

## **ARTICLE 2.4: EXCAVATION IN THE PUBLIC RIGHT-OF-WAY**

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**SUBARTICLE I  
GENERAL PROVISIONS**

**SEC. 2.4.1. EXCAVATION IN THE PUBLIC RIGHT-OF-WAY.**

This Article 2.4 shall govern excavation in the public right-of-way within the City that is under the jurisdiction and control of the Department of Public Works. The Director of Public Works shall be responsible for managing the public right-of-way. (Added by Ord. 341-98, App. 11/13/98)

**SEC. 2.4.2. PERMITS REQUIRED TO EXCAVATE.**

(a) It is unlawful for any person to make or to cause or permit to be made any excavation in any public right-of-way that is under the jurisdiction of the Department of Public Works without first obtaining from the Department a permit authorizing such excavation.

(b) The Department shall issue a permit to excavate only if the owner has the legal authority to occupy and use the public right-of-way for the purposes identified in the application for the permit and the owner and its agent, if any, are in compliance with this Article.

(c) No permit to excavate shall be required when an excavation is to be completed within a period of 24 hours or less to install a parking meter, street light, street tree, traffic sign, traffic signal, or utility pole or to repair a utility box in a sidewalk; or when an excavation is in connection with the construction or maintenance of a subsidewalk basement; or when an excavation is performed for the sole purpose of repairing a sidewalk.

(d) Permit requirements pertaining to emergency excavation are addressed in Section 2.4.22. (Added by Ord. 341-98, App. 11/13/98; amended by Ord. 33-02, File No. 020051, App. 3/28/2002)

### **SEC. 2.4.3. DEPARTMENT ORDERS AND REGULATIONS.**

In addition to the requirements set forth in this Article, the Department may adopt such orders or regulations as it deems necessary in order to preserve and maintain the public health, safety, welfare, and convenience. Each excavation in the public right-of-way pursuant to this Article shall be performed in accordance with the standard plans and specifications of the Department and any Department orders or regulations, except where the Director, in his or her discretion, grants prior written approval to deviate from such standard plans and specifications, orders, or regulations. The Director shall develop guidelines to implement the granting of waivers authorized pursuant to this Article. Furthermore, excavation in the public right-of-way shall conform to the orders, regulations, and rules of the Department of Parking and Traffic, including, but not limited to, the regulations adopted in accordance with Article 11 of the San Francisco Traffic Code (the "Blue Book"). (Added by Ord. 341-98, App. 11/13/98)

### **SEC. 2.4.4. DEFINITIONS.**

For purposes of this Article, the following terms shall have the following meanings:

(a) "Agent" shall mean a person or persons authorized to assist an owner in the permitting process or in the performance of an excavation.

(b) "Applicant" shall mean an owner or duly authorized agent of such owner, who has submitted an application for a permit to excavate.

(c) "Article" shall mean this Article 2.4 of the Public Works Code.

(d) "Block" shall mean that part of the public right-of-way that includes the street area from the property line to the parallel property line in width and extending from the property line of an intersecting street to the nearest property line of the next intersecting street in length. For purposes of this definition, an intersection also shall be considered a "block."

(e) "City" shall mean the City and County of San Francisco.

(f) "Department" shall mean the Department of Public Works.

(g) "Deposit" shall mean any bond, cash deposit, or other security provided by the applicant in accordance with Section 2.4.40 of this Article.

(h) "Director" shall mean the Director of the Department of Public Works or his or her designee.

(i) "Excavation" shall mean any work in the surface or subsurface of the public right-of-way, including, but not limited to opening the public right-of-way; installing, servicing, repairing or modifying any facility(ies) in or under the surface or subsurface of the public right-of-way, and restoring the surface and subsurface of the public right-of-way.

(j) "Facility" or "facilities" shall include, but not be limited to, any and all cables, cabinets, ducts, conduits, converters, equipment, drains, handholds, manholes, pipes, pipelines, splice boxes, surface location markers, tracks, tunnels, utilities, vaults, and other appurtenances or tangible things owned, leased, operated, or licensed by an owner or person, that are located or are proposed to be located in the public right-of-way.

(k) "Large excavation project" shall mean any excavation of more than 1000 square feet.

(l) "Major work" shall mean any reasonably foreseeable excavation that will affect the public right-of-way for more than 15 consecutive calendar days.

(m) "Medium excavation project" shall mean any excavation of more than 100 but no greater than 1000 square feet.

(n) "Moratorium street" shall mean any block that has been reconstructed, repaved, or resurfaced by the Department or any other owner or person in the preceding five-year period.

(o) "Municipal excavator" shall mean any agency, board, commission, department, or subdivision of the City that owns, installs, or maintains a facility or facilities in the public right-of-way.

(p) "Owner" shall mean any person, including the City, who owns any facility or facilities that are or are proposed to be installed or maintained in the public right-of-way.

(q) "Permit" or "permit to excavate" shall mean a permit to perform an excavation as it has been approved, amended, or renewed by the Department.

(r) "Permittee" shall mean the applicant to whom a permit to excavate has been granted by the Department in accordance with this Article.

(s) "Person" shall mean any natural person, corporation, partnership, any municipal excavator, or any governmental agency, including the State of California or United States of America.

(t) "Public right-of-way" shall mean the area across, along, beneath, in, on, over, under, upon, and within the dedicated public alleys, boulevards, courts, lanes, roads, sidewalks, spaces, streets, and ways within the City, as they now exist or hereafter will exist and which are or will be under the permitting jurisdiction of the Department of Public Works.

(u) "Responsible party" shall mean the owner for each excavation involving the owner's facility or facilities. In addition, it shall mean any person who performs an excavation or has a duty or right to manage or participate in the management of an excavation and whom the Director designates as responsible, in whole or in part, for such excavation.

(v) "Sidewalk" shall mean the area between the fronting property line and the back of the nearest curb.

(w) "Small excavation project" shall mean any excavation of 100 square feet or less.

(x) "Utility excavator" shall mean any owner whose facility or facilities in the public right-of-way are used to provide electricity, gas, information services, sewer service, steam, telecommunications, traffic controls, transit service, video, water, or other services to customers regardless of whether such owner is deemed a public utility by the California Public Utilities Commission. (Added by Ord. 341-98, App. 11/13/98; amended by Ord. 33-02, File No. 020051, App. 3/28/2002)

## **SUBARTICLE II**

### **APPLICATIONS FOR PERMITS TO PERFORM AN EXCAVATION**

#### **SEC. 2.4.10. APPLICATIONS.**

(a) Applications shall be submitted in a format and manner specified by the Department and shall contain:

(i) The name, address, telephone, and facsimile number of the applicant. Where an applicant is not the owner of the facility to be installed, maintained, or repaired in the public right-of-way, the application also shall include the name, address, telephone, and facsimile number of the owner;

(ii) A description of the location, purpose, method of excavation, and surface and subsurface area of the proposed excavation;

(iii) A plan showing the proposed location and dimensions of the excavation and the facilities to be installed, maintained, or repaired in connection with the excavation, and such other details as the Department may require;

(iv) A copy or other documentation of the franchise, easement, encroachment permit, license, or other legal instrument that authorizes the applicant or owner to use or occupy the public right-of-way for the purpose described in the application. Where the applicant is not the owner of the facility or facilities to be installed, maintained, or repaired, the applicant must demonstrate in a form and manner specified by the Department that the applicant is authorized to act on behalf of the owner;

- (v) The proposed start date of excavation;
  - (vi) The proposed duration of the excavation, which shall include the duration of the restoration of the public right-of-way physically disturbed by the excavation;
  - (vii) Written acknowledgment that all material to be used in the excavation, installation, maintenance, or repair of facilities, and restoration of the public right-of-way will be on hand and ready for use so as not to delay the excavation and the prompt restoration of the public right-of-way;
  - (viii) Written acknowledgment that the owner and its agent, if any, are in compliance with all terms and conditions of this Article, the orders, regulations, and standard plans and specifications of the Department, and that the owner and its agent are not subject to any outstanding assessments, fees, penalties that have been finally determined by the City or a court of competent jurisdiction;
  - (ix) A current Business Tax Registration Certificate issued by the San Francisco Tax Collector pursuant to Section 1003 of Part III of the San Francisco Municipal Code for the owner and its agent, if any;
  - (x) Evidence of insurance as required by Section 2.4.23 of this Article;
  - (xi) A deposit as required by Section 2.4.40 of this Article;
  - (xii) Any other information that may reasonably be required by the Department.
- (b) The Department may allow an applicant to maintain documents complying with Subsections (iv), (ix), (x), and (xi) on file with the Department rather than requiring submission of such documents with each separate application. (Added by Ord. 341-98, App. 11/13/98; amended by Ord. 33-02, File No. 020051, App. 3/28/2002)

#### **SEC. 2.4.11. COORDINATION OF EXCAVATION.**

(a) **Five-Year Plans.**

(i) On the first day of April and October, or the first regular business day immediately thereafter, each utility and municipal excavator shall prepare and submit to the Department a plan, in a format specified by the Department, that shows all major work anticipated to be done in the public right-of-way in the next five years. Any utility or municipal excavator that does not propose major work in the next five years shall submit a plan with a statement that no such major work is anticipated and shall immediately report any major work to the Department as soon as it becomes reasonably foreseeable.

(ii) The Department may disclose information contained in a five-year plan to any utility excavator or municipal excavator only on a need-to-know basis in order to facilitate coordination among excavators and to avoid unnecessary excavation in City streets. To the maximum extent permissible under federal, State, and local laws applicable to public records, the City shall not otherwise disclose to the public any information contained in a five-year plan submitted by a utility excavator that is proprietary, trade secret or is otherwise protected from disclosure; provided, however that the City shall have no duty to decline to disclose any information that the utility excavator has not identified on its face as proprietary, trade secret or otherwise protected from disclosure. The Department shall notify a utility excavator of any request for inspection of public records that calls for disclosure of any five-year plan on which any information has been identified as proprietary, trade secret or otherwise protected from disclosure. The Department shall consult with the City Attorney regarding any such request and shall inform the affected utility excavator either that the Department will refuse to disclose the protected information or, if there is no proper basis for such refusal, that the Department intends to disclose the requested information unless ordered otherwise by a court.

(b) **Department Repaving Plans.**

(i) The Department shall prepare a five-year repaving plan showing all proposed repaving and reconstruction of the public right-of-way. The Department's repaving plan shall be revised and updated on a semiannual basis after receipt of the five-year plans from utility and municipal

excavators. In order to facilitate coordination and minimize the cost of excavation, the Department shall make its repaving plan available for public inspection.

(ii) At least one hundred twenty calendar days prior to undertaking the repaving and reconstruction of any block, the Department shall send a notice of the proposed repaving and reconstruction to each utility and municipal excavator.

(c) **Coordination.**

(i) The Department shall review the five-year plans and identify conflicts and opportunities for coordination of excavations. The Department shall notify affected owners and permittees of such conflicts and opportunities to the extent necessary to maximize coordination of excavation. Each applicant shall coordinate, to the extent practicable, with each potentially affected owner and permittee to minimize disruption in the public right-of-way.

(ii) When two or more applicants coordinate major work in the same block so that, in the opinion of the Department, such major work minimizes disruption to the affected neighborhood, and is likely to qualify the block for repaving, the Department shall make its best effort to schedule the affected block for repaving. Such scheduling shall occur, to the extent funds are available in the Street Damage Restoration Fund, so that the applicants may qualify for a waiver of the street damage restoration fee under Section 2.4.44(b)(ii). Notwithstanding the foregoing, nothing in this subsection shall interfere with the Department's authority to allocate available repaving resources in a manner that it determines best serves the public interest. (Added by Ord. 341-98, App. 11/13/98)

#### **SEC. 2.4.12. JOINT EXCAVATION.**

(a) **Municipal Excavators.** Whenever two or more municipal excavators propose major work in the same block within a five-year period, such work shall be performed by one municipal excavator. The participants to the excavation shall pay their pro rata share of the work. For purposes of this subsection, the municipal excavators shall be treated as a single applicant and shall submit one application.

(b) **Utility Excavators.** Whenever two or more utility excavators propose major work in the same block within a five-year period, such work shall be performed by one utility excavator. For purposes of this subsection, the utility excavators shall be treated as a single applicant and shall submit one application.

(c) **Municipal Excavator and Utility Excavator.** Whenever a municipal excavator(s) and a utility excavator(s) propose major work in the same block within a five-year period, the Department shall condition permits for such work in a manner that maximizes coordination and minimizes the total period of construction.

(d) **Waiver of Joint Excavation Requirements.** Applicants may seek a waiver of the joint excavation requirements with respect to a particular excavation. Within 30 calendar days of receipt of a written request for a waiver, the Director, in his or her discretion, may grant a waiver to the joint excavation requirements for good cause. In making his or her decision on the request for waiver, the Director shall consider the impact of the proposed excavation on the neighborhood, the applicant's need to provide services to a property or area, facilitating the deployment of new technology as directed pursuant to official City policy, and the public health, safety, welfare, and convenience. The Director shall indicate in written, electronic, or facsimile communication the basis for granting any waiver pursuant to this subsection. The Director may place additional conditions on any permit(s) subject to a waiver, including, but not limited to, the charging of additional fees pursuant to Section 2.4.43. The Director's decision regarding waivers of the joint excavation requirements shall be final. (Added by Ord. 341-98, App. 11/13/98)

### **SUBARTICLE III PERMITS TO EXCAVATE**

**SEC. 2.4.20. ACTION ON APPLICATIONS FOR PERMITS TO EXCAVATE.**

(a) After receipt of an application for a permit to excavate, the Department, within a reasonable time period, shall determine whether an application is complete.

(b) If the application is deemed to be incomplete, the Department promptly shall advise the applicant in a written, electronic, or facsimile communication of the reasons for rejecting the application as incomplete.

(c) If the application is deemed to be complete, the Department, in its discretion, may deny, approve, or conditionally approve the application.

(i) If the application is approved or conditionally approved, the Department shall issue a permit to the applicant. The Department may condition a permit with specified requirements that preserve and maintain the public health, safety, welfare, and convenience. The Department shall inform the permittee of the basis for such requirements.

(ii) If the application is denied, the Department shall advise the applicant in a written, electronic, or facsimile communication of the basis for denial. (Added by Ord. 341-98, App. 11/13/98)

**SEC. 2.4.20.1. TERMS AND LIMITATIONS.**

The permit shall specify the location, extent, and method of the excavation, the start date and duration of the excavation, the permittee to whom the permit is issued, and any conditions placed on the permit. The terms and conditions of the permit shall include the application, all information submitted therewith, and all Department orders and regulations applicable to the permit. The Department must approve any and all modifications to the permit. (Added by Ord. 341-98, App. 11/13/98; amended by Ord. 33-02, File No. 020051, App. 3/28/2002)

**SEC. 2.4.20.2. DURATION AND VALIDITY.**

Permits shall be void if the excavation has not begun within 30 calendar days of the start date specified in the permit, if the excavation is not prosecuted diligently to its conclusion, or if the excavation, including restoration, has not been completed within the specified duration; provided, however, that the Director, at his or her discretion, may issue extensions to the start date, the duration of excavation, or both upon written request from the permittee. Such written requests must explain why the work could not be commenced on the start date, completed in the approved number of calendar days, or both; shall specify the additional number of calendar days required to complete the work; and shall be accompanied by applicable fees specified in Subarticle IV. All requests to modify the start date of an excavation shall be made at least five (5) calendar days prior to the excavation start date. All requests to modify the duration of the excavation shall be made at least five (5) calendar days prior to the permit expiration date. Any extension that the Director grants may be subject to additional special conditions, including, but not limited to, conditions that ensure timely completion and coordination of the project. The Director shall not grant requests for extensions to the start date after the permitted start date nor shall the Director grant requests for extensions to the duration of the excavation after the permit expiration date. (Added by Ord. 341-98, App. 11/13/98; amended by Ord. 33-02, File No. 020051, App. 3/28/2002)

**SEC. 2.4.20.3. PERMIT AMENDMENTS.**

The Director, at his or her sole discretion, may allow amendments to the permit, such as to change the method of construction, to advance the start date of the excavation, or modify permit conditions, upon written request from the permittee. Such requests shall explain the basis for the permit amendment and shall be accompanied by applicable fees specified in Subarticle IV. Any amendments that the Director grants may be subject to additional special conditions, including, but not limited to, conditions that ensure timely completion and coordination of the project. The

Director shall not grant requests for amendments to the excavation after the permit expiration date. (Added by Ord. 33-02, File No. 020051, App. 3/28/2002)

**SEC. 2.4.20.4. NONTRANSFERABILITY OF PERMITS.**

Permits are not transferable. (Added by Ord. 341-98, App. 11/13/98; amended by Ord. 33-02, File No. 020051, App. 3/28/2002)

**SEC. 2.4.21. MORATORIUM STREETS.**

The Department shall not issue any permit to excavate in any moratorium street; provided, however, that the Director, in his or her discretion, may grant a waiver for good cause. The Director is specifically authorized to grant a waiver for an excavation that facilitates the deployment of new technology as directed pursuant to official City policy. The Director shall issue his decision on a waiver within a reasonable period after receipt of a written request for a waiver. The Director may place additional conditions on a permit subject to a waiver, including, but not limited to, the charging of additional fees pursuant to Section 2.4.43. The Director's decision regarding a waiver shall be final. (Added by Ord. 341-98, App. 11/13/98)

**SEC. 2.4.22. EMERGENCY EXCAVATION.**

Nothing contained in this Article shall be construed to prevent any person from taking any action necessary for the preservation of life or property or for the restoration of interrupted service provided by a municipal or utility excavator when such necessity arises during days or times when the Department is closed. In the event that any person takes any action to excavate or cause to be excavated the public right-of-way pursuant to this Section, such person shall apply for an emergency permit within four hours after the Department's offices are first opened. The applicant for an emergency permit shall submit a written statement of the basis of the emergency action and describe the excavation performed and any work remaining to be performed. (Added by Ord. 341-98, App. 11/13/98)

**SEC. 2.4.23. LIABILITY AND INDEMNIFICATION.**

Each permit, except one obtained by a municipal excavator, shall incorporate by reference and require the owner and its agent, if any, to comply with the liability, indemnity, insurance, and taxable possessory interest provisions set forth below in this Section; provided, however, that the Director, with the concurrence of the City Controller and City Risk Manager, may modify the indemnity and insurance provisions as they pertain to a particular permit.

(a) **Liability upon Owner and Agent.** Each owner and its agent is wholly responsible for the quality of the excavation performed in the public right-of-way and both the owner and agent are jointly and severally liable for all 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 Department shall not excuse any owner or agent from such responsibility or liability.

(b) **Indemnification, Defense, and Hold Harmless.**

(i) Each owner and its agent shall agree on its behalf and that of any successor or assign to indemnify, defend, protect, and hold harmless the City, including, without limitation, each of its commissions, departments, officers, agents, and employees (hereinafter in this subsection collectively referred to as "San Francisco") from and against any and all actions, claims, costs, damages, demands, expenses, fines, injuries, judgments, liabilities, losses, penalties, or suits including, without limitation, attorneys' fees and costs (collectively, "claims") of any kind allegedly arising directly or indirectly from:

(1) Any act by, omission by, or negligence of, owner or its agent, contractors, subcontractors, or the officers, agents, or employees of such entities, while engaged in the performance of the excavation authorized by the permit, or while in or about the property subject



to the permit for any reason connected in any way whatsoever with the performance of the excavation authorized by the permit, or allegedly resulting directly or indirectly from the maintenance or installation of any equipment, facility(ies), or structures authorized under the permit;

(2) Any accident, damage, death, or injury to any contractor or subcontractor, or any officer, agent or employee of either of them, while engaged in the performance of the excavation authorized by the permit, or while in or about the property for any reason connected with the performance of the excavation authorized by the 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 permit;

(3) Any accident, damage, death, or injury to any person(s) or accident, damage, or injury to any real or personal property in, upon, or in any way allegedly connected with the excavation authorized by the permit from any cause or claims arising at any time; and,

(4) 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 permit or the environment. As used herein, "hazardous material" means any gas, material, substance, or waste which, because of its quantity, concentration, or physical or chemical characteristics, is deemed by any federal, state, or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. "Release" when used with respect to hazardous materials shall include any actual or imminent disposing, dumping, emitting, emptying, escaping, injecting, leaching, leaking, pumping, pouring, or spilling.

(ii) Upon the request of San Francisco, the owner or its agent, at no cost or expense to San Francisco, must indemnify, defend, and hold harmless San Francisco against any claims, regardless of the alleged negligence of San Francisco or any other party, except only for claims resulting directly from the sole negligence or wilful misconduct of San Francisco. Each owner and its agent specifically acknowledges and agrees that it has an immediate and independent obligation to defend San Francisco from any claims which actually or potentially fall within the indemnity provision, even if the allegations are or may be groundless, false, or fraudulent, which obligation arises at the time such claim is tendered to owner or its agent by San Francisco and continues at all times thereafter. In addition, San Francisco shall have a cause of action for indemnity against each owner and its agent for any costs San Francisco may be required to pay as a result of defending or satisfying any claims that arise from or in connection with the permit, except only for claims resulting directly from the sole negligence or wilful misconduct of San Francisco. Owner and its agent agree that the indemnification obligations assumed under the permit shall survive expiration of the permit or completion of excavation.

(c) **Insurance.**

(i) Each owner or its agent shall maintain in full force and effect, throughout the term of the permit, an insurance policy or policies issued by an insurance company or companies satisfactory to the City's Controller and Risk Manager. Policy or policies shall afford insurance covering all operations, vehicles, and employees, as follows:

(1) Workers' Compensation with employers' liability limits not less than \$1,000,000 each accident;

(2) Commercial general liability insurance with limits not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage, including contractual liability; personal injury; explosion, collapse, and underground (xcu); products; and completed operations;

(3) Business automobile liability insurance with limits not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage, including owned, nonowned, and hired auto coverage, as applicable;

(4) Contractors' pollution liability insurance, on an occurrence form, with limits not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage and any deductible not to exceed \$25,000 each occurrence.

(ii) Said policy or policies shall include the City and its officers and employees jointly and severally as additional insureds, shall apply as primary insurance, shall stipulate that no other insurance effected by the City will be called on to contribute to a loss covered thereunder, and shall provide for severability of interests. Said policy or policies shall provide that an act or omission of one insured, which would void or otherwise reduce coverage, shall not reduce or void the coverage as to any other insured. Said policy or policies shall afford full coverage for any claims based on acts, omissions, injury, or damage which occurred or arose, or the onset of which occurred or arose, in whole or in part, during the policy period. Said policy or policies shall be endorsed to provide 30 calendar days advance written notice of cancellation or any material change to the Department.

(iii) 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 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.

(iv) 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 above in Subsection (c)(i).

(v) Such insurance shall in no way relieve or decrease owner's and its agent's obligation to indemnify the City under Subsection (b) or any other provision of this Article.

(vi) Certificates of insurance, in the form satisfactory to the Department, evidencing all coverages above, shall be furnished to or maintained on file with the Department before issuance of a permit, with complete copies of policies furnished promptly upon the Department's request.

(vii) Where an owner is self-insured, and such insurance is no less broad and affords no less protection to the City than the requirements specified above in Subsection (c), the Department, in consultation with the City's Controller and Risk Manager, may accept such insurance as satisfying the requirements of Subsection (c). Evidence of such insurance shall be provided in the manner specified in Subsection (c)(vi).

(d) **Taxable Possessory Interest.** Each owner shall acknowledge on its behalf and that of any successor or assign that its permit incorporates the following statements: The owner of the facility(ies) for which the permit to excavate was obtained recognizes and understands that the permit may create a possessory interest subject to property taxation and that owner may be subject to the payment of property taxes levied on such interest under applicable law. Owner agrees to pay taxes of any kind, including possessory interest taxes, if any, that may be lawfully assessed on owner's interest under the permit to excavate or for use of the public right-of-way and to pay other excises, licenses, taxes, or permit charges or assessments based on owner's usage of the public right-of-way that may be imposed on owner by applicable law. Owner shall pay all of such charges when they become due and before delinquency. (Added by Ord. 341-98, App. 11/13/98; amended by Ord. 33-02, File No. 020051, App. 3/28/2002)

#### **SEC. 2.4.24. PERMIT TO BE AVAILABLE AT EXCAVATION SITE.**

The permit or a photo duplicate shall be available for review at the site of the excavation for the duration of the excavation and shall be shown, upon request, to any police officer or any employee of a City agency, board, commission, or department with jurisdictional responsibility over activities in the public right-of-way. (Added by Ord. 341-98, App. 11/13/98)

## **SUBARTICLE IV DEPOSITS AND FEES**

### **SEC. 2.4.40. DEPOSIT.**

Each applicant shall submit and maintain with the Department a bond, cash deposit, or other security acceptable to the Department securing the faithful performance of the obligations of the owner and its agent under any permit(s) to excavate and the compliance with all terms and conditions of this Article (the "deposit"). The deposit shall be in the sum of \$25,000 in favor of the "Department of Public Works, City and County of San Francisco." Utility and municipal excavators and other frequent applicants may submit a single deposit for multiple excavations so long as a constant balance of \$25,000 is maintained on file with the Department. If the Director has deducted from such a deposit pursuant to Section 2.4.46(c), the utility or municipal excavator or other frequent applicant must restore the full amount of the deposit prior to the Department's issuance of a subsequent permit. (Added by Ord. 341-98, App. 11/13/98; amended by Ord. 33-02, File No. 020051, App. 3/28/2002)

### **SEC. 2.4.41. ADMINISTRATIVE FEE.**

Each applicant shall pay to the Department a fee of \$66 for each permit issued for a small excavation project, a fee of \$83 for each block contained in a medium excavation project, or a fee of \$110 for each block contained in a large excavation project. Said fees shall compensate the Department for the cost incurred to administer the provisions of this Article. If the Director grants a permit extension or amendment pursuant to Sections 2.4.20.2 or 2.4.20.3, the permittee shall pay a fee of \$66 for any block for which the permit has been extended or amended to cover the cost of additional permit review and administration. (Added by Ord. 341-98, App. 11/13/98; amended by Ord. 33-02, File No. 020051, App. 3/28/2002)

### **SEC. 2.4.42. INSPECTION FEE.**

Each applicant shall pay to the Department a fee of \$16 for each permit issued for a small excavation project, a fee of \$55 for each calendar day of a medium excavation project, or a fee of \$81 for each calendar day of a large excavation project. Said fee shall compensate the Department for the cost of the inspection and regulatory services provided to such applicant when he or she becomes a permittee pursuant to this Article. No inspection fees shall be collected from a municipal excavator when: (a) the municipal excavator pays the Department to manage and inspect the construction or (b) the excavation is to construct, replace, or repair Municipal Railway tracks. If the Director grants a permit extension pursuant to Section 2.4.20.2, the permittee shall pay \$16 for a small excavation project or the appropriate fees for a medium or large excavation project for each additional calendar day for which the permit is extended to cover the cost of additional permit inspection. If the Director grants a permit amendment pursuant to Section 2.4.20.3 that results in additional permit inspection, the permittee shall pay the fees specified above for permit extensions. (Added by Ord. 341-98, App. 11/13/98; amended by Ord. 33-02, File No. 020051, App. 3/28/2002)

### **SEC. 2.4.43. ADDITIONAL FEES FOR EXCAVATION.**

In instances where administration of this Article or inspection of an excavation is or will be unusually costly to the Department, the Director, in his or her discretion, may require an applicant or permittee to pay any sum in excess of the amounts charged pursuant to Sections 2.4.41 and 2.4.42. This additional sum shall be sufficient to recover actual costs incurred by the Department and shall be charged on a time and materials basis. The Director also may charge for any time and materials costs incurred by other agencies, boards, commissions, or departments of the City in connection with the administration or inspection of the excavation. Whenever additional fees are charged, the Director, upon request of the applicant or permittee, shall provide in writing the basis

for the additional fees and an estimate of the additional fees. (Added by Ord. 341-98, App. 11/13/98)

**SEC. 2.4.44. STREET DAMAGE RESTORATION FEE.**

(a) **Calculation of Fee.** Each applicant shall pay to the Department a street damage restoration fee to recover the increased repaving and reconstruction costs incurred by the City that are reasonably attributable to the impact of excavation in City streets. The fee shall not generate proceeds in excess of the City's costs of street repaving and reconstruction reasonably attributable to the excavation for which the fee is charged. The amount of the fee shall be calculated as follows:

| <b>Age of Block (Years Since Last Resurfacing)</b> | <b>Fee Amount</b>                    |
|--|--------------------------------------|
| 0—5 years  | \$3.50 per square foot of excavation |
| 6—10 years   | \$3.00 per square foot of excavation |
| 11—15 years  | \$2.00 per square foot of excavation |
| 15—20 years  | \$1.00 per square foot of excavation |

Where an applicant proposes an excavation in a block whose age is unknown to the Department and the block's pavement condition score recorded in the Department's pavement management and mapping database is greater than 53, the applicant shall be charged the street damage restoration fee at the rate specified for streets 15 to 20 years old.

(b) **Exceptions from the Street Damage Restoration Fee to Encourage Coordination.** To encourage coordination of excavation with the Department's repaving schedule and to encourage excavation in older blocks and those with lower pavement condition scores:

(i) No fee will be assessed for excavation in blocks with a recorded pavement condition score of 53 or less, or a recorded age of greater than 20 years.

(ii) No fee will be assessed for excavation in a block scheduled to be completed by an applicant less than two years prior to the Department's scheduled repaving of that block.

(c) **Fee Waived for Excavation that Includes Repaving.** The street damage restoration fee shall be waived for an excavation where an applicant proposes to reconstruct and repave the entire block affected by the excavation or any and all traffic lanes affected by the excavation, where such reconstruction and repaving is performed consistent with all of the standards set forth in orders, rules, plans and specifications of the Department.

(d) **Fee Waiver for In-Kind Payment of Fee—Installation of Conduit.** With the approval of the Director of the Department of Public Works and the Director of the Department of Telecommunications and Information Services, where it would minimize neighborhood disruption, and where savings in street resurfacing costs through avoidance of future excavation are anticipated to exceed amounts that would otherwise be due from the street damage restoration fee, some portion or all of the otherwise applicable street damage restoration fee may be waived for an excavation in which the applicant installs: (i) conduit for City use or control or (ii) conduit made available via approval and coordination with the Department and Department of Telecommunications and Information Services to other subsequent applicants or excavators such that future excavation is permanently avoided. The City shall make any available space in such conduit available to subsequent applicants to avoid future excavation in the block. The Departments of Public Works and Telecommunications and Information Services shall adopt orders or regulations prescribing circumstances under which in-kind payment of all or some portion of the fee shall be permitted, prescribing specifications for the conduit to be installed, and

prescribing terms under which the conduit shall be made available to interested parties on a competitively neutral and nondiscriminatory basis.

(e) **Exception for Excavation in Sidewalks, Concrete Blocks, or Unaccepted Blocks.** No street damage restoration fee shall be assessed with respect to excavation in a sidewalk, block constructed solely of portland cement concrete, or a block that the City has not accepted for maintenance purposes.

(f) **Exception for Excavation to Accommodate the City's Use.** No street damage restoration fee shall be assessed for excavation performed to relocate the facilities of a utility excavator to accommodate the City's use of the block. (Added by Ord. 341-98, App. 11/13/98)

#### **SEC. 2.4.45. REPORT TO BOARD OF SUPERVISORS.**

Within one year after adoption or amendment of the street damage restoration fee or other fees set forth in this Subarticle, and every three years thereafter, the Director shall review the proceeds of the street damage restoration fee and such other fees, the costs of repaving and reconstruction reasonably attributed to excavation in City streets, the City's costs to administer this Article and inspect excavations, and any other new information that shall become available, and prepare a report to the Board of Supervisors. Based upon the result of the review, the Director shall recommend to the Board of Supervisors any necessary adjustments to the fee, along with written justification for the recommended adjustment and any necessary legislation. In the event that fee proceeds have exceeded, or are anticipated to exceed, the costs for street repaving and reconstruction reasonably attributable to excavation or the City's costs to administer this Article or inspect excavations, the Director shall recommend legislation to the Board of Supervisors that modifies the applicable fee to ensure that fee proceeds do not exceed the costs for street repaving and reconstruction reasonably attributable to excavation or the City's costs to administer this Article or inspect excavations. In the event that fee proceeds have undercollected, or are anticipated to undercollect, for the costs for street repaving and reconstruction reasonably attributable to excavation or the City's costs to administer this Article or inspect excavations, the Director may recommend legislation to the Board of Supervisors that modifies the applicable fee to more accurately recover the costs for street repaving and reconstruction reasonably attributable to excavation or the City's costs to administer this Article or inspect excavations. (Added by Ord. 341-98, App. 11/13/98; amended by Ord. 33-02, File No. 020051, App. 3/28/2002)

#### **SEC. 2.4.46. COLLECTION, RETURN, AND REFUND OF DEPOSIT AND FEES.**

(a) **Collection of Deposit and Fees.** The Director shall establish procedures for billing, collection, and refund of a deposit(s), fees, and other charges provided for in this Article. The Director shall deposit all funds in accordance with Sections 10.117-119 and 10.117-120 of the San Francisco Administrative Code.

(b) **Refunds.**

(i) When an application is either withdrawn by the applicant or denied by the Department before the start of construction, the applicant's administrative fee assessed under Section 2.4.41 shall be retained and those fees assessed under Sections 2.4.42, 2.4.43, and 2.4.44 shall be returned to the applicant.

(ii) In the event that the Director determines, after preparing a report pursuant to Section 2.4.45, that there has been an overcollection of any of the fees identified in this Subarticle, the Director shall establish procedures to refund excess fee proceeds in a manner which fairly and reasonably reimburses those excavators who paid the fee during the relevant period consistent with their level of excavation.

(iii) In the event that a project is completed prior to the permit expiration date, a permittee may make a written request for a refund of the inspection fee that is proportionate to the number of calendar days the project was completed early. Prior to the issuance of any refund, the Department shall verify the date of completion, that the project has been satisfactorily completed,

that all punch list work has been completed, and that there are no outstanding fines or penalties pending against the permittee or its agent. The Department shall not release the requested refund until any and all outstanding fines or penalties pending against the permittee and its agent have been paid. The permittee seeking a refund shall pay the Department a fee of \$110 for the cost of the calculation and processing of the refund.

(c) **Deductions for Deposits.** The Director may make deductions from the balance of a permittee's deposit(s) to ensure the faithful performance of the obligations under a permit to excavate, to pay fees, to offset the costs for any excavation done or repairs made by the Department, or to pay any assessed penalties or costs associated with violations of this Article.

(d) **Retention of Deposit for Three Years.** Each deposit made pursuant to Section 2.4.40 shall be retained by the City for a period of three years after the satisfactory completion of the excavation to secure the obligations in the permit and this Article.

(e) **Return of Deposit.** Upon expiration of three years from the satisfactory completion of the excavation, a permittee's deposit(s), less the deductions made pursuant to Subsection (c), shall be returned to the permittee or to its assigns. (Added by Ord. 341-98, App. 11/13/98; amended by Ord. 33-02, File No. 020051, App. 3/28/2002)

## **SUBARTICLE V EXCAVATIONS**

### **SEC. 2.4.50. NOTICES.**

Any permittee who excavates or causes to be made an excavation in the public right-of-way shall provide notice as follows:

(a) **Two to Fourteen-Day Excavations.** For excavations that will be completed and restored in a period exceeding 24 hours but within 14 calendar days of commencement, the permittee shall post and maintain notice at the site of the excavation. The notice shall include the name, telephone number, and address of the owner and its agent, a description of the excavation to be performed, and the duration of the excavation. The notice shall be posted at least every 100 feet along any block where the excavation is to take place at least 72 hours prior to commencement of the excavation.

(b) **Notice for Major Work.**

(i) At least 30 calendar days prior to commencement of the excavation, the permittee shall provide written notice delivered by United States mail to each property owner on the block(s) affected by the excavation and each affected neighborhood and merchant organization that is listed in the City Planning Department's Directory of Neighborhood Organizations and Service Agencies. The latest City-wide assessor's roll for names and addresses of owners shall be used for the mailed notice. This notice shall include the same information that is required for the posted notice pursuant to Subsection (a) and the name, address, and 24-hour telephone number of a person who will be available to provide information to and receive complaints from any member of the public concerning the excavation.

(ii) The permittee shall post and maintain notice at the site of the excavation at least 10 calendar days prior to commencement of the excavation in the same manner and with the same information as required for posted notice pursuant to Subsection (a). At least 10 calendar days prior to commencement of the excavation, the permittee also shall deliver a written notice to each dwelling unit on the block(s) affected by the excavation. This written notice shall include the same information that is required for the written notice pursuant to this Subsection (i).

(iii) Before commencement of construction, a permittee for major work shall post and maintain excavation project signs at the site of the excavation that describe the excavation being done and bear the name, address, and 24-hour telephone number of a contact person for the owner and its agent. Said excavation project signs shall be in format, quantity, and size specified by the Department.

(c) **Notice of Emergency Excavation.** For emergency excavation, the permittee, or the applicant if a permit has not been issued, shall post and maintain notice at the site of the excavation during the construction period. The notice shall include the name, telephone number, and address of the owner, permittee, applicant, and its agent, a description of the excavation to be performed, and the duration of the excavation. The notice shall be posted at least every 100 feet along any block where the excavation is to take place. (Added by Ord. 341-98, App. 11/13/98; amended by Ord. 33-02, File No. 020051, App. 3/28/2002)

#### **SEC. 2.4.51. NOTICE FOR MARKING OF SUBSURFACE FACILITIES.**

In accordance with State law, any person excavating in the public right-of-way shall comply with the requirements of the Underground Service Alert (“USA”) regarding notification of excavation and marking of subsurface facilities. Such person shall provide USA with the assigned number for the permit to excavate or other information as may be necessary to properly identify the proposed excavation. (Added by Ord. 341-98, App. 11/13/98)

#### **SEC. 2.4.52. LIMITS UPON EXCAVATION IN THE PUBLIC RIGHT-OF-WAY.**

(a) **Scope.** It is unlawful for any permittee to make, to cause, or permit to be made any excavation in the public right-of-way outside the boundaries, times, and description set forth in the permit.

(b) **Rock Wheel and Trenchless Technology.** Use of a rock wheel or trenchless technology to excavate in the public right-of-way is unlawful without prior written approval of the Director.

(c) **Single Excavation Maximum of 1,200 Feet.** No single excavation site shall be longer than 1,200 feet in length at any time except with the prior written approval of the Director. (Added by Ord. 341-98, App. 11/13/98)

#### **SEC. 2.4.53. REGULATIONS CONCERNING EXCAVATION SITES.**

Each owner and its agent shall be subject to requirements for excavation sites that are set forth in Department orders or regulations. Such orders or regulations shall include, but not be limited to, the following measures:

(a) **Protection of the Excavation.** Each owner and its agent shall cover open excavation with steel plates ramped to the elevation of the contiguous street, pavement, or other public right-of-way, or otherwise protected in accordance with guidelines prescribed by the Department.

(b) **Housekeeping and Removal of Excavated Material.** Each owner and its agent shall keep the area surrounding the excavation clean and free of loose dirt or other debris in a manner deemed satisfactory to the Department. Excavation sites shall be cleaned at the completion of each work day. In addition, the owner and its agent shall remove all excavated material from the site of the excavation no later than the end of each work day.

(c) **Storage of Materials and Equipment.** Materials and equipment that are to be used for the excavation within seven calendar days may be stored at the site of the excavation, except that fill material, sand, aggregate, and asphalt-coated material may be stored at the site only if it is stored in covered, locked containers.

(d) **Hazardous Material.** Each owner and its agent shall be subject to hazardous material guidelines for date collection; disposal, handling, release, and treatment of hazardous material; site remediation; and worker safety and training. The Department, in consultation with the Department of Public Health, shall develop, prescribe, and update such hazardous material guidelines. The guidelines shall require the owner and its agent to comply with all federal, state, and local laws regarding hazardous material. For purposes of this subsection, “hazardous materials” shall mean any gas, material, substance, or waste which, because of its quantity, concentration, or physical or chemical characteristics, is deemed by any federal, state, or local governmental authority to pose a present or potential hazard to human health or safety or to the

environment. (Added by Ord. 341-98, App. 11/13/98; amended by Ord. 33-02, File No. 020051, App. 3/28/2002)

#### **SEC. 2.4.54. STOP WORK ORDER, PERMIT MODIFICATION, AND PERMIT REVOCATION.**

When the Director has determined that a person has violated this Article or that an excavation poses a hazardous situation or constitutes a public nuisance, public emergency, or other threat to the public health, safety, or welfare, or when the Director determines that there is a paramount public purpose, the Director is authorized to issue a stop work order, to impose new conditions upon a permit, or to suspend or revoke a permit by notifying the permittee of such action in a written, electronic, or facsimile communication. (Added by Ord. 341-98, App. 11/13/98)

#### **SEC. 2.4.55. RESTORATION OF THE PUBLIC RIGHT-OF-WAY.**

(a) **Restoration.** In any case in which the sidewalk, street, or other public right-of-way is or is caused to be excavated, the owner and its agent shall restore or cause to be restored such excavation in the manner prescribed by the orders, regulations, and standard plans and specifications of the Department. At a minimum, trench restoration shall include resurfacing to a constant width equal to the widest part of the excavation in accordance with the following diagram; provided, however, that the width of resurfacing need not exceed 13 feet;

(b) **Backfill, Replacement of Pavement Base, and Finished Pavement.** Activities concerning backfilling, replacement of pavement base, and finished pavement shall be performed in a manner specified by the orders, regulations, and standard plans and specifications of the Department. In addition, these activities shall be subject to the following requirements:

(i) **Backfill.** Each excavation shall be backfilled and compacted within 72 hours from the time the construction related to the excavation is completed.

(ii) **Replacement of pavement base.** Replacement of the pavement base shall be completed within 72 hours from the time the excavation is backfilled.

(iii) **Finished pavement.** Finished pavement restoration shall be completed within 72 hours of replacement of the pavement base.

(c) **Modification to Requirements.** Upon written request from the permittee, the Director may grant written approval for modifications to the requirements of Subsection (b).

(d) **Incomplete Excavation; Completion by the Department.** In any case where an excavation is not completed or restored in the time and manner specified in the permit, this Article, or the orders, regulations, and standard plans and specifications of the Department, the Director shall order the owner or its agent to complete the excavation as directed within 24 hours. If the owner or its agent should fail, neglect, or refuse to comply with the order, the Director may complete or cause to be completed such excavation in such manner as the Director deems expedient and appropriate. The owner or its agent shall compensate the Department for any costs associated with the administration, construction, consultants, equipment, inspection, notification, remediation, repair, restoration, or any other actual costs incurred by the Department or other agencies, board, commissions, or departments of the City that were made necessary by said excavation. The cost of such work also may be deducted from the permittee's deposit pursuant to Section 2.4.46(c). The Director's determination as to the cost of any work done or repairs made shall be final. In addition, the owner, its agent, or other responsible party may be subject to those enforcement actions set forth in Subarticle VII.

(e) Subject to the limitation set forth in Section 2.4.70, completion of an excavation or restoration by the Department in accordance with Subsection (d) shall not relieve the owner or its agent from liability for future pavement failures at the excavation site. (Added by Ord. 341-98, App. 11/13/98; amended by Ord. 33-02, File No. 020051, App. 3/28/2002)



## **SUBARTICLE VI**

### **POST-EXCAVATION REPAIR, MAINTENANCE, AND PAVEMENT FAILURE**

#### **SEC. 2.4.70. REPAIR AND MAINTENANCE OBLIGATION OF OWNER AND AGENT.**

Each owner and its agent that excavates or causes to be made an excavation in the public right-of-way shall be responsible to maintain, repair, or reconstruct the site of the excavation so as to maintain a condition acceptable to the Director until such time as the public right-of-way is reconstructed, repaved, or resurfaced by the Department. (Added by Ord. 341-98, App. 11/13/98; amended by Ord. 33-02, File No. 020051, App. 3/28/2002)

#### **SEC. 2.4.71. SUBSURFACE OR PAVEMENT FAILURES.**

In the event that subsurface material or pavement over or immediately adjacent to any excavation should become depressed, broken, or fail in any way at any time after the excavation has been completed, the Director shall exercise his or her best judgment to determine the person(s) responsible, if any, for the failure in the subsurface or surface of the public right-of-way and shall designate such person as the responsible party. The Director shall notify said person(s) of the condition, its location, and the required remedy, and such person(s) shall repair or restore, or cause to be repaired or restored, such condition to the satisfaction of the Director within 72 hours of the notification. The Director may extend the time for the responsible party to repair or restore the affected public right-of-way. (Added by Ord. 341-98, App. 11/13/98)

#### **SEC. 2.4.72. REPAIR BY THE DEPARTMENT.**

(a) In the event that any person(s) fails, neglects, or refuses to repair or restore any condition pursuant to the Director's notice as set forth in Section 2.4.71, the Director may repair or restore, or cause to be repaired or restored, such condition in such manner as the Director deems expedient and appropriate. The persons(s) identified by the Director as the responsible party shall compensate the Department for any costs associated with the administration, construction, consultants, equipment, inspection, notification, remediation, repair, restoration, or any other actual costs incurred by the City that were made necessary by reason of the repair or restoration undertaken by the Department. The cost of such work also may be deducted from the permittee's deposit pursuant to Section 2.4.46(c). The Director's determination as to the cost of the repair or restoration performed shall be final. In addition, the responsible party may be subject to those enforcement actions set forth in Subarticle VII.

(b) Subject to the limitation set forth in 2.4.70. repair or restoration by the Department in accordance with this Section shall not relieve the person(s) from liability for future pavement failures at the site of the repair or restoration. (Added by Ord. 341-98, App. 11/13/98)

#### **SEC. 2.4.73. EMERGENCY REMEDIATION BY THE DEPARTMENT.**

(a) If, in the judgment of the Director, the site of an excavation is considered hazardous or if it constitutes a public nuisance, public emergency, or other imminent threat to the public health, safety, or welfare that requires immediate action, the Director may order the condition remedied by a written, electronic, or facsimile communication to the person(s) responsible, if any, for remedying the condition and shall designate such person as the responsible party.

(b) If the responsible party is inaccessible or fails, neglects, or refuses to take immediate action to remedy the condition as specified in said communication, the Director may remedy the condition or cause the condition to be remedied in such manner as the Director deems expedient and appropriate. The person(s) identified by the Director as the responsible party shall compensate the Department for any reasonable costs associated with the administration, construction, consultants, equipment, inspection, notification, remediation, repair, restoration, or any other actual costs incurred by the Department or other agencies, boards, commissions, or departments of the City that were made necessary by reason of the emergency remediation

undertaken by the Department. The cost of such work also may be deducted from the permittee's deposit pursuant to Section 2.4.46(c). The Director's determination as to the cost of any remediation performed shall be final. In addition, the responsible party may be subject to those enforcement actions set forth in Subarticle VII.

(c) Subject to the limitation set forth in Section 2.4.70, remediation by the Department in accordance with this Section shall not relieve the person(s) from liability for future pavement failures at the site of the remediation. (Added by Ord. 341-98, App. 11/13/98)

## **SUBARTICLE VII VIOLATION OF ARTICLE**

### **SEC. 2.4.80. VIOLATION OF ARTICLE.**

(a) The Director shall have authority to enforce this Article against violations thereof. Upon the Director's determination that a person has violated any provision of this Article, the standard plans and specifications, notices, orders, or regulations of the Department; any term, condition, or limitation of any permit; or is subject to any outstanding fees, deposits, or other charges, the Director shall serve notice on said person to abate the violation. Any person whom the Director determines to be a responsible party may be subject to any or all of the enforcement mechanisms specified in Section 2.4.81, 2.4.82, and 2.4.83.

(b) Municipal excavators are not subject to the penalties and fines specified in Sections 2.4.82 and .83; however, municipal excavators that violate Article 2.4 may be subject to administrative penalties and costs as specified in Section 2.4.81. The Director is empowered to charge municipal excavators with such penalties and costs, abate violations by municipal excavators, or both. The Director may assess such penalties, costs, and abatement charges against the deposit or budget of the municipal excavator, take other appropriate action against such excavator within the Director's authority, or both. (Added by Ord. 341-98, App. 11/13/98; amended by Ord. 239-99, File No. 991177, App. 9/3/99; Ord. 33-02, File No. 020051, App. 3/28/2002)

### **SEC. 2.4.81. ADMINISTRATIVE PENALTIES AND COSTS.**

(a) **Notice of Violation.** Except as specified in Subsections (1) through (3) below, the Director shall notify the responsible party for a violation that he or she has seventy-two (72) hours to correct or otherwise remedy the violation or be subject to the imposition of administrative penalties. The Director's notice of violation shall be a written, electronic, or facsimile communication and shall specify the manner in which the violation shall be remedied.

(1) For those violations subject to the incomplete excavation provisions of Section 2.4.55(d), the responsible party shall have twenty-four (24) hours to remedy the violation or be subject to the imposition of administrative penalties.

(2) For violations that create an imminent danger to public health, safety, or welfare or are otherwise subject to Section 2.4.73, the Director shall notify the responsible party to immediately remedy the violation or be subject to the imposition of administrative penalties.

(3) For violations that cannot be cured within seventy-two (72) hours, including, but not limited to, excavating without a permit, the Director shall notify the responsible party of the Director's imposition of administrative penalties pursuant to Subsection (e).

(b) **Amount of Administrative Penalties.** Administrative penalties assessed pursuant to Subsection (a) shall not exceed one thousand dollars (\$1,000) per day, per violation commencing with the first day of the violation. Notwithstanding the penalty limitation set forth above, a person who excavates without a valid permit may be assessed a penalty not to exceed ten thousand dollars (\$10,000.00) per day, per violation commencing with the first day of the violation. In assessing the amount of the administrative penalty, the Director may consider any one or more of the following: the nature and seriousness of the misconduct, the number of

violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the wilfulness of the violator's misconduct, and the violator's assets, liabilities, and net worth.

(c) **Enforcement Costs.** In addition to the administrative penalty assessed pursuant to Subsection (a), the Director may assess enforcement costs to cover the reasonable costs incurred in enforcing the administrative penalty, including reasonable attorneys' fees. Any enforcement costs imposed and recovered shall be distributed according to the purpose for which the Director imposed them.

(d) **Accrual of Penalties and Costs.** Penalties and costs assessed under this Section shall continue to accrue against a responsible party until the violation of this Article is corrected or otherwise remedied in the judgment of the Director or the responsible party pays the assessed penalties and costs. If such penalties and costs are the subject of a request for administrative review or an appeal, then the accrual of such penalties and costs shall be stayed until the determination concerning the administrative penalties is final.

(e) **Notice Imposing Administrative Penalties.** If the responsible party fails to remedy the violation within the time specified in the notice of violation or if the violation is incurable pursuant to Section 2.4.81(a)(3), the Director shall notify in writing the responsible party of the Director's imposition of administrative penalties. This notice shall include the amount of the penalties and costs and declare that such penalties and costs are due and payable to the City Treasurer within thirty (30) calendar days. The notice also shall state that the person designated as the responsible party has the right, pursuant to Subsection (g), to request administrative review of the Director's determination as to the designation of the responsible party and the assessment of penalties.

(f) **Finality of the Director's Determination and Collection of Assessed Penalties.** If no request for administrative review is filed pursuant to Subsection (g), the Director's determination is final. Thereafter, if the penalties and costs are not paid within the time specified in Subsection (e), the Director is empowered to pursue any method of collection of such penalties and costs authorized by local law including, but not limited to deductions of the permittee's deposit pursuant to Section 2.4.46(c).

(g) **Administrative Review.** Any Person that is designated as the responsible party for a violation or is subject to an administrative penalty may seek administrative review of the designation or the assessment of the penalty or cost within ten (10) calendar days of the date of the notice imposing administrative penalties. Administrative review shall be initiated by filing with the Director a request for review that specifies in detail the basis for contesting the designation of the responsible party or the assessment of the penalty or cost.

(h) **Notice for and Scheduling of Administrative Hearing.** Whenever an administrative review hearing is requested pursuant to Subsection (g), the Director, within ten (10) calendar days of the date of receipt of the request, shall notify the affected parties of the date, time, and place of the hearing by certified mail. Such hearing shall be held no later than thirty (30) calendar days after the Director received the request for administrative review, unless extended by mutual agreement of the affected parties. The Director shall appoint a hearing officer for such hearing.

(i) **Submittals for the Administrative Review Hearing.** The parties to the hearing shall submit written information to the hearing officer including, but not limited to, the following: the statement of issues to be determined by the hearing officer and a statement of the evidence to be offered at the hearing.

(j) **Conduct of the Administrative Review Hearing.** The administrative review hearing is a public hearing and shall be tape recorded. Any party to the hearing may at his or her own expense, cause the hearing to be recorded by a certified court reporter. During the hearing, evidence and testimony may be presented to the hearing officer. Written decisions and findings shall be rendered by the hearing officer within ten (10) calendar days of the hearing. Copies of the findings and decision shall be served upon the parties to the hearing by certified mail. A notice

that a copy of the findings and decisions is available for inspection between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday shall be posted at the offices of the Department of Public Works.

(k) **Director's Decision on the Hearing Officer's Recommendation.** The decision of the hearing officer shall be a recommendation to the Director, and the Director, within five (5) calendar days of receipt of such recommendation, shall adopt, modify, or deny such recommendation. The Director's decision on the hearing officer's recommendation is final. Such decision shall be served upon the parties to the hearing and posted in the same manner as the hearing officer's decision as set forth in Subsection (j). If any imposed administrative penalties and costs have not been deposited at this time, the Director may proceed to collect the penalties and costs pursuant to Subsection (f).

(l) **Additional procedures.** The Director, by Departmental order, may adopt additional procedures to implement this Section. (Added by Ord. 341-98, App. 11/13/98; amended by Ord.239-99, File No. 991177, App. 9/3/99; Ord. 33-02, File No. 020051, App. 3/28/2002)

#### **SEC. 2.4.82. CIVIL PENALTIES AND FEES.**

(a) The Director may call upon the City Attorney to maintain an action for injunction to restrain or summary abatement to cause the correction or abatement of the violation of this Article, and for assessment and recovery of a civil penalty and reasonable attorney's fees for such violation.

(b) Any person who violates this Article may be liable for a civil penalty, not to exceed \$500 for each day such violation is committed or permitted to continue, which penalty shall be assessed and recovered in a civil action brought in the name of the people of the City by the City Attorney in any court of competent jurisdiction. In assessing the amount of the civil penalty, the court may consider any one or more of the relevant circumstances presented by any of the parties to the case, including, but not limited to, the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the wilfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth. The City Attorney also may seek recovery of the attorneys fees and costs incurred in bringing a civil action pursuant to this Section. (Added by Ord. 341-98, App. 11/13/98)

#### **SEC. 2.4.83. CRIMINAL FINES.**

(a) The Director is authorized to enforce the criminal provisions of this Article, to call upon the Chief of Police and authorized agents to assist in the enforcement of this Article, or both.

(b) Any person who violates this Article shall be deemed guilty of an infraction. Every violation determined to be an infraction is punishable by (1) a fine not exceeding \$100 for the first violation within one year; (2) a fine not exceeding \$200 for a second violation within one year from the date of the first violation; (3) a fine not exceeding \$500 for the third and each additional violation within one year from the date of the first violation.

(c) When a government official authorized to enforce this Article pursuant to Subsection (a) has reasonable cause to believe that any person has committed an infraction in the official's presence that is a violation of this Article, the official may issue a citation to that person pursuant to California Penal Code, Part II, Title 3, Chapters 5, 5C, and 5D.

(d) Among other violations, citations may be issued for the following specific violations:

- (i) Excavation without a valid permit;
- (ii) Excavation without proof of the permit issuance on site;
- (iii) Excavation without proper notice to the Underground Service Alert;
- (iv) Excavation without proper public notice;
- (v) Excavation that violates the San Francisco Traffic Code;

(vi) Excavation that violates the regulations concerning excavation sites (Section 2.4.53), which include, but are not limited to, protection of the excavation, housekeeping and removal of excavated material, and hazardous material;

(vii) Excavation that does not meet the requirements for restoration concerning backfill, replacement of pavement base, and finished pavement (Section 2.4.55(b)); or

(viii) Excavation that exceeds the scope of the permit, including, but not limited to, obstructing the path of automobile or pedestrian travel in excess of the permitted area. (Added by Ord. 341-98, App. 11/13/98; amended by Ord. 33-02, File No. 020051, App. 3/28/2002)

#### **SEC. 2.4.84. DEPOSIT OF PENALTIES INTO EXCAVATION FUND.**

Any penalty assessed and recovered in an action brought pursuant to Sections 2.4.81 or 2.4.82 shall be deposited in the Excavation Fund, as provided in Section 10.117-120 of the San Francisco Administrative Code. (Added by Ord. 341-98, App. 11/13/98)

#### **SEC. 2.4.85. SUSPENSION OF ACTION ON APPLICATIONS.**

A person who is in wilful noncompliance with this Article shall not apply for nor be issued a permit to excavate in the public right-of-way unless the Director, by written authorization, grants a waiver to this prohibition. Wilful noncompliance shall include, without limitation, deliberate acts that result in failure to: (a) satisfy any terms and conditions of this Article, the orders, regulations, or standard plans and specifications of the Department or (b) pay any outstanding assessments, fees, penalties that have been finally determined by the City or a court of competent jurisdiction. (Added by Ord. 341-98, App. 11/13/98; amended by Ord. 33-02, File No. 020051, App. 3/28/2002)

### **SUBARTICLE VIII MISCELLANEOUS PROVISIONS**

#### **SEC. 2.4.90. ABANDONMENT OF UNDERGROUND FACILITIES, REPORTS, AND MAPS.**

(a) Whenever any facility(ies) is abandoned in the public right-of-way, the person owning, using, controlling or having an interest therein, shall, within 30 calendar days after such abandonment, file in the office of the Director a statement in writing, giving in detail the location of the facility(ies) so abandoned. Each map, set of maps, or plans filed pursuant to the provisions of this Article, including those maps or plans required by Section 2.4.11 shall show in detail the location of each such facility(ies) abandoned subsequent to the filing of the last preceding map, set of maps, or plans.

(b) It shall be unlawful for any person to fail, refuse, or neglect to file any map or set of maps at the time, and in all respects as required by this Section. (Added by Ord. 341-98, App. 11/13/98)

#### **SEC. 2.4.91. IDENTIFICATION OF VISIBLE FACILITIES.**

Each visible facility installed in the public right-of-way shall be clearly identified with the name of the owner of the facility. The Department shall adopt orders or regulations to specify other appropriate methods for identification. (Added by Ord. 341-98, App. 11/13/98)

#### **SEC. 2.4.92. CITY'S OBLIGATION.**

In undertaking enforcement of this Article, the City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury. (Added by Ord. 341-98, App. 11/13/98)

**SEC. 2.4.93. TIME LIMITATION ON COMMENCEMENT OF ACTIONS.**

Any action or proceeding to attack, review, set aside, void or annul this Article or any provision thereof shall be commenced within 120 calendar days from the effective date of the ordinance approving this Article; otherwise, the provisions of this Article shall be held to be valid and in every respect legal and incontestable. (Added by Ord. 341-98, App. 11/13/98)

**SEC. 2.4.94. SEVERABILITY.**

If any part of this Article, or the application thereof to any person or circumstance, is held invalid, the remainder of this Article, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Article are severable. (Added by Ord. 341-98, App. 11/13/98)