

THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: November 29, 2012

REPORT NO: 12-135

ATTENTION: City Council

SUBJECT: Proposed Draft Amendments to the Municipal Code relating to Excavating within the Public Right-of-Way and Proposed Amendments to the Excavation Fee.

REFERENCES: Mayor's Report No. 12-064, *Proposed Draft Amendments to the Municipal Code relating to Excavating within the Public Right-of-Way and Proposed Amendments to the Excavation Fee.*

Manager's Report No. 96-14, *Ordinance Pertaining to Procedures for Public Utilities' Use of the Public Right of Way*

Manager's Report No. 96-88, *Right of Way Ordinance*

Manager's Report No. 99-182, *Draft Report on Trench Impacts to City Streets*

Manager's Report No. 00-32, *Utility Trenches in City Streets*

Manager's Report No. 01-271, *Utility Trenches in City Streets*

Manager's Report No. 03-089 *Utility Trenches in City Streets*

Manager's Report No. 05-084, *Trench Restoration*

Grand Jury Report, *San Diego City Street Conditions*, filed April 6, 2006

Grand Jury Report, *San Diego City Street Repair, Funding and Reforms*, filed April 26, 2012

Audit Report #10-007, *Performance Audit of the City's Street Maintenance Functions*

Audit Report #11-009, *Street Maintenance: City Needs to Improve Planning, Coordination, and Oversight to Effectively Manage Transportation Assets*

REQUESTED ACTION

Approve an Ordinance (Attachments 1 & 2) amending the Municipal Code to provide for procedures, limitations and requirements when excavations are made in the public right-of-way (ROW) and related matters.

Approve a Resolution adjusting the current Trench Cut Fee (Attachments 3, 7 & 8) and renaming it the Street Damage Fee, to partially recover the costs of providing the maintenance, repair or resurfacing services necessary to partially mitigate the damage and degradation that excavations cause that are reasonably attributable to the impact of an excavation to the public right-of-way.

STAFF RECOMMENDATION

Recommend approval of requested actions.

EXECUTIVE SUMMARY OF ITEM BACKGROUND

The Transportation and Storm Water Department was created in an effort to improve the management, operation and maintenance of our public right-of way. A Task Force of relevant staff met over the course of months to identify improvements to accomplish these goals. The Task Force consisted of representatives of the Transportation & Storm Water Department (street maintenance, underground utilities, right of way coordination) the Public Works Department and the Public Utilities Department, Development Services Department and the City Attorney's Office. A number of improvements were suggested, many which have been implemented. One recommendation from the Task Force was to modify *Chapter 6, Article 2: Public Rights-of-Way and Land Development, Division 12: Excavation Fees*, of the Municipal Code. Recommendations were made that would make the Ordinance simple to read/implement/enforce, ensure it is in alignment with proper engineering practices, legally defensible and equitable across stakeholders. In addition the ordinance provided clear definitions, minimized options/exemptions with some allowance for discretion (when documented) and ensured that the City would be fully reimbursed for degradation to the ROW (Attachment 4).

The draft Ordinance was presented to the Utilities Coordination Committee on five (5) occasions, SANDAG, the Associated General Contractors, the Code Monitoring Team and the Technical Advisory Committee. Feedback was solicited and modifications were made to the draft. The draft Ordinance was then presented to the Land Use and Housing Committee (LU&H) on September 13, 2012 (Attachment 5). A summary of the recommendations from LU&H (Attachment 6) as well as the impact of the recommendations is as follows:

1. *Recommendation:* Implement 50% of the proposed Street Damage Fee increase (Attachment 4) over 2 years with 25% of the increase effective July 1, 2013 and an additional 25% of the proposed increase effective July 1, 2014.

Impact: This will result in less than full cost recovery for the estimated costs of providing the repair or resurfacing services necessary to fully mitigate the damage and degradation that excavations cause that are reasonably attributable to the impact of that excavation.

2. *Recommendation:* During the 2 year phased in fee increase period, collaborate with stakeholders on an evaluation of new technologies that seek to mitigate excavation impacts and refine the fee methodology, if necessary, based upon the results of the study. Report back to Council with the results.

Impact: Staff will review and update the study as appropriate to take into consideration the current environment, technologies, and costs. If the excavators/stakeholders provide information as to new technologies they use to perform street excavations that were not evaluated in the original study, then we will evaluate those. Within 2 years, staff will bring to Council any recommended fee modifications to achieve full cost recovery, if appropriate.

3. *Request:* Request the City Attorney to explore the concept and legal issues related to possibly exempting from the Street Damage Fee those excavations for dry utilities that are related to the Underground Utilities Program, or are a result of a government mandate or government reimbursable projects. Also build in reimbursement options should the City instigate trenching in an effort to widen roads, etc.

Impact: The City Attorney has provided a memo.

4. *Recommendation:* Request the Auditor to conduct an audit of the Street Damage Fee within 3 years of the initial 25% fee increase.

Impact: This request has been made and the Auditor has agreed to include such an audit in the future.

5. *Recommendation:* Include large conduit packages as a criteria for exemption to a street resurfacing moratorium.

Impact: We have discussed the request to continue this current exemption with the stakeholders that requested this modification to the proposed Ordinance and have determined that their concerns can be addressed without amending our proposed Ordinance to reinsert this exemption.

6. *Recommendation:* Amend language to differentiate a 10 year maintenance obligation for dry utilities and a 15 year maintenance obligation for wet utility excavations.

Impact: The majority, but not all, failed excavations will appear during these time frames and the "owner" of the failed excavation will be required to repair the failed excavation.

7. *Recommendation:* Require that the Ordinance state that the City will not disclose any confidential and proprietary information on proposed future utility projects as allowed under the Public Records Act.

Impact: This provision is contained in the draft Ordinance.

8. *Recommendation:* Include a requirement that the City share its projected 24 month resurfacing plan with the utilities.

Impact: This provision has been added to the draft Ordinance.

The requested actions amend and replace *Chapter 6, Article 2: Public Rights-of-Way and Land Development, Division 12: Excavation Fees*, of the Municipal Code with the new Street Preservation Ordinance.

The substantive items that will be in the Street Preservation Ordinance are as follows:

- Continues the requirement for a permit to excavate and to follow quality construction standards.
- Clarifies various definitions that were ambiguous.

- Requires that all Utilities twice per year submit to the City planned work anticipated to be completed in the public right-of-way in the upcoming 24 months so that projects can be better coordinated.
- Requires that excavation work begin within 90 calendar days of the permit start date and is completed within one (1) year.
- Increases the length of the existing Moratorium for excavations on slurried/resurfaced streets from 1 year/3 years for slurry/overlay to 3 years/5 years in order to maintain the improved condition of the street for a longer period of time.
- Provides guidelines for granting waivers to the moratorium with the requirement of proper documentation.
- Continues guidelines for the proper resurfacing of excavations, taking into account the "area of influence".
- Assigns liability for an excavation to the facility owner and establishes indemnification and insurance requirements for permittees.
- Extends partial cost recovery for degradation of the asset resulting from excavations in the public right-of-way to municipal excavators (our Public Utilities Department and our Utilities Undergrounding Program) by charging them the Street Damage Fee.
- Establishes the maintenance obligation of the excavation to the facility owner for the excavation and the surface condition.

In addition, this action would rename the Trench Cut Fee the Street Damage Fee to more accurately reflect the reason it is being collected and adjust the fee based upon the recommendation from LU&H . The original fee was adopted on September 9, 2003 (Resolution Number R-298358). Since that time, the costs of providing the maintenance, repair or resurfacing services necessary to fully mitigate the damage and degradation that excavations cause have increased. The proposed fee schedule has been adjusted to partially recover these costs.

FISCAL CONSIDERATIONS

The proposed Resolution adjusts the current Trench Cut/Street Damage Fee that is charged to an excavator. This proposed fee adjustment recovers only 50% of the fee adjustment that would be required to make the fee 100% reimbursable for damage to the ROW due to an excavation. This adjustment will be phased in over two years with 25% of the proposed fee adjustment effective July 2013 and an additional 25% of the fee adjustment effective July 2014.

In FY2012 \$160,000 was collected from the issuance of permits to excavate in the public ROW from non-municipal excavators. If we were to assume the same approximate number and size of excavations are performed in future years as in FY12, then this annual revenue would remain the same for FY13 and increase to approximately \$240,000 in FY14 and \$320,000 in FY15 if this "graduated" fee adjustment is approved.

In addition to adjusting the fee for non-municipal excavators, the proposed Ordinance will require municipal excavators (Water, Sewer, & Underground Program) to pay the Street Damage Fee. Currently Water & Sewer do not pay this fee when they excavate for maintenance purposes or when they excavate as a requirement of a capital improvement project. If the Ordinance is approved, the Water/Sewer Fund will be impacted by the Street Damage fee.

The estimated annual cost to the Water Fund for excavations related to maintenance at the current rate would be \$35,000. The estimated annual cost to the Water Fund at the adjusted rate would be approximately \$220,000 (1,200 excavations) at full cost recovery but would be approximately \$55,000 in FY14 and \$110,000 in FY15 if this “graduated “ fee adjustment is approved.

The estimated annual cost to the Water Fund for excavations related to future capital improvement projects at the current rate would be \$208,000 (20 miles of pipe replacement). The estimated annual cost to the Water Fund at the adjusted rate would be \$1,320,000 at full cost recovery but would increase to approximately \$330,000 in FY14 and \$660,000 in FY15 if this “graduated “ fee adjustment is approved.

The estimated annual cost to the Sewer Fund for excavations related to maintenance at the current rate would be \$11,000. The estimated cost to the Sewer Fund at the adjusted rate would be \$70,000 (400 excavations) at full cost recovery but approximately \$17,500 in FY14 and \$35,000 in FY15 if this “graduated “ fee adjustment is approved.

The estimated cost to the Sewer Fund for excavations related to future capital improvement projects at the current rate would be \$208,000 (20 miles of pipe replacement). The estimated cost to the Sewer Fund at the adjusted rate would be \$1,320,000 at full cost recovery but approximately \$330,000 in FY14 and \$660,000 in FY15 if this “graduated “ fee adjustment is approved.

The Utilities Undergrounding Program would also be assessed the Street Damage Fee. The average annual cost to the program under the existing fee would be \$257,000 and \$695,000 under the adjusted fee if full cost recovery but approximately \$173,750 in FY14 and \$347,500 in FY15 if this “graduated “ fee adjustment is approved.

Total annual revenue resulting from the new requirement that non-municipal & municipal excavators (Water, Sewer, Underground Program) pay the fee at the full cost recovery rate would be approximately \$4,105,000 (an overall revenue increase of \$3,945,000). But total annual revenue of only \$1,146,250 in FY14 and \$2,132,500 in FY15 if this “graduated” fee adjustment is approved. These funds would be used to mitigate the damage caused by excavations.

EQUAL OPPORTUNITY CONTRACTING INFORMATION

This action does not authorize entering into any contract or agreement and therefore, is not subject to the City’s Equal Opportunity Contracting (San Diego Ordinance No.18173, Section 22.2701 through 22.2708) and Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

PREVIOUS COUNCIL and/or COMMITTEE ACTIONS

On September 22, 2003, Council authorized the addition of *Division 12: Excavation Fees , Article 2: Public Rights-of-Way and Land Development* to the Municipal Code by O-19215 N.S. Land Use & Housing Committee, September 13, 2012 .

COMMUNITY PARTICIPATION AND OUTREACH EFFORTS

- Utilities Coordination Committee, December 14, 2011
- Utilities Coordination Committee February 29, 2012

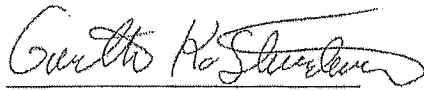
- Utilities Coordination Committee, March 28, 2012
- Utilities Coordination Committee, April 25, 2012
- Utilities Coordination Committee, June 27, 2012
- Sandag, March 21, 2012
- AGC City Liaison Committee, March 21, 2012
- Code Monitoring Team, April 11, 2012
- Technical Advisory Committee, August 8, 2012

KEY STAKEHOLDERS AND PROJECTED IMPACTS

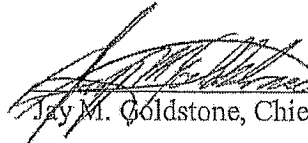
All who excavate in the public right-of-way will be required to apply for a permit (except for municipal excavators) and adhere to quality construction standards as well as bear the responsibility to maintain, repair or reconstruct the excavation and the surface condition for 15 years if they are a "wet" utility and 10 years if they are a "dry" utility. All excavators will pay the Street Damage Fee. Public and private utilities will be required to submit planned projects 24 months in advance. Excavators will be required to adhere to a 3 year slurry & 5 year resurface moratorium.

Submitted By:

Approved By:



Garth K. Sturdevan, Director



Jay M. Goldstone, Chief Operating Officer

Attachments:

1. Strikeout Version of the Ordinance
2. Clean Copy of the Ordinance
3. Trench Cut Fee (cost per square foot)
4. Cost Recovery Street Damage Fee (cost per square foot)
5. Land Use and Housing Committee Report No. 12-064, July 2, 2012, *Proposed Draft Amendments to the Municipal Code relating to Excavating within the Public Right-of-Way and Proposed Amendments to the Excavation Fee.*
6. Memorandum, Councilmember Lorie Zapf, September 12, 2012, *Proposed Motion on Draft Excavation Ordinance for Consideration*
7. Street Damage Fee at 25% of the Proposed Increase, FY14 (costs per square foot)
8. Street Damage Fee at 50% of the Proposed Increase, FY 15 (costs per square foot)