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

Section 10. That Chapter 6, Article 2, Division 12 of the San Diego Municipal Code is amended by amending sections 62.1202 and 62.1203, to read as follows:

**Division 12: 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 Adopted Standards*, specifications, orders, and regulations, unless the *City Engineer* grants prior written approval to deviate

from any such standards, 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 San Diego Municipal Code (Municipal Code) section 62.1102 apply. In addition, the following definitions apply in this Division:

*Alley* has the same meaning as provided in Municipal Code section 113.0103, as may be amended.

*Asphalt overlay* means the process of milling the existing pavement and installing a new layer of asphalt on top of the milled surface.

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

*Emergency* means a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services.

*Excavation influence area* means the area that is impacted by the excavation as determined by the *City Engineer* and extends around the perimeter of the excavation as set forth in the chart in Municipal Code section 62.1209.

*Exploratory excavation* means a limited excavation, not to exceed 3 feet by 3 feet unless authorized by the *City Engineer*, to determine the actual vertical and horizontal location of underground *facilities*.

*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* [No change in text.]

*Major excavation* means an excavation involving a trench greater than 6 inches in width or greater than 3 feet in depth.

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

*Minor excavation* means an excavation involving a trench 6 inches or less in width and 3 feet or less in depth.

*Moratorium street* means any street, or portion thereof, that is newly constructed, or has been reconstructed or *asphalt overlayed* in the preceding three-year period or *slurry sealed* in the preceding one-year period. *Moratorium streets* will not include streets where the *asphalt overlay* or *slurry seal* does not extend from curb to curb or between intersections.

*Municipal excavator* means an *excavator* that is an agency, board, commission, department, or subdivision of the City, or other municipality or public agency that owns, installs, or maintains a *facility* or *facilities* in the *public right-of-way*.

*New Service* means a new connection from an existing underground *facility* to a specific customer site.

*Non-linear excavation* means an excavation for accessing an existing *facility* and is no more than 18 inches around the access hole, vault, or other similar substructures required to access the existing *facility*.

*Slurry seal* means a pavement preservation method consisting of asphalt emulsion and aggregates.

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

*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.

Section 11. That Chapter 6, Article 2, Division 12 of the San Diego Municipal Code is amended by retitling and amending section 62.1204, to read as follows:

**§62.1204      Markouts**

- (a) *Excavators* seeking to perform work in the *public right-of-way* shall notify *Underground Service Alert* of the planned excavation and obtain a utility *markout* prior to excavation as required by California Government Code sections 4216-4216.24, as may be amended.
- (b) All *excavators* shall give notice to *Underground Service Alert* as required by California Government Code section 4216.2, as may be amended, before any *excavation*, including *exploratory excavations*, is commenced.
- (c) If an *emergency* arises requiring immediate action, *Underground Service Alert* shall be notified within 24 hours.
- (d) *Markouts* shall not be placed in the *public right-of-way* more than 14 days prior to the commencement of excavation work. If the excavation work is

not commenced within 14 days of the placement of the *markout*, the *markout* shall be immediately removed by the *excavator*.

- (e) *Excavators* shall remove *markouts* from all surfaces in the *public right-of-way*, including from *decorative surfaces*, concurrently with required *pavement* restoration.

Section 12. That Chapter 6, Article 2, Division 12 of the San Diego Municipal Code is amended by amending sections 62.1205, 62.1206, 62.1207, to read as follows:

**§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 issued in accordance with Municipal Code section 129.0741.

Notwithstanding Chapter 12, Article 9, Division 7 of this Code, a *Public Right-of-Way* Permit to excavate within the *public right-of-way* shall be void if the excavation has not begun within 90 calendar days of the start date specified in the permit.

**§62.1206      Moratorium Streets**

- (a) Excavations shall not be permitted in a *moratorium street* without a valid moratorium waiver, regardless of whether the moratorium was active prior to a required application for a *Public Right-of-Way* Permit. The moratorium period for the *moratorium street* begins upon the acceptance of a newly constructed or reconstructed street by the *City Engineer*, or completion of the *asphalt overlay* or *slurry seal*.
- (b) The excavation moratorium does not apply to:



- (1) a raised median located within a *moratorium street*; or
- (2) *alleys*.

**§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 as a condition of granting a waiver under Municipal Code section 62.1207. Any excavation performed on a *moratorium street* as part of a moratorium waiver shall follow the applicable restoration process in Municipal Code sections 62.1209 or 62.1210. The *City Engineer* may grant an excavation moratorium waiver only upon making a written finding that the excavation is necessary because of one or more of the following reasons:

- (a) An *emergency* exists that requires excavation to remediate the *emergency*.  
The *public utility* has demonstrated to the *City Engineer's* satisfaction that *New Service* to a specific location does not require excavation exceeding 500 linear feet from the existing main, except as authorized or required by applicable federal or state law, decisions, orders, and regulations, and cannot be provided:
  - (1) through existing conduit;
  - (2) through *trenchless technology* because of:
    - (A) soil conditions;
    - (B) proximity of *facilities*; or

- (C) the use of *trenchless technology* is impractical due to costs when compared to trenching and resurfacing performed in accordance with approved standards; or
- (3) from another location.
- (c) The installation or relocation of *facilities* by a non-government owned *public utility* is required by the City or county, state or federal government for a reason other than the establishment of an underground utility district established under Municipal Code section 61.0501.
- (d) Only a *non-linear excavation* or *exploratory excavation* will be conducted. The *City Engineer* may authorize a larger *exploratory excavation*. Such authorization is at the *City Engineer's* sole discretion, and must be made in writing signed by the *City Engineer*.
- (e) The excavation is part of construction of new surface features that results in the permanent removal of existing *pavement*, where the impact to surrounding *pavement* is limited to the area required for temporary installation of materials needed for construction of median, sidewalk, curb and gutter, and similar surface improvements.
- (f) The work is to repair or correct defects that occur within the warranty period after the street has been *asphalt overlayed* or *slurry sealed*.
- (g) The work involves *trenching* through an intersection of a *moratorium street* where such work is necessary to complete a project on a cross street.
- (h) The excavation is part of a funded and planned project scheduled in the City's digital coordination system that was waiting for a *moratorium street*

to be out of the moratorium period, but the moratorium period was extended because a moratorium waiver was granted to another *excavator* for one of the reasons listed in (a) through (g).

Section 13. That Chapter 6, Article 2, Division 12 of the San Diego Municipal Code is amended by adding new section 62.1208, to read as follows:

**§62.1208      General Restoration of the Public Right-of-Way**

The following restoration requirements apply to excavations in the *public right-of-way*:

- (a) If the sidewalk, street, alley, 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 *City Adopted Standards* and any applicable permit requirements.
- (b) *Excavators* shall restore *pavement* at the end of each day with *pavement* material that shall be maintained flush with the adjacent *pavement* such that the excavation may be safely accessed by all users. If surfacing material cannot be installed at the end of each day, then all intersections, pedestrian crossings, and other locations as required by the *City Engineer* shall be secured with structural trench plates.
- (c) All damaged *pavement* shall be restored with surfacing materials which match both the surface and the structural strength of the adjacent surface and meet *City Adopted Standards*.

- (d) All *pavement* shall be restored with permanent surfacing material within 60 calendar days of a *major excavation*. All *pavement* restoration for *minor excavations* shall adhere to *City Adopted Standards*.
- (e) If the excavation and related work impacts a curb at a pedestrian street crossing where no curb ramp exists, then this activity constitutes an alteration as defined in 28 C.F.R. §§ 35.151(b) and 35.151(i) (2011). Where an alteration occurs, a new curb ramp compliant with accessibility requirements must be constructed rather than replacing the existing curb.

Section 14. That Chapter 6, Article 2, Division 12 of the San Diego Municipal Code is amended by retitling, amending, and renumbering existing section 62.1208 to section 62.1209, to read as follows:

**§62.1209      Restoration of Moratorium Streets Under Excavation Moratorium Due to New Construction, Reconstruction, or Asphalt Overlay**

*Excavators* shall *asphalt overlay* in *moratorium streets* under moratorium due to new construction, reconstruction, or *asphalt overlay* within 180 working days after the *City Engineer* approves the trench repair as follows:

- (a) Where the excavation is in the direction of traffic, the *excavator* shall *asphalt overlay* the street from curb to curb or, where a raised median is present, from the curb to the raised median for the length of the excavation area; and the *excavation influence area* on each end.
- (b) Where the excavation is perpendicular to the direction of traffic, the *excavator* shall *asphalt overlay* the street from curb to curb or, where a raised median is present, from the curb to the raised median, for the length of the excavation and the length of the *excavation influence area*.

**Table 62-12A**

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

Street Classification	Wet Utilities	Dry Utilities
Arterial Streets through Residential Streets [No change in text.]	[No change in text.]	[No change in text.]

Section 15. That Chapter 6, Article 2, Division 12 of the San Diego Municipal Code is amended by retitling, amending, and renumbering section 62.1209 to section 62.1210, to read as follows:

**§62.1210      Restoration of Moratorium Streets Under Excavation Moratorium Due to Slurry Seal**

*Excavators shall slurry seal in moratorium streets due to slurry seal and within 180 working days after the City Engineer's acceptance of the repair work as follows:*

- (a)      Where the excavation is in the direction of traffic, the *excavator* shall *slurry seal* the street from curb to curb, or where a raised median is present, from the curb to the median for the length of the excavation and the *excavation influence area*.
- (b)      Where the excavation is perpendicular to the direction of traffic, the *excavator* shall *slurry seal* the street from curb to curb, or where a raised median is present, from the curb to the median for the length of the excavation and the *excavation influence area*.

**Table 62-12B**

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

Street Classification	Wet Utilities	Dry Utilities
Arterial Streets through Residential Streets [No change in text.]	[No change in text.]	[No change in text.]

Section 16. That Chapter 6, Article 2, Division 12 of the San Diego Municipal Code is amended by retitling, amending, and renumbering section 62.1210 to section 62.1211, to read as follows:

**§62.1211 Additional Restoration of Streets Not Under an Excavation Moratorium**

(a) For *major excavations* in asphalt concrete streets other than *moratorium streets*, excavators shall:

- (1) restore the trench as required by *City Adopted Standards* and *asphalt overlay* the *excavation influence areas* within 180 days of the trench cap;
- (2) repair damage to the existing *pavement* from the excavation work as determined by the *City Engineer*;
- (3) if the trench or *excavation influence area* enters a bicycle lane, the entire width of the bicycle lane shall be *asphalt overlaid* and restriped for the length of the trench including the *excavation influence area*; and
- (4) pay the Street Damage Fee under Municipal Code section 62.1216 for the increased repaving and reconstruction costs incurred by the City that are reasonably attributable to the impact of the *major excavation* in the *public right-of-way*, or perform additional restoration in-lieu of paying the Street Damage Fee as follows:

- (A) repair and backfill the trench as required by *City's Adopted Standards*, and *asphalt overlay* the trench and all lanes affected by the trench, including any lanes within the *excavation influence area* within 180 days of the trench cap. If the excavation perpendicular to the direction of traffic was done on less than half of the width of the street as measured from curb to curb, grind and *asphalt overlay* the affected area from the toe of the gutter, or curb face if no gutter exists, to the centerline of the street or to the centerline marking where available;
- (B) if the excavation only included installing one service lateral, *asphalt overlay* the trench and the *excavation influence areas* from curb to curb;
- (C) if the excavation included installing more than one service lateral in one street segment (i.e., street block), *asphalt overlay* curb to curb from the *excavation influence area* of the first lateral excavation to the *excavation influence area* of the last lateral excavation;
- (D) for any excavation larger than 3 feet by 3 feet, restore the width of the affected lane for the length of the excavation including the *excavation influence areas*, but in no circumstance shall the restored area be less than 10 feet in length; and

- (E) repair any *pavement* damage outside the affected lane caused by the excavation work.
- (b) For *minor excavations* in asphalt concrete streets other than *moratorium streets*, excavators shall:
- (1) restore the trench per *City Adopted Standards* and *asphalt overlay* the *excavation influence areas*;
  - (2) repair damage to the existing *pavement* from the excavation work as determined by the *City Engineer*; and
  - (3) if the trench or *excavation influence area* enters a bicycle lane, the entire width of the bicycle lane shall be *asphalt overlayed* and restriped for the length of the trench including the *excavation influence area*; and
  - (4) pay the Street Damage Fee under Municipal Code section 62.1216 for the increased repaving and reconstruction costs incurred by the City that are reasonably attributable to the impact of the *minor excavation* of the *public right-of-way*, or perform additional restoration in-lieu of paying the Street Damage Fee as follows:
    - (A) repair and backfill the trench per *City Adopted Standards*, *asphalt overlay* the trench and all lanes affected by the trench, including any lanes within the *excavation influence area* within 180 days. If the excavation perpendicular to the direction of traffic was done on less than half of the width of the street as measured from curb to curb, grind and *asphalt*



- overlay* the affected area from the toe of the gutter, or curb face if no gutter exists, to the centerline or to the centerline marking where available;
- (B) if the excavation included only one service lateral, *asphalt overlay* the trench and the *excavation influence areas* from curb to curb;
  - (C) if the excavation included installing more than one service lateral in one street segment (i.e., street block), *asphalt overlay* curb to curb from the *excavation influence area* of the first lateral excavation to the *excavation influence area* of the last lateral excavation;
  - (D) for any excavation larger than 3 feet by 3 feet restore the width of the affected lane for the length of the excavation including the *excavation influence areas*, but in no circumstance shall the restored area be less than 10 feet in length; and
  - (E) repair any pavement damage outside the affected lane from the excavation work.
- (c) For any excavation in Portland cement concrete streets, including *alleys*, *excavators* shall perform restoration as directed by the *City Engineer* in accordance with the following:
- (1) *Excavators* shall restore the entire Portland cement concrete panel extending beyond both sides of the trench to the nearest joint or to

the edge of the adjacent gutter, if it exists, or to the face of the curb if no gutter exists. If an existing trench patch is 4 feet or less from the edge of the excavation, the restoration shall include removing the existing trench cap and replacing it as part of the new Portland cement concrete construction for the new panel.

- (2) *Excavators* shall perform additional repairs to Portland cement concrete to correct any damage caused during construction activities, including those associated with increased damage to *pavement* due to the use of large or heavy equipment during construction activities.

Section 17. That Chapter 6, Article 2, Division 12 of the San Diego Municipal Code is amended by amending and renumbering section 62.1211 to section 62.1212, to read as follows:

**§62.1212      Emergency Excavation**

Nothing contained in this Division prohibits a *public utility* from taking the minimum actions necessary for the preservation of life or property or for the restoration of essential service provided by that *public utility* if such necessity arises when City offices are closed. The *public utility* shall notify the City through the Emergency Excavation Notification process prior to performing any excavation in the *public right-of-way*. The *public utility* shall then apply for a *Public Right-of-Way* Permit under Municipal Code section 129.0702, no later than 14 business days after excavation commences. The application for a *Public Right-of-Way* Permit under Municipal Code section 129.0702 shall include a written statement describing the basis of the emergency action, the excavation performed,

and any work remaining to be performed. A *Public Right-of-Way* Permit under Municipal Code section 129.0702 shall not be valid until a final inspection of the excavation is performed and approved by the City. The *public utility* shall complete final street restorations within 60 days for *major excavations* and 7 days for *minor excavations* after completion of work.

Section 18. That Chapter 6, Article 2, Division 12 of the San Diego Municipal Code is amended by amending and renumbering section 62.1212 to section 62.1213, to read as follows:

**§62.1213      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.

Section 19. That Chapter 6, Article 2, Division 12 of the San Diego Municipal Code is amended by amending and renumbering section 62.1213 to section 62.1214, to read as follows:

**§62.1214      Indemnification of the City**

To the extent permissible by law, *excavators* and their agents, successors, and assigns, shall indemnify, defend, protect and hold harmless the City, including, without limitation, each of its commissions, elected officials, 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 of any kind allegedly arising directly or indirectly from:

- (a) Any act, 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 *facilities* or structures authorized under the *Public Right-of-Way Permit*;
- (b) Any alleged act or omission of the City, not including allegations of the City's active or sole negligence or willful misconduct.
- (c) 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*;
- (d) 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

- (e) 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.

Section 20. That Chapter 6, Article 2, Division 12 of the San Diego Municipal Code is amended by retitling, amending, and renumbering section 62.1214 to section 62.1215, to read as follows:

**§62.1215 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, at their sole cost and expense, to provide coverage against claims for loss, including injuries to *persons* or damage to property, which may arise out of or in connection with the performance of the work by the *excavator* or its contractors issued by an insurance company or companies covering all operations, vehicles, and employees as follows:

- (a) Commercial general liability insurance shall be written on the current version of the ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad. The policy shall cover liability arising from premises and operations, XCU (explosions, collapse, and underground), independent contractors, products/completed operations, personal injury and advertising injury, bodily injury, and property damage.

All costs should be outside of policy limits. Policy coverage shall be in liability limits of not less than \$2,000,000 per occurrence and a \$4,000,0000 aggregate.

- (1) The City and its respective elected officials, officers, employees, agents and representatives shall be added as additional insureds on a separate endorsement(s) delivered to the City prior to commencement of work, on a policy form(s) at least as broad as the CG 20 10 11 85. This additional insured coverage will not include indemnification for the City's active negligence.
  - (2) The policy shall be endorsed to provide that the coverage with respect to operations, including the completed operations, if appropriate, of the named insured is primary to any insurance or self-insurance of the City and its elected officials, officers, employees, agents, and representatives. Further, it shall provide that any insurance maintained by the City and its elected officials, officers, employees, agents, and representatives shall be in excess of the *excavator's* insurance and shall not contribute to it.
- (b) Contractors' pollution liability insurance written with a combined single limit of not less than \$1 million per claim or occurrence. Claims made policies shall include a 12-month extended Claims Discovery Period applicable to the excavation work or the existing policy or policies that shall continue to be maintained for 12 months after the completion of the work.

- (c) Automobile liability insurance written on the current version of the ISO form CA 00 01 12 90 or later version or equivalent form providing coverage at least as broad in the amount of \$1 million combined single limit per accident, coverage bodily injury and property damage for owned, non-owned and hired automobiles.
- (d) Workers Compensation and Employers Liability insurance as required by the State of California, with Statutory Limits, and Employer's Liability insurance with a limit no less than \$1 million per accident for bodily injury or disease.

The policy or policies shall be endorsed to provide that the insurer will waive all rights of subrogation against the City and its respective elected officials, officers, employees, agents, and representatives for losses paid under the terms of the policy or policies and which arise from work performed by the named insured.

- (e) Policies providing excess coverage shall follow the form of the primary policies, including all endorsements.
- (f) 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.

- (g) 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 Municipal Code sections 62.1215(a) and §62.1215(b).
- (h) 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.
- (i) Where an *excavator* is self-insured, the City may accept such self-insurance as satisfying the requirements of Municipal Code section 62.1215 where the *excavator* provides evidence 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 in Municipal Code section 62.1215. Any self-insurance, including any self-insured retention amounts, shall be disclosed in writing to the City prior to the commencement of any work.

Section 21. That Chapter 6, Article 2, Division 12 of the San Diego Municipal Code is amended by amending and renumbering section 62.1215 to section 62.1216, to read as follows:

**§62.1216 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*, unless the



*excavator* performs additional restoration as described in Municipal Code section 62.1211(a)(4) or Municipal Code section 62.1211(b)(3) to account for such increased repaving and reconstruction costs or as otherwise provided by law. The amount of the Street Damage Fee shall be established by resolution of the San Diego City Council adopted under this Division and placed on file in the Office of the City Clerk. The Street Damage Fee Schedule shall be automatically adjusted every year on July 1 based on the RS Means Construction Cost Index, or a similar construction industry index selected by the City Manager if the RS Means Construction Cost Index is discontinued. 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.

Section 22. That Chapter 6, Article 2, Division 12 of the San Diego Municipal Code is amended by repealing existing section 62.1216.

Section 23. That Chapter 6, Article 2, Division 12 of the San Diego Municipal Code is amended by amending sections 62.1617 and 62.1218, to read as follows:

**§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 Adopted Standards* or as specified by the *City Engineer* for 15 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 Adopted Standards* or as specified by the *City Engineer* for 10 years after inspection and acceptance by the City. Upon notification by the City of the need for maintenance, repair, or reconstruction, *facility owners* shall apply for a *Public Right-of-Way Permit* within 10 business days and complete corrective work within 90 calendar days after issuance of the permit. Safety issues shall be addressed immediately.

**§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*, any required Traffic Control Permit, and any applicable excavation moratorium waiver documentation available for inspection at the site of excavation.
- (b) *Excavators* shall not excavate without providing proper notice to the *Underground Service Alert* in accordance with Municipal Code section 62.1204.
- (c) [No change in text.]

Section 24. That Chapter 6, Article 2, Division 12 of the San Diego Municipal Code is amended by adding new section 62.1219, to read as follows:

**§62.1219      Restoration of Decorative Surfaces**

For areas with a *decorative surface* in the *public right-of-way*, *excavators* shall comply with the following additional requirements:


- (a) Before disturbing any *decorative surface*, *excavators* shall provide information to the *City Engineer* to establish that such disturbance is necessary because alternative measures, such as rerouting, boring, jacking, or scoping, cannot be used.
- (b) Before commencing work on the *decorative surface*, *excavators* shall submit to the *City Engineer* for approval, specifications designed to minimize destruction and ensure restoration of the same quality of surface.
- (c) *Excavators* shall deliver written notice to the *City Engineer* at least two working days prior to starting construction or trenching that will involve any disturbance of *decorative surfaces* in the *public right-of-way*. The notice shall include the location and estimated start and completion dates. In the event of an *emergency*, written notice shall be delivered to the *City Engineer* as soon as possible after the start of construction.
- (d) *Excavators* shall not damage adjacent surface material when removing a *decorative surface*.
- (e) *Excavators* shall restore *decorative surfaces*, at no cost to the City, with surfacing material that matches both the surface and the structural strength of the adjacent surface.

Section 25. That a full reading of this Ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 26. That this Ordinance shall take effect and be in force on January 1, 2024, or the thirtieth day from and after its final passage, whichever is later.

Section 27. That the provisions of this Ordinance shall be applicable to applications for permits deemed complete after the effective date, which date is determined in accordance with Section 26, above.

APPROVED: MARA W. ELLIOTT, City Attorney

By   
Ryan P. Gerrity  
Deputy City Attorney

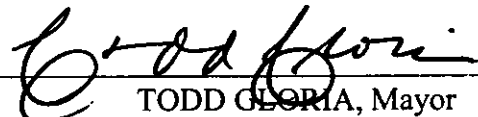
RPG:cw:cm  
June 12, 2023  
June 30, 2023 COR. COPY  
July 11, 2023 REV.  
Or.Dept: Transportation  
Doc. No. 3329000\_3

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of JUL 25 2023.

DIANA J.S. FUENTES  
City Clerk

By   
Deputy City Clerk

Approved: 8/8/23  
(date)

  
TODD GLORIA, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
TODD GLORIA, Mayor

**STRIKEOUT ORDINANCE**

**OLD LANGUAGE: ~~Struck Out~~**

**NEW LANGUAGE: Double Underline**

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER 6, ARTICLE 2, DIVISION 11 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 62.1102, 62.1104, AND 62.1105; RETITLING AND AMENDING SECTION 62.1106; AMENDING SECTIONS 62.1107 AND 62.1108; REPEALING SECTIONS 62.1109 AND 62.1110; AMENDING AND RENUMBERING SECTION 62.1111 TO SECTION 62.1109; AMENDING AND RENUMBERING SECTION 62.1112 TO SECTION 62.1110; AMENDING AND RENUMBERING SECTION 62.1113 TO SECTION 62.1111; AND AMENDING AND RENUMBERING SECTION 62.1114 TO SECTION 62.1112; BY AMENDING CHAPTER 6, ARTICLE 2 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING THE TITLE OF DIVISION 12; AND BY AMENDING CHAPTER 6, ARTICLE 2, DIVISION 12 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 62.1202 AND 62.1203; RETITLING AND AMENDING SECTION 62.1204; AMENDING SECTIONS 62.1205, 62.1206, AND 62.1207; ADDING NEW SECTION 62.1208; RETITLING, AMENDING, AND RENUMBERING EXISTING SECTION 62.1208 TO SECTION 62.1209; RETITLING, AMENDING, AND RENUMBERING SECTION 62.1209 TO SECTION 62.1210; RETITLING, AMENDING, AND RENUMBERING SECTION 62.1210 TO SECTION 62.1211; AMENDING AND RENUMBERING SECTION 62.1211 TO SECTION 62.1212; AMENDING AND RENUMBERING SECTION 62.1212 TO SECTION 62.1213; AMENDING AND RENUMBERING SECTION 62.1213 TO SECTION 62.1214; RETITLING, AMENDING, AND RENUMBERING SECTION 62.1214 TO SECTION 62.1215; AMENDING AND RENUMBERING SECTION 62.1215 TO SECTION 62.1216; REPEALING EXISTING SECTION 62.1216; AMENDING SECTIONS 62.1217 AND 62.1218; AND ADDING NEW SECTION 62.1219 TO THE SAN DIEGO MUNICIPAL CODE, ALL RELATING TO EXCAVATIONS IN THE PUBLIC RIGHT-OF-WAY.

**§62.1102 Definitions**

For purposes of this Division ~~the definitions in Section 62.0102 apply. In addition, defined terms appear in italics.~~ The following definitions apply in this Division:

AMPP means the Association for Materials Protection and Performance.

*Blockage Report* [No change in text.]

*California State Plane 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~~ under California Public Resources Code sections 8801-8819, as may be amended.

*Cathodic Protection* [No change in text.]

City Adopted Standard means the current engineering standards adopted by the City Engineer.

*City Engineer* [No change in text.]

~~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* [No change in text.]

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

~~*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* [No change in text.]

*Inspection Fee* means the fee assessed pursuant to Sunder San Diego Municipal Code (Municipal Code) section 62.11078 to reimburse the City for costs of inspecting work in the *public right-of-way* within the City.

*Joint Trenches* [No change in text.]

~~*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 and non-vehicular traffic. ~~*Pavement* typically consists of asphaltic concrete or Portland cement concrete.~~

*Person* has the same meaning as in Municipal Code section 11.0210, as may be amended.

*Plans* mean engineering drawings for the proposed work in the *public right-of-way* that are prepared, signed, and stamped by a professional engineer or architect licensed in California, unless applicable state law exempts the *person* submitting the engineering drawings from having a licensed professional engineer or architect prepare, sign, and stamp the drawings.

*Public right-of-way* [No change in text.]

Public utility means wet utilities and dry utilities which provide services for, or deliver a commodity to, the public or any portion thereof. This includes any City Department engaged in providing such services and utilities defined in the California Public Utilities Code section 216, as may be amended, including their agents, assigns, successors, contractors, subcontractors, employees, and representatives.

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

Trench Plate [No change in text.]

~~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 Ppublic Utilities whose Ffacilities are for water, reclaimed water, sewer, storm drains, fire hydrants, and any other means of liquid or gaseous conveyance.

#### **§62.1104      Records**

- (a)      All ~~persons~~persons with ~~installations~~facilities in the public right-of-way shall maintain accurate records relating to the location of that ~~person's~~person's facility. For this purpose the person shall use facilities using either the California State Plane Coordinate System or the current system



used by the ~~person, providing that~~ person if such system can be readily understood by others. Such records may ~~not only~~ be relied upon by the City to provide information ~~other than regarding~~ the approximate location of the ~~person's installations~~ person's facilities.

- (b) Within ~~fifteen (15)~~ calendar days of receipt of a written request from the City, all ~~persons~~ persons shall make these records available to the City.

**§62.1105 Installations**

- (a) All persons ~~persons~~ wishing to work in the ~~public right-of-way~~ shall first ~~call for~~ markout.
- (b) All such persons ~~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.~~
- (ea) New facilities placed in the ~~public right-of-way~~ shall occupy the locations indicated in the ~~plans submitted to the City~~ submitted to the City unless otherwise authorized by the City Engineer. If the City Engineer authorizes a deviation from the plans, the person granted the deviation shall supplement the plans as needed and to the City Engineer's satisfaction to

show the accurate location of the person's facilities. This is required for final approval of the plans.

- (fb) All ~~installations~~ facilities placed in the public right-of-way shall comply with City Adopted Standards Drawings.
- (c) All cuts shall be made with a sawcut, rockwheel, or other City Engineer approved method.

**§62.1106 Placement and Removal of Markouts Coordination of Excavation by Public Utilities**

- (a) ~~Markouts shall not be placed in the public right of way more than thirty (30) days prior to the commencement of excavation work performed in connection with an installation. If the excavation work is not commenced within thirty days of the placement of the markout, the markout shall be immediately removed.~~

Public utilities shall coordinate the installation of their facilities with the City to minimize the damage to the public right-of-way.

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 document that shows all planned trenching in the public right-of-way to be done in the next 24 months. The document shall be in a geospatial data format, or other City Engineer approved format. Any public utility that does not anticipate trenching in the next 24 months shall submit a statement that no trenching is anticipated. A public utility shall immediately report any anticipated trenching to the City as soon as it becomes reasonably foreseeable that the trenching will occur. A project

will not be issued a *Public Right-of-Way* Permit until it has been coordinated in the City's digital coordination system. *Public utilities* may submit amendments to previously submitted coordination documents at any time.

- (b) ~~Markouts shall be removed from all surfaces in the public right-of-way, including decorative surfaces, within thirty (30) days of the completion of the excavation work, if the work is completed, but in any event no later than sixty (60) days from the date the markout is placed in the public right-of-way.~~

The City will use the information provided by a *public utility* to facilitate coordination among *excavators* to avoid unnecessary excavation of the *public right-of-way*. To the extent that a *public utility* claims that any information provided under Municipal Code section 62.1106 is a trade secret, or is proprietary or confidential information, the *public utility* shall clearly mark every page containing such information as confidential. 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 elected officials, 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.

**§62.1107 Documents Required for City Engineer Authorization**

- (a) All ~~persons~~persons placing ~~installations~~facilities 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~~public utility facilities, 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~~public utility shall submit to the *City Engineer* ~~copies of maps~~plans 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~~persons placing *facilities* in the *public right-of-way* shall pay an inspection fee to the ~~City Engineer~~City prior to permit issuance and prior to any inspection needed for the project. The *City Engineer* ~~has the authority to set the~~will establish a schedule of fees ~~collected provided that such fees do that 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~~ calculated and invoiced according to the current fee  
schedule.

- (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.~~ The City Manager shall direct the manner of  
payment for inspection fees.
- (c) ~~Funds on deposit shall be carried forward from year to year until expended~~  
The City Engineer may halt inspections on a project if inspection fees are  
not paid or are insufficient.
- (d) ~~If a person~~ person ~~makes a payment pursuant to Sunder Municipal Code~~  
~~section 62.1108(ba)(2), the City Engineer will, within thirty (30) days of~~  
~~receipt of payment upon request, provide that person~~ person ~~with a copy~~  
~~of the field reports from inspections performed and a detailed accounting~~  
~~of the number of City staff hours performed on the inspections project.~~  
The City Engineer shall provide this information within 30 business days  
of a request.
- (e) 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.
- (f) If a City inspection discloses nonconformance with any of the  
requirements of this Division that does not endanger public safety, the

City shall provide written notice of the nonconformance within five (5) working days. The ~~person~~person placing the ~~installations~~facilities in the public right-of-way shall implement the corrective work specified by the ~~City Engineer within~~as soon as possible but no later than 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~~of nonconformance, the City may perform the necessary repairs and all costs related to the repair shall be charged to the ~~person placing the installation~~person installing the facilities.

- (g) If a City inspection discloses nonconformance with any of the requirements of this Division that endangers public safety, the City shall provide notice of the nonconformance immediately. The person placing the facilities in the public right-of-way shall secure the site immediately and implement the corrective work specified by the City Engineer as soon as possible to make the site safe. Corrective work must be completed as soon as possible but no later than within five working days. If the person placing the facilities does not secure the site as required, the City may take necessary actions to secure the site and any costs related to securing the site shall be charged to the person installing the facilities. If the corrective work is not completed within five working days of notice of nonconformance, the City may perform the necessary repairs and all costs related to the repair shall be charged to the person installing the facilities.

- (gh) The *City Engineer* shall have authority to stop work and to request that the excavation be uncovered to certify compliance with this Division at no cost to the City.
- (hi) Any City work done directly or indirectly to ensure compliance with the provisions of this Division shall be charged to the ~~person~~ person placing the ~~installation which~~ facilities that requires the City work.
- (ij) Any work which is the result of a City required project shall be exempt from the *inspection fee* requirement of SMunicipal Code 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) ~~Any striping removed or temporarily placed shall be restored within twenty-four (24) hours where there are more than two lanes of travel, and within seventy-two (72) hours where there are two or fewer lanes of travel.~~

**§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.~~

#### **§62.114+02 Safety and Traffic Control**

- (a) All ~~persons~~ persons working in the ~~public rights-of-way~~ public right-of-way shall be responsible for the safe movement of both vehicular and ~~pedestrian non-vehicular~~ traffic through that ~~person's~~ person's construction and maintenance operations.
- (b) The City Engineer shall be notified of scheduled construction at least two (2)-working days before ~~commeneing~~ work commences.
- (c) ~~S~~All persons performing work in the public right-of-way shall maintain signs, warning devices, traffic control plans, and general conditions of safety, as described either in City Adopted Standards ~~Drawing~~ or other State standards, ~~shall be maintained.~~

- (d) All ~~persons~~persons performing work in the ~~public rights-of-way~~public right-of-way shall identify him, her or itself with on-site signs indicating the name of the ~~person~~person and the phone number to call in case of a complaint or emergency. Such signs shall remain on-site for two (2) weeks after completion of work.

**§62.11120 Relocation of Installations**

- (a) All ~~persons~~persons maintaining *facilities* in the *public right-of-way* shall relocate or remove their *facilities* within the timelines provided by the City 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~~person.
- (b) When *facilities* need to be relocated or removed as a result of construction by a private entity, except as set forth in SMunicipal Code section 62.11120(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*.

**§62.11131 Cathodic Protection**

- (a) ~~Public utilities~~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)~~AMPP.

- (b) If the ~~NACE-AMPP~~ standards conflict with either the California Department of Transportation or California Public Utilities Commission's requirements, the most stringent requirements shall govern.

**§62.11142 Quality Control**

- (a) All ~~persons~~persons performing work in the ~~public rights-of-way~~public right-of-way are solely responsible for ensuring that the work performed, whether by that ~~person~~person, contractors, subcontractors, employees, agents or representatives, complies with all applicable City and State standards.
- (b) At the beginning of each calendar year, each ~~public utility~~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) through (3) [No change in text.]

**Division 12: Excavations in the ~~Public Right-of-Way~~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 ~~Adopted Standards~~Plans*, specifications, orders, and regulations, unless the *City Engineer*, ~~in his or her discretion~~, grants prior written approval to deviate from any such standardsplans, 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 San Diego Municipal Code (Municipal Code) section 62.1102 apply. In addition, the following definitions apply in this Division:

Alley has the same meaning as provided in Municipal Code section 113.0103, as may be amended.

Asphalt overlay means the process of milling the existing pavement and installing a new layer of asphalt on top of the milled surface.

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

Emergency means a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services.

Excavation Influence Area means the area that is impacted by the excavation as determined by the City Engineer and extends around the perimeter of the excavation as set forth in the chart in Municipal Code section 62.1209.

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

Exploratory excavation means a limited excavation, not to exceed 3 feet by 3 feet unless authorized by the City Engineer, to determine the actual vertical and horizontal location of underground facilities.

*Facility Owner* means the ~~P~~ublic ~~U~~tility or other ~~person~~ person that owns, controls, or is otherwise responsible for a ~~F~~acility or ~~F~~acilities within the public right-of-way.

*Hazardous Material* [No change in text.]

Major excavation means an excavation involving a trench greater than 6 inches in width or greater than 3 feet in depth.

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

Minor excavation means an excavation involving a trench 6 inches or less in width and 3 feet or less in depth.

*Moratorium Street* means any street, or portion thereof, that is newly constructed, or has been reconstructed or resurfaced asphalt overlaid in the preceding ~~five~~ three-year period or ~~slurry sealed~~ slurry sealed in the preceding ~~three~~ one-year period. Moratorium streets will not include streets where the asphalt overlay or slurry seal does not extend from curb to curb or between intersections.

*Municipal Excavator* means an excavator that is any agency, board, commission, department, or subdivision of the City, or other municipality or public agency that owns, installs, or maintains a ~~f~~acility or facilities in the public right-of-way.

New Service means a new connection from an existing underground facility to a specific customer site.

*Non-Linear Excavation* means an excavation ~~of for accessing an existing facility~~ and is no more than ~~eighteen~~ 18 inches (18") around ~~the access hole, vault, or other similar~~ substructures required to access ~~the 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.~~

*Slurry seal* means a pavement preservation method consisting of asphalt emulsion and aggregates.

*Trenchless Technology* means any method, including drilling, auguring, boring, and tunneling, 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.~~

*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.

62.1204      **Coordination of Excavation Markouts**

~~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.~~

- (e) ~~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.~~
- (a) Excavators seeking to perform work in the public right-of-way shall notify Underground Service Alert of the planned excavation and obtain a utility markout prior to excavation as required by California Government Code sections 4216-4216.24, as may be amended.
- (b) All excavators shall give notice to Underground Service Alert as required by California Government Code section 4216.2, as may be amended, before any excavation, including exploratory excavations, is commenced.
- (c) If an emergency arises requiring immediate action, Underground Service Alert shall be notified within 24 hours.
- (d) Markouts shall not be placed in the public right-of-way more than 14 days prior to the commencement of excavation work. If the excavation work is not commenced within 14 days of the placement of the markout, the markout shall be immediately removed by the excavator.



- (e) Excavators shall remove markouts from all surfaces in the public right-of-way, including from decorative surfaces, concurrently with required pavement restoration.

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

It shall be unlawful for any ~~person~~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~~ Public Right-of-Way Permit issued in accordance with ~~SMunicipal Code~~ Municipal Code section 129.0741. Notwithstanding Chapter 12, Article 9, Division 7 of this Code, a ~~Public Right-of-Way~~ Public Right-of-Way Permit to excavate within the roadway section of a ~~public street~~ public right-of-way shall be void if the excavation has not begun within ~~ninety~~ 90 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**

- (a) Excavations shall not be permitted in a *moratorium street* without a valid moratorium waiver, regardless of whether the moratorium was active prior to a required application for a Public Right-of-Way Permit. The moratorium period for the moratorium street begins upon the acceptance of a newly constructed or reconstructed street by the City Engineer, or completion of the asphalt overlay or slurry seal.
- (b) The excavation moratorium does not apply to:
- (1) a raised median located within a moratorium street; or

(2) alleys.

**§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~~ Permit as a condition of granting a waiver under Municipal Code section 62.1207. Any excavation performed on a moratorium street as part of a moratorium waiver shall follow the applicable restoration process in Municipal Code sections 62.1209 or 62.1210. The *City Engineer* may ~~approve or conditionally approve~~ grant an excavation moratorium waiver only if ~~the City Engineer makes upon making~~ a written finding that the excavation is necessary because of one or more of the following ~~grounds are present~~ reasons:

- (a) An ~~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~~  
emergency.
- (b) ~~New Service~~ The public utility has demonstrated to the City Engineer's satisfaction that New Service to a specific location does not require excavation exceeding 500 linear feet from the existing main, except as authorized or required by applicable federal or state law, decisions, orders, and regulations, and cannot be provided either:
  - (1) through existing conduit;

- (2) ~~where through trenchless technology is impractical due to one or more of the following because of:~~
- (A) soil conditions;
  - (B) proximity of ~~facilities~~; or
  - (C) ~~where trenchless technology is economically impractical~~  
the use of trenchless technology is impractical due to costs  
when 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~~ facilities by a non-government owned ~~public utility~~ is ~~both~~:
- (1) required by the City; or ~~C~~ocounty, ~~S~~state or ~~F~~federal ~~G~~government;  
and for a reason other than the establishment
  - (2) ~~not required as a result of~~ an underground utility district  
established pursuant to Sunder Municipal Code section 61.0501.
- (d) Only a ~~non-linear excavation~~ or ~~exploratory excavation~~ will be ~~made~~  
conducted. The *City Engineer* in his or her ~~sole discretion~~ may authorize  
an larger exploratory excavation with an area not to exceed five feet by  
five feet. Such authorization is at the City Engineer's sole discretion, and  
must be made in writing ~~and signed by the City Engineer~~.
- (e) The excavation is part of construction of new surface features that results  
in the permanent removal of existing pavement, where the impact to

surrounding pavement is limited to the area required for temporary installation of materials needed for construction of median, sidewalk, curb and gutter, and similar surface improvements.

- (f) The work is to repair or correct defects that occur within the warranty period after the street has been asphalt overlayed or slurry sealed.
- (g) The work involves trenching through an intersection of a moratorium street where such work is necessary to complete a project on a cross street.
- (h) The excavation is part of a funded and planned project scheduled in the City's digital coordination system that was waiting for a moratorium street to be out of the moratorium period, but the moratorium period was extended because a moratorium waiver was granted to another excavator for one of the reasons listed in (a) through (g).

**§62.1208 General Restoration of the Public Right-of-Way**

The following restoration requirements apply to excavations in the public right-of-way:

- (a) If the sidewalk, street, alley, 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 City Adopted Standards and any applicable permit requirements.
- (b) Excavators shall restore pavement at the end of each day with pavement material that shall be maintained flush with the adjacent pavement such that the excavation may be safely accessed by all users. If surfacing

material cannot be installed at the end of each day, then all intersections, pedestrian crossings, and other locations as required by the City Engineer shall be secured with structural trench plates.

(c) All damaged pavement shall be restored with surfacing materials which match both the surface and the structural strength of the adjacent surface and meet City Adopted Standards.

(d) All pavement shall be restored with permanent surfacing material within 60 calendar days of a major excavation. All pavement restoration for minor excavations shall adhere to City Adopted Standards.

(e) If the excavation and related work impacts a curb at a pedestrian street crossing where no curb ramp exists, then this activity constitutes an alteration as defined in 28 C.F.R. §§ 35.151(b) and 35.151(i) (2011).

Where an alteration occurs, a new curb ramp compliant with accessibility requirements must be constructed rather than replacing the existing curb.

**§62.12089** **Excavations on Streets Under an Excavation Moratorium Due to Reconstruction or Resurfacing Restoration of Moratorium Streets Under Excavation Moratorium Due to New Construction, Reconstruction, or Asphalt Overlay**

~~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~~  
Excavators shall asphalt overlay in moratorium streets under moratorium due to new construction, reconstruction, or asphalt overlay within 180 working days after the City Engineer approves the trench repair as follows:

- (a) Where the excavation is in the direction of traffic, the *excavator* shall ~~resurface~~ asphalt overlay the ~~entire street from curb to curb or, where a raised median is present, from the curb to the raised median for the length of the excavation area, and 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~~ asphalt overlay the ~~street from curb to curb or, where a raised median is present, from the curb to the raised median, for the length of the excavation from curb to curb, or for the length of the excavation plus and the length of 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.~~

Table 62-12A

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

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

Street Classification	Wet Utilities	Dry Utilities
Arterial Streets through Residential Streets [No change in text.]	[No change in text.]	[No change in text.]

**§62.120910** ~~Excavations on Streets Under~~ Restoration of Moratorium Streets Under  
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~~ Excavators shall slurry seal in moratorium streets due to slurry seal and within 180 working days after the City Engineer's acceptance of the repair work as follows:

- (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~~ slurry seal 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 for the length of the excavation and the excavation influence area.
- (b) Where the excavation is perpendicular to the direction of traffic, the excavator shall ~~slurry seal the length of the excavation~~ slurry seal the

~~street 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 where a raised median is present, from the curb to the median for the length of the excavation and the excavation influence area.~~

~~The excavator shall also slurry seal the excavation area plus the excavation influence area on each side of the excavation.~~

- (e) ~~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.~~

**Table 62-12B**

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

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

Street Classification	Wet Utilities	Dry Utilities
Arterial Streets through Residential Streets [No change in text.]	[No change in text.]	[No change in text.]

**§62.12101 Excavations-Additional Restoration of Streets 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.~~

- (a) For major excavations in asphalt concrete streets other than moratorium streets, excavators shall:
- (1) restore the trench as required by City Adopted Standards and asphalt overlay the excavation influence areas within 180 days of the trench cap;
  - (2) repair damage to the existing pavement from the excavation work as determined by the City Engineer;
  - (3) if the trench or excavation influence area enters a bicycle lane, the entire width of the bicycle lane shall be asphalt overlaid and restriped for the length of the trench including the excavation influence area; and
  - (4) pay the Street Damage Fee under Municipal Code section 62.1216 for the increased repaving and reconstruction costs incurred by the City that are reasonably attributable to the impact of the major excavation in the public right-of-way, or perform additional restoration in-lieu of paying the Street Damage Fee as follows:
    - (A) repair and backfill the trench as required by City's Adopted Standards, and asphalt overlay the trench and all lanes affected by the trench, including any lanes within the excavation influence area within 180 days of the trench

cap. If the excavation perpendicular to the direction of traffic was done on less than half of the width of the street as measured from curb to curb, grind and asphalt overlay the affected area from the toe of the gutter, or curb face if no gutter exists, to the centerline of the street or to the centerline marking where available;

(B) if the excavation only included installing one service lateral, asphalt overlay the trench and the excavation influence areas from curb to curb;

(C) if the excavation included installing more than one service lateral in one street segment (i.e., street block), asphalt overlay curb to curb from the excavation influence area of the first lateral excavation to the excavation influence area of the last lateral excavation;

(D) for any excavation larger than 3 feet by 3 feet, restore the width of the affected lane for the length of the excavation including the excavation influence areas, but in no circumstance shall the restored area be less than 10 feet in length; and

(E) repair any pavement damage outside the affected lane caused by the excavation work.

(b) For minor excavations in asphalt concrete streets other than moratorium streets, excavators shall:

- (1) restore the trench per City Adopted Standards and asphalt overlay the excavation influence areas;
- (2) repair damage to the existing pavement from the excavation work as determined by the City Engineer; and
- (3) if the trench or excavation influence area enters a bicycle lane, the entire width of the bicycle lane shall be asphalt overlaid and restriped for the length of the trench including the excavation influence area; and
- (4) pay the Street Damage Fee under Municipal Code section 62.1216 for the increased repaving and reconstruction costs incurred by the City that are reasonably attributable to the impact of the minor excavation of the public right-of-way, or perform additional restoration in-lieu of paying the Street Damage Fee as follows:

  - (A) repair and backfill the trench per City Adopted Standards, asphalt overlay the trench and all lanes affected by the trench, including any lanes within the excavation influence area within 180 days. If the excavation perpendicular to the direction of traffic was done on less than half of the width of the street as measured from curb to curb, grind and asphalt overlay the affected area from the toe of the gutter, or curb face if no gutter exists, to the centerline or to the centerline marking where available;

- (B) if the excavation included only one service lateral, asphalt overlay the trench and the excavation influence areas from curb to curb;
  - (C) if the excavation included installing more than one service lateral in one street segment (i.e., street block), asphalt overlay curb to curb from the excavation influence area of the first lateral excavation to the excavation influence area of the last lateral excavation;
  - (D) for any excavation larger than 3 feet by 3 feet restore the width of the affected lane for the length of the excavation including the excavation influence areas, but in no circumstance shall the restored area be less than 10 feet in length; and
  - (E) repair any pavement damage outside the affected lane from the excavation work.
- (c) For any excavation in Portland cement concrete streets, including alleys, excavators shall perform restoration as directed by the City Engineer in accordance with the following:
- (1) Excavators shall restore the entire Portland cement concrete panel extending beyond both sides of the trench to the nearest joint or to the edge of the adjacent gutter, if it exists, or to the face of the curb if no gutter exists. If an existing trench patch is 4 feet or less from the edge of the excavation, the restoration shall include removing

the existing trench cap and replacing it as part of the new Portland cement concrete construction for the new panel.

- (2) Excavators shall perform additional repairs to Portland cement concrete to correct any damage caused during construction activities, including those associated with increased damage to pavement due to the use of large or heavy equipment during construction activities.

**§62.12142 Emergency Excavation**

Nothing contained in this Division shall be construed to prevent ~~any prohibits a~~ *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 that public utility when if such~~ necessity arises when City offices are closed. ~~In the event that any person or The 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 shall notify the City through the Emergency Excavation Notification process prior to performing any excavation and in the public right-of-way. The public utility shall then apply for a Public Right-of-Way Permit Permit under SMunicipal Code section 129.0702, no later than fourteen 14 business days after excavation commences. The applicant application for a Public Right-of-Way Permit Permit under SMunicipal Code section 129.0702, shall submit include a written statement on describing the basis of the emergency action, and describe the excavation performed, and any work remaining to be performed. A Public Right-of-Way Permit Permit under~~

SMunicipal Code section 129.0702 shall not be valid until a final inspection of the excavation is performed and approved by the City. The public utility shall complete final street restorations within 60 days for major excavations and 7 days for minor excavations after completion of work.

**§62.12123 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~~ person affiliated with the City shall not excuse any owner or agent from such responsibility or liability.

**§62.12134 Indemnification of the City**

To the extent permissible by law, ~~the City may require excavators, and~~ their agents, successors, and assigns, ~~to~~ shall indemnify, defend, protect and hold harmless the City, including, without limitation, each of its commissions, elected officials, 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~~ Permit*, or while in or about the property subject to the *Public Right-of-Way ~~Permit~~ Permit* for any reason connected in any way whatsoever with the performance of the excavation authorized by the *Public Right-of-Way ~~Permit~~ Permit* or allegedly resulting directly or indirectly from the maintenance or installation of any ~~equipment, facility~~ facilities or structures authorized under the *Public Right-of-Way ~~Permit~~ Permit* Permit;

- (b) Any alleged act or omission of the City, not including allegations of the City's active or sole negligence or willful misconduct.
- (bc) 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~~ 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~~ 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~~ Permit* Permit;
- (ed) Any accident, damage, death, or injury to any ~~persons~~ 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~~ Permit* from any cause or claims arising at any time; and



- (de) 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*.

**§62.12145 Insurance Requirements Ffor Excavations in the ~~Public Right-of-Way~~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, at their sole cost and expense, to provide coverage against claims for loss, including injuries to persons or damage to property, which may arise out of or in connection with the performance of the work by the excavator or its contractors 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; shall be written on the current version of the ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad. The policy shall cover liability arising from premises and operations, XCU (explosions, collapse, and underground), independent contractors, products/completed operations, personal injury and advertising injury, bodily injury, and property damage. All costs should be outside of policy limits. Policy coverage shall be in liability limits of not less than \$2,000,000 per occurrence and a \$4,000,000 aggregate.~~

- (1) The City and its respective elected officials, officers, employees, agents and representatives shall be added as additional insureds on a separate endorsement(s) delivered to the City prior to commencement of work, on a policy form(s) at least as broad as the CG 20 10 11 85. This additional insured coverage will not include indemnification for the City's active negligence.
  - (2) The policy shall be endorsed to provide that the coverage with respect to operations, including the completed operations, if appropriate, of the named insured is primary to any insurance or self-insurance of the City and its elected officials, officers, employees, agents, and representatives. Further, it shall provide that any insurance maintained by the City and its elected officials, officers, employees, agents, and representatives shall be in excess of the excavator's insurance and shall not contribute to it.
- (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~~ written with a combined single limit of not less than \$1 million per claim or occurrence. Claims made policies shall include a 12-month extended Claims Discovery Period applicable to the excavation work or the existing policy or policies that shall continue to be maintained for 12 months after the completion of the work.

- (c) Automobile liability insurance written on the current version of the ISO form CA 00 01 12 90 or later version or equivalent form providing coverage at least as broad in the amount of \$1 million combined single limit per accident, coverage bodily injury and property damage for owned, non-owned and hired automobiles.
- (d) Workers Compensation and Employers Liability insurance as required by the State of California, with Statutory Limits, and Employer's Liability insurance with a limit no less than \$1 million per accident for bodily injury or disease.  
The policy or policies shall be endorsed to provide that the insurer will waive all rights of subrogation against the City and its respective elected officials, officers, employees, agents, and representatives for losses paid under the terms of the policy or policies and which arise from work performed by the named insured.
- (e) Policies providing excess coverage shall follow the form of the primary policies, including all endorsements.
- (ef) 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*~~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.

- (dg) 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 SMunicipal Code sections §62.12145(a) and §62.12145(b).
- (eh) 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.
- (fi) Where an *excavator* is self-insured, the City may accept such self-insurance as satisfying the requirements of SMunicipal Code section §62.12145 where the *excavator* provides 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 in~~ Municipal Code section 62.1215. Any self-insurance, including any self-insured retention amounts, shall be disclosed in writing to the City prior to the commencement of any work.

**§62.12156 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*, unless the excavator performs additional restoration as described in Municipal Code section 62.1211(a)(4) or Municipal Code section 62.1211(b)(3) to account for such increased repaving and reconstruction costs or as otherwise provided by law. The amount of the Street Damage Fee shall be established by resolution of the San Diego City Council adopted pursuant to under this Division and placed on file in the Office of the City Clerk. The Street Damage Fee Schedule shall be automatically adjusted every year on July 1 based on the RS Means Construction Cost Index, or a similar construction industry index selected by the City Manager if the RS Means Construction Cost Index is discontinued. 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* ~~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 Adopted Standards Drawings* or as specified by the *City Engineer* for ~~fifteen~~ 15 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 Adopted Standards Drawings* or as specified by the *City Engineer* for ~~ten~~ 10 years after inspection and acceptance by the City. Upon notification by the City of the need for maintenance, repair, or reconstruction, facility owners shall apply for a Public Right-of-Way Permit within 10 business days and complete corrective work within 90 calendar days after issuance of the permit. Safety issues shall be addressed immediately.

**§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, and any applicable excavation moratorium waiver documentation~~ available for inspection at the site of excavation.

- (b) *Excavators shall not excavate without providing proper notice to the Underground Service Alert in accordance with SMunicipal Code section ~~§62.1105~~1204.*

- (c) [No change in text.]

**§ 62.1219 Restoration of Decorative Surfaces**

For areas with a decorative surface in the public right-of-way, excavators shall comply with the following additional requirements:

- (a) Before disturbing any decorative surface, excavators shall provide information to the City Engineer to establish that such disturbance is necessary because alternative measures, such as rerouting, boring, jacking, or scoping, cannot be used.
- (b) Before commencing work on the decorative surface, excavators shall submit to the City Engineer for approval, specifications designed to minimize destruction and ensure restoration of the same quality of surface.
- (c) Excavators shall deliver written notice to the City Engineer at least two working days prior to starting construction or trenching that will involve any disturbance of decorative surfaces in the public right-of-way. The notice shall include the location and estimated start and completion dates. In the event of an emergency, written notice shall be delivered to the City Engineer as soon as possible after the start of construction.
- (d) Excavators shall not damage adjacent surface material when removing a decorative surface.

- (e) Excavators shall restore decorative surfaces, at no cost to the City, with surfacing material that matches both the surface and the structural strength of the adjacent surface.

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June 12, 2023  
June 30, 2023 COR. COPY  
July 11, 2023 REV.  
Or.Dept: Transportation  
Doc. No. 3329033\_3



Passed by the Council of The City of San Diego on JUL 25 2023, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery Steppe	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kent Lee	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Raul A. Campillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage AUG 08 2023.

AUTHENTICATED BY:

TODD GLORIA  
Mayor of The City of San Diego, California.

(Seal)

DIANA J.S. FUENTES  
City Clerk of The City of San Diego, California.

By Kristell Medina, Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

JUL 10 2023

, and on

AUG 08 2023

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

DIANA J.S. FUENTES  
City Clerk of The City of San Diego, California.

By Kristell Medina, Deputy

Office of the City Clerk, San Diego, California

21701

Ordinance Number O-