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REPORT TO LAW & LEGISLATION COMMITTEE
City of Sacramento

915 I Street. Sacramento. CA 95814-2671

STAFF REPORT
March 17, 2009

Honorable Members of the
Law and Legislation Committee

Title: Ordinance Repealing, Amending and Reenacting Sections of City Code Related to Encroachment and Excavation Permits and Street and Sidewalk Use Regulation

Location/Council District: Citywide

Recommendation: Staff recommends that the Committee approve and forward to the City Council the attached ordinance amendments to Title 12 of the City Code.

Contact: Jon Blank, Supervising Engineer, 808-7914

Presenters: Jon Blank

Department: Transportation

Division: Engineering Services

Organization No: 15001151

Description/Analysis:

Issue: Recent State legislation enables telecommunication companies to provide services under a State franchise license. Currently, the City Code does not provide for the regulation of facilities owned by public and private utilities including telecommunication providers such as poles, boxes, vaults, and cabinets except under Title 5, Business Licenses and Regulations, and Title 16, Subdivisions. Staff proposes that Title 12, Streets, Sidewalks, and Public Places, of the City Code be revised to include provisions regulating the facilities of public utilities placed in the City's rights-of-way and public utility easements, and broadened to regulate the storage of materials and equipment.

Policy Considerations: The proposed ordinance amendment is consistent with the City of Sacramento Strategic Plan goals of improving and expanding public safety, and achieving sustainability and enhancing livability.

Environmental Considerations:

California Environmental Quality Act (CEQA): The Planning Division, Neighborhood, Planning & Development Services Department has reviewed these amendments and has determined that they are exempt from the California Environmental Quality Act (CEQA) under Sections 15061(b)(1), 15061(b)(3), and 15301(c) of the CEQA Guidelines. This action involves general policy and procedures concerning the operation of City streets and has no potential adverse impact on the environment.

Committee/Commission Action: This proposed City Code changes were presented to the Development Oversight Commission on June 5, 2007 and the staff report was received and filed. The Development Oversight Commission supported the changes that require the under-grounding of all new overhead utility facilities.

Rationale for Recommendation: The City Code amendments are necessary to provide for the regulation of utility poles, boxes, vaults, and cabinets in the public right-of-way.

Financial Considerations: There are no additional fees being proposed as part of the amendments to the City Code.

Emerging Small Business Development (ESBD): There are no ESBD considerations as there are no goods or services being purchased.

Respectfully Submitted by: _____
Nicholas Theocharides
Engineering Services Manager

Approved by: _____
Jerry Way
Director of Transportation

Recommendation Approved:

_____
for **Ray Kerridge**
City Manager

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Attachment 1

Background:

On June 20, 2006, staff presented information to the City Council relating to new legislation that provides for the transmission of tele-video through a statewide franchise license. As a result, the City Council directed staff to revise the City Code to provide for the regulation of utility boxes, cabinets and other facilities utilized by utility companies obtaining a state franchise license. During the revision process, staff identified additional changes to update Title 12 of the City Code.

A summary of the proposed changes are:

- An encroachment permit is required for use of the City right-of-way or other public property to place storage containers, construction materials, equipment, or trailers.

- An encroachment permit is required to install public utilities or facilities in the City right-of-way or in easements including poles, cabinets, boxes, or related facilities.

- Utility facilities are not to be placed where they could create a safety hazard such as in areas where stopping sight distance is required, adjacent to driveways, or in planter strips behind the curb.

- The placement of utility cabinets, boxes and vaults are subject to public input from adjacent landowners and stakeholders, and are to be reviewed and approved for aesthetic qualities such as size, color, and physical location.

- Facilities are to be located such that they create minimal interference with future street maintenance and operations, are located outside of sidewalk areas when practicable, and are to meet Federal and State disability access laws.

- New pole lines, wire holding structures, and overhead wires are to be placed underground unless otherwise approved by the Director (excluding high voltage power lines less than 110KV, which are permitted by State Law to be placed overhead).

- With the construction of the Main Avenue Bridge, the two way access restriction on Main Avenue is no longer necessary and is rescinded.

- The Department of Public Works has been changed to the Department of Transportation as being responsible for issuing encroachment permits.

Informational meetings were held to discuss the proposed changes to the City Code and to receive comments from the following:

- Utility companies such as SMUD, PG&E, AT&T, Comcast, and Surewest;
- City departments such as Parks and Recreation, Transportation, Code Enforcement, Development Services, and General Services;
- Sacramento Metropolitan Cable Television Commission;

The proposed City Code changes were presented to the Development Oversight Commission on June 5, 2007 and the staff report was received and filed. The Development Oversight Commission supported the changes that require the under-grounding of new overhead utility facilities.

In December 2007, Sacramento Municipal Utility District (SMUD) requested changes to the draft ordinance. A number of meetings were held and revisions were made to the proposed ordinance to address SMUD's concerns. A revision was made to permit the placement of overhead high voltage power lines less than 110KV which are permitted by State Law. SMUD will place high voltage power lines underground at the City's request provided that the City pay the additional cost. The City may also enter into a memorandum of understand with SMUD to further define items such as "earth tone colors" and "non-slip grates" to fully address SMUD's concerns. The City Code changes are not expected to significantly affect the City's current permitting process with SMUD or any other public utility companies.

Attachment 2

ORDINANCE NO. 2009-

Adopted by the Sacramento City Council

Date Adopted

AN ORDINANCE REPEALING SECTIONS 12.08.040, 12.08.050, 12.08.110, 12.08.160 AND AMENDING SECTIONS 12.08.060, 12.16.020, 12.16.200, 12.16.210, 12.20.010, 12.20.020 AND 12.24.110 OF CHAPTER 12 OF THE SACRAMENTO CITY CODE, RELATING TO STREET AND SIDEWALK USE REGULATIONS

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1.

Sections 12.08.040 and 12.08.050 of the Sacramento City Code are repealed.

~~**12.08.040 Placing cement, gravel, etc., on improved streets.**~~

~~It is unlawful for any person to place gravel, cement or other material of like character on any improved street within the city without first obtaining a permit so to do from the city engineer. (Prior code § 38.01.004)~~

~~**12.08.050 Storage of gravel, etc., in barrels, boxes, etc.**~~

~~Any person engaged in the business of repairing or building sidewalks or doing other work may store gravel or other material in barrels, boxes, bins or on planks; provided, however, that such person shall not permit or cause any gravel or other materials to in any manner escape from such barrels, boxes, bins or planks onto the streets. (Prior code § 38.01.005)~~

SECTION 2.

Section 12.08.060 of the Sacramento City Code is amended to read as follows:

12.08.060 Painting house numbers on curbs—Permitted.

A homeowner shall be permitted to paint or cause to be painted a house number on the curb fronting his or her house in residential zones in accordance with the provisions of this title. The size, style and colors of numbers shall be in accordance with regulations established by the Department of ~~public works~~Transportation. ~~(Prior code § 38.01.008)~~

SECTION 3.

Section 12.08.110 of the Sacramento City Code is repealed.

~~**12.08.110 Use of streets for storage of building material.**~~

~~No person shall leave, place, deposit or cause to be left, placed, or deposited, in or upon any street, alley or public place within the city any wagon, cart, wood, lumber, casks, barrels, boxes, sacks of grain or vegetables, any goods, wares or merchandise of any character whatsoever. (Prior code § 38.01.015)~~

SECTION 4.

Section 12.08.160 of the Sacramemto City Code is repealed:

~~**12.08.160 Temporary two-way access to Main Avenue between the Natomas East Main Drainage Canal and Kelton Way.**~~

~~A. Area Defined. The specific portion of Main Avenue within the city, which is the subject of this section, is described as follows: five hundred (500) feet west of Pell Drive, to a point approximately six hundred (600) feet west of Kelton Way, at the westerly terminus of the raised median island.~~

~~B. Restriping to Provide Temporary Two-Way Access. The defined area shall be restriped in such a manner as to provide temporary two-way access to properties fronting along the portion of Main Avenue which is within the defined area. Such other traffic control and warning signs and devices as in the judgment of the traffic engineer are appropriate, if any, shall also be installed.~~

~~C. Access Strictly Temporary. The two-way access provided for in this section shall be temporary, and shall establish no property rights or other compensable interest in the property adjacent to the defined area of Main Avenue, or in the present, past or future owners thereof. In the event that this section is repealed or other action is taken pursuant to the provisions of this chapter to terminate the temporary access, such action shall not be deemed to be taking or reduction or other alteration of the property rights of the properties adjacent to the defined area of Main Avenue, or the owners thereof.~~

~~D. Conditions. The city shall not take the action specified in subsection B of this section, unless each of the following conditions has been fully satisfied:~~

~~1. The requirements of the California Environmental Quality Act have been met with respect to the redesign of the defined area of Main Avenue.~~

~~2. The city council has approved the redesign project, based upon a complete report to the council from the director of public works, and the traffic engineer.~~

~~3. Each landowner of property adjacent to Main Avenue within the defined area shall have executed a written agreement with the city in a form satisfactory to the city attorney, in which each such owner agrees that the two-way access provided by this section is temporary and confers no property right whatsoever; that in the event of termination of two-way access pursuant to this section, there is no right to compensation for loss or diminution of access, or any loss or damage associated therewith; that the agreement shall be executed in such form as to be recordable in the office of the county recorder, and binding upon all successors in interest; that the city has the right to terminate the temporary access in accordance with the provisions of this section; that the landowner shall indemnify and defend the city against any and all claims of loss, injury or damage arising out of or related to the project and its design; and such other terms and conditions as the city may require in the agreement.~~

~~E. Termination. The city may, in its sole and exclusive discretion, without the necessity of a hearing or any specific notice to landowners adjacent to the defined area of Main Avenue, or to any other person or entity, terminate the temporary access provided for this section when any one or more of the following conditions exist, in the sole and exclusive judgment of the city:~~

~~1. Traffic safety problems or issues have arisen which, in the city's judgment, require termination of the temporary two-way access;~~

~~2. Traffic volumes along the defined area of Main Avenue exceed twenty-five thousand (25,000) vehicles per day;~~

~~3. Any one or more of the landowners of property fronting along the defined area, and who has executed or is bound by the agreement specified in subsection D of this section, has breached the agreement.~~

~~Termination of temporary two-way access provided in accordance with this section shall be accomplished by an ordinance repealing this section. (Prior code § 38.01.021-3)~~

SECTION 5.

Section 12.16.200 of the Sacramento City Code is amended to read as follows.

12.16.200 Information and documentation required.

A. Initial Closure. The following information and documentation shall be included in the request to the city manager:

1. An exact description of the limits of the street(s) to be closed and the proposed method of closure.

2.a. Documentation from the Sacramento police department indicating that the area of the proposed street closure suffers from serious and continual criminal activity

that is contributed to by vehicular or pedestrian traffic; and

b. A recommendation from the police department that the proposed temporary street closure be implemented because that action would substantially alleviate the serious and continual criminal activity in the area,

3. Verification from the ~~public works~~ Department ~~of Transportation~~ that the street closure proposed does not include a through highway or an arterial street, and that the proposed street closure allows adequate and safe traffic circulation on adjacent streets.

4. Verification from the fire department that the proposed closure will not adversely impact their operations or safety in the surrounding neighborhoods.

5. Any other information and documentation requested by the city manager in his or her sole discretion.

B. Extension of Closure. The following information and documentation shall be included in the request to the city manager:

1. An exact description of the limits of the street(s) where extension of the temporary closure is requested.

2.a. Documentation from the Sacramento police department indicating that the area where extension of the temporary closure is requested suffers from serious and continual criminal activity that is contributed to by vehicular or pedestrian traffic; and

b. A recommendation from the police department that the temporary street closure be continued to assist in preventing the occurrence or reoccurrence of the serious and continual criminal activity in the area found to exist when the immediately preceding temporary closure was authorized.

3. Verification from the ~~public works~~ Department ~~of Transportation~~ that the street where extension of the temporary closure is requested is not a through highway or an arterial street, and that the immediately preceding closure allowed for adequate and safe traffic circulation on adjacent streets.

4. Verification from the fire department that the immediately preceding closure did not adversely impact their operations or safety in the surrounding neighborhoods.

5. Any other information and documentation requested by the city manager in his or her sole discretion. (Ord. 99-009 § 1 (part): prior code § 38.15.204)

SECTION 6.

Section 12.16.210 of the Sacramento City Code is amended to read as follows.

12.16.210 Permits required for closure improvements in the public right-of-way.

If the proposed street closure requires construction of temporary closure improvements such as fencing, gates, guard booth, or lighting, in the public right-of-way by a private entity, a revocable encroachment permit and an excavation permit must be

obtained from the ~~public works~~ Department ~~of Transportation~~. The revocable encroachment permit must be issued simultaneously with the approval of the street closure by the city council. The excavation permit, if required, may be issued subsequent to city council approval of the temporary closure, but must be obtained prior to actual closure of the street(s). The city manager, in his or her discretion, may waive the fees required for these permits. (Ord. 99-009 § 1 (part): prior code § 38.15.205)

SECTION 7.

The title of chapter 12.20. of the Sacramento City Code is amended to read as follows:

Chapter 12.20 CLOSURE OF ~~PRIMARY~~ STREETS~~, ALLEYS, AND SIDEWALKS~~ FOR CONSTRUCTION

SECTION 7

Section 12.20.010 of the Sacramento City Code is amended to read as follows.

12.20.010 Definitions.

The following terms used in this chapter shall have the meanings set forth below:

"City working hours" means 7:00 a.m. to 6:00 p.m., Monday through Friday, legal holidays excepted.

"Director" means the director of ~~public works or utilities departmentsthe Department of Transportation or Utilities~~ of the city of Sacramento or his or her authorized representative(s).

"Emergency repairs" means repairs to a utility facility located in or adjacent to a primary city street that must be performed immediately when the necessity arises to safeguard life or property or maintain continued operation of the facility.

"Facility" means a marked or otherwise identified underground or existing above-ground improvement or structure.

"Known facility" means any facility that can be observed visually, is marked correctly in the field or is shown correctly on any contract, plan or permit document.

"Person" means any person, firm, company or governmental agency, including any person performing work under a contract between the person and the city.

"Public Easement" means any easement or right-of-way owned or controlled by a public agency or by a public utility.

"~~Traffic engineering services office~~ ~~Engineering Services Division, Construction Section~~" means the office responsible for providing traffic engineering services for the ~~public works~~ Department ~~of Transportation~~ of the ~~C~~city of Sacramento, ~~1000 I Street915~~

~~I Street~~, ~~Suite 170Room 2000~~, Sacramento, CA. ~~95814~~, phone (916) ~~264-5307808-~~

~~6600~~, fax (916) ~~264-8404808-7903~~.

"Work" means all work performed under a notice to proceed for a private development project, a capital improvement project or other contract with the city or for which a revocable permit, encroachment or excavation permit or temporary street closure permit is required. Work also means all work performed without one or more of the aforementioned permits or authorizations, but for which one or more of the aforementioned permits or authorizations are required. (Ord. 2002-004 § 1, 2002; Ord. 98-002 § 2 (part): prior code § 25.04.069)

SECTION 9

Section 12.20.020 of the Sacramento City Code is amended to read as follows.

12.20.020 Closure of streets~~, alleys and sidewalks,~~ for work—Traffic control plan.

A. Except when performing emergency repairs, no person shall perform any work that will obstruct vehicular or pedestrian traffic on a public right of way ~~city street~~ unless a traffic control plan has been approved by the director.

B. Emergency repairs that obstruct vehicular or pedestrian traffic on a public right of way ~~city street~~, shall be reported to the ~~traffic engineering services officeEngineering Services Division, Construction Section~~ not later than one hour after the need for the emergency repairs is determined. If the emergency repairs obstruct vehicular or pedestrian traffic on a public right of way ~~city street~~ outside of city working hours, the ~~C~~city ~~Engineering Services Division, Construction Section traffic engineering services office~~ shall be notified of the closure or obstruction not later than nine a.m. on the next working day.

C. All work requiring a traffic control plan shall conform to the conditions and requirements of the approved plan.

D. Where a traffic control plan is required, the approved plan must be available at the site for inspection by the director during all work.

E. If the director determines that actual traffic conditions under the approved plan are hazardous to public safety, the director may require the plan to be immediately modified. If the hazardous conditions cannot be eliminated by plan modification the director may require work under the plan to be stopped, and the plan suspended, until the safety hazard is remedied. (Ord. 2002-004 § 2, 2002: Ord. 98-002 § 2 (part): prior code § 25.04.069-1)

Adopted by the City of Sacramento City Council on by the following vote:

Ayes:

Noes:

Abstain:

Absent:

_____
MAYOR

Attest:

_____
City Clerk

Passed for Publication:
Published:
Effective:

Attachment 3

ORDINANCE NO. 2009-

Adopted by the Sacramento City Council

Date Adopted

AN ORDINANCE REPEALING SECTIONS 12.08.040, 12.08.050, 12.08.110, 12.08.160 AND AMENDING SECTIONS 12.08.060, 12.16.020, 12.16.200, 12.16.210, 12.20.010, 12.20.020 AND 12.24.110 OF CHAPTER 12 OF THE SACRAMENTO CITY CODE, RELATING TO STREET AND SIDEWALK USE REGULATIONS

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1.

Sections 12.08.040 and 12.08.050 of the SACRAMENTO CITY CODE are repealed.

SECTION 2.

Section 12.08.060 of the SACRAMENTO CITY CODE is amended to read as follows:

12.08.060 Painting house numbers on curbs—Permitted.

A homeowner shall be permitted to paint or cause to be painted a house number on the curb fronting his or her house in residential zones in accordance with the provisions of this title. The size, style and colors of numbers shall be in accordance with regulations established by the Department of Transportation.

SECTION 3.

Section 12.08.110 of the SACRAMENTO CITY CODE is repealed.

SECTION 4.

Section 12.08.160 of the SACRAMENTO CITY CODE is repealed:

SECTION 5.

Section 12.16.200 of the Sacramento City Code is amended to read as follows.

12.16.200 Information and documentation required.

A. Initial Closure. The following information and documentation shall be included in the request to the city manager:

1. An exact description of the limits of the street(s) to be closed and the proposed method of closure.

2.a. Documentation from the Sacramento police department indicating that the area of the proposed street closure suffers from serious and continual criminal activity that is contributed to by vehicular or pedestrian traffic; and

b. A recommendation from the police department that the proposed temporary street closure be implemented because that action would substantially alleviate the serious and continual criminal activity in the area.

3. Verification from the department of transportation that the street closure proposed does not include a through highway or an arterial street, and that the proposed street closure allows adequate and safe traffic circulation on adjacent streets.

4. Verification from the fire department that the proposed closure will not adversely impact their operations or safety in the surrounding neighborhoods.

5. Any other information and documentation requested by the city manager in his or her sole discretion.

B. Extension of Closure. The following information and documentation shall be included in the request to the city manager:

1. An exact description of the limits of the street(s) where extension of the temporary closure is requested.

2.a. Documentation from the Sacramento police department indicating that the area where extension of the temporary closure is requested suffers from serious and continual criminal activity that is contributed to by vehicular or pedestrian traffic; and

b. A recommendation from the police department that the temporary street closure be continued to assist in preventing the occurrence or reoccurrence of the serious and continual criminal activity in the area found to exist when the immediately preceding temporary closure was authorized.

3. Verification from the department of transportation that the street where extension of the temporary closure is requested is not a through highway or an arterial street, and that the immediately preceding closure allowed for adequate and safe traffic circulation on adjacent streets.

4. Verification from the fire department that the immediately preceding closure did not adversely impact their operations or safety in the surrounding neighborhoods.
5. Any other information and documentation requested by the city manager in his or her sole discretion. (Ord. 99-009 § 1 (part): prior code § 38.15.204)

SECTION 6.

Section 12.16.210 of the Sacramento City Code is amended to read as follows.

12.16.210 Permits required for closure improvements in the public right-of-way.

If the proposed street closure requires construction of temporary closure improvements such as fencing, gates, guard booth, or lighting, in the public right-of-way by a private entity, a revocable encroachment permit and an excavation permit must be obtained from the department of transportation. The revocable encroachment permit must be issued simultaneously with the approval of the street closure by the city council. The excavation permit, if required, may be issued subsequent to city council approval of the temporary closure, but must be obtained prior to actual closure of the street(s). The city manager, in his or her discretion, may waive the fees required for these permits. (Ord. 99-009 § 1 (part): prior code § 38.15.205)

SECTION 7.

Section 12.20.010 of the Sacramento City Code is amended to read as follows.

Chapter 12.20 CLOSURE OF STREETS, ALLEYS, AND SIDEWALKS FOR CONSTRUCTION

12.20.010 Definitions.

The following terms used in this chapter shall have the meanings set forth below:

"City working hours" means 7:00 a.m. to 6:00 p.m., Monday through Friday, legal holidays excepted.

"Director" means the director of the Department of Transportation or Utilities of the city of Sacramento or his or her authorized representative(s).

"Emergency repairs" means repairs to a utility facility located in or adjacent to a primary city street that must be performed immediately when the necessity arises to safeguard life or property or maintain continued operation of the facility.

"Facility" means a marked or otherwise identified underground or existing above-ground improvement or structure.

"Known facility" means any facility that can be observed visually, is marked correctly in the field or is shown correctly on any contract, plan or permit document.

"Person" means any person, firm, company or governmental agency, including any person performing work under a contract between the person and the city.

"Public Easement" means any easement or right-of-way owned or controlled by a public agency or by a public utility.

"Engineering Services Division, Construction Section" means the office responsible for providing traffic engineering services for the department of transportation of the City of Sacramento, 915 I Street, Room 2000, Sacramento, CA 95814, phone (916) 808-6600, fax (916) 808-7903.

"Work" means all work performed under a notice to proceed for a private development project, a capital improvement project or other contract with the city or for which a revocable permit, encroachment or excavation permit or temporary street closure permit is required. Work also means all work performed without one or more of the aforementioned permits or authorizations, but for which one or more of the aforementioned permits or authorizations are required. (Ord. 2002-004 § 1, 2002; Ord. 98-002 § 2 (part): prior code § 25.04.069)

SECTION 8

Section 12.20.020 of the Sacramento City Code is amended to read as follows.

12.20.020 Closure of streets, alleys and sidewalks, for work—Traffic control plan.

A. Except when performing emergency repairs, no person shall perform any work that will obstruct vehicular or pedestrian traffic on a public right of way unless a traffic control plan has been approved by the director.

B. Emergency repairs that obstruct vehicular or pedestrian traffic on a public right of way, shall be reported to the Engineering Services Division, Construction Section not later than one hour after the need for the emergency repairs is determined. If the emergency repairs obstruct vehicular or pedestrian traffic on a public right of way outside of city working hours, the City Engineering Services Division, Construction Section shall be notified of the closure or obstruction not later than nine a.m. on the next working day.

C. All work requiring a traffic control plan shall conform to the conditions and requirements of the approved plan.

D. Where a traffic control plan is required, the approved plan must be available at the site for inspection by the director during all work.

E. If the director determines that actual traffic conditions under the approved plan are hazardous to public safety, the director may require the plan to be immediately modified. If the hazardous conditions cannot be eliminated by plan modification the director may require work under the plan to be stopped, and the plan suspended, until the safety hazard is remedied. (Ord. 2002-004 § 2, 2002: Ord. 98-002 § 2 (part): prior code § 25.04.069-1)

Adopted by the City of Sacramento City Council on by the following vote:

Ayes:

Noes:

Abstain:

Absent:

_____
MAYOR

Attest:

_____
City Clerk

Passed for Publication:
Published:
Effective:

Attachment 4

CURRENT CITY CODE BEING REPEALED

Chapter 12.12 EXCAVATIONS

12.12.010 Permit—Required.

It is unlawful for any person to make or cause to be made any excavation in or under the surface of any public street, alley, sidewalk, or any other public place for the installation, repair or removal of any pipe, conduit, duct, tunnel, utility pole, or any other facility or installation or for any other purpose without first obtaining from the director an excavation permit in compliance with this chapter. As used in this chapter, the term person shall mean any person, company, partnership, agency or other public or private entity, excepting the city or a contractor performing an excavation for the city, and the term director shall mean the director of the department of public works for the city or his or her authorized representative. (Prior code § 38.03.026)

12.12.020 Permit—Requirements.

A. Before issuing an excavation permit, the director shall require a written application on a form furnished by the director, setting forth:

1. The name and residence or business address of the applicant;
2. The location and approximate area of the excavation, including its approximate length and width, and, if the excavation is in a street, whether it is parallel or transverse to the direction of the travel lanes; and
3. The purpose of the excavation.

The applicant shall attach to the application form a plan showing the location of the proposed excavation, the dimensions thereof, and any other details the director may require. As used in this chapter, the term applicant shall mean the person applying for an excavation permit, as well as the person owning the facility or installation for which the excavation will be made. The director may establish different requirements for blanket permits issued under Section 12.12.130 of this chapter.

B. At the time the permit is issued, the applicant shall pay a nonrefundable fee in an amount established by resolution of the city council to defray the city's costs to process the application and to inspect the excavation. The fee may also include any costs incurred by the city to maintain an inventory or database of facilities

that are installed, repaired or removed during the excavation for which the permit is issued. In any case where the director determines the fee to be inappropriate based on the amount of work to be done to process the application, to inspect the excavation and to maintain said inventory or database, or for other good cause shown, the director may waive the fee, in whole or in part.

C. At the time any permit is issued for excavation of a paved street, the applicant shall pay a trench cut cost recovery fee, in addition to the fee required by subsection B of this section. The fee shall not exceed an amount reasonably necessary to recover the estimated costs for all future maintenance, repair or resurfacing that would be necessary to fully mitigate the damage and degradation caused by the excavation to the pavement located adjacent to the trench where the excavation occurs. The fee shall be highest for excavations in newly surfaced streets and shall decrease as the age of the street surface being excavated increases. The amount of the trench cut cost recovery fee shall be established from time to time by resolution of the city council. The director shall adopt procedures requiring the payment of the trench cut cost recovery fees by all city departments and divisions performing excavations in city streets.

D. The trench cut cost recovery fee required by subsection C of this section, shall not be charged for the following excavations: (1) excavations in a street that the city has scheduled for resurfacing either during the fiscal year (July 1st through June 30th) when the excavation permit is issued or during the immediately following fiscal year; (2) excavations in a street where the existing pavement quality is already so poor that the pavement quality index, as defined by the city's pavement management system, is less than four on the date the excavation permit is issued; (3) excavations for potholing or to install utility poles; (4) excavations that will include resurfacing of the street where the excavation is made, provided that the resurfacing is approved by the director; and (5) excavations made for a utility relocation required by the city to accommodate a proper governmental use of a street, alley, sidewalk or other public place. As used in this chapter, the term resurfacing shall mean any repaving, overlay, seal or reconstruction which constructs a new pavement surface over the entire width of the street, excluding crack seals.

E. All moneys paid to the city under subsection C of this section, shall be deposited in a special fund or funds and shall be expended only for the resurfacing of city streets where excavation has occurred after the effective date of the ordinance adopting subsection C of this section.

F. Except for requirements subject to the exclusive jurisdiction of another regulatory agency, the location, depth and other physical characteristics of any facilities for which an excavation permit is issued shall be subject to approval of the director, and all backfilling, compaction and pavement restoration performed for any excavation shall comply with the requirements of this chapter.

G. No fee or requirement authorized or imposed pursuant to this chapter shall be construed to affect or alter in any way any obligation of public and private utilities with facilities installed in any street, alley, sidewalk or other public place to relocate the facilities at no cost to the city, in the event that relocation is required by the city to accommodate a proper governmental use of the street, alley, sidewalk or other public place. (Prior code § 38.03.027)

12.12.030 Permit—Issuance.

A. Upon receiving a written application for an excavation permit and a plan, the director shall set forth all requirements, approve or disapprove the application, sign and return it to the applicant. Excepting only excavations made pursuant to Section 12.12.120, emergency excavations and Section 12.12.130, blanket permits, at least one working day prior to the start of work, the applicant shall telephone the city street maintenance division and request a permit number, informing city the date the work will commence. A permit number shall then be assigned to the job and a permit shall be sent to the applicant.

B. No permit shall be transferable. A permit shall be void unless the excavation to be made pursuant thereto is commenced within thirty (30) days from the date of its issuance and the work diligently completed.

C. Each permit shall state a time period for completion of all the work to be done thereunder. The director may grant extensions of time for good cause.

D. No person in violation of any requirement of this chapter shall be issued an excavation permit, nor shall any contractor or agent apply for or be issued an excavation permit on the person's behalf, until the outstanding violation is corrected or a plan for correction is approved by the director, which approval shall not be unreasonably withheld. The foregoing requirement is in addition to any penalty or remedy for violation that may be imposed or sought by the city at law or equity. (Prior code § 38.03.028)

12.12.040 Compliance with safety regulations.

The permittee shall be responsible to comply with all current federal, state and local safety regulations and requirements. As used in this chapter, the term permittee shall mean the person to whom an excavation permit is issued, as well as the person owning the facility or installation for which the excavation permit is issued. (Prior code § 38.03.029)

12.12.050 Excavations not in accordance with permit declared unlawful.

A. It is unlawful for any person to make, cause or permit to be made, any excavation, or to install, cause or permit to be installed any tank, pipe, conduit, duct, tunnel, utility pole or other utility or appliance in or under the surface of any public street, alley, sidewalk or other public place, at any location, other than that

described in the application for the excavation permit and as shown on the plans filed with the director, and in accordance with the requirements of the permit. If the circumstances appearing after the excavation is commenced make it impossible to comply with the permit, the director may grant a waiver to take the circumstances into account.

B. Failure to comply with requirements set forth in this chapter or on any permit shall be cause for revocation of the permit until the violations have been corrected or alternative requirements have been approved by the director. (Prior code § 38.03.030)

12.12.060 Restoration of pavement.

Unless otherwise specified in the permit, restoration of the asphalt pavement of any street, alley or other public place shall be performed by city forces. Nothing in this section shall relieve the person opening or tearing up any pavement from the responsibility to maintain the excavation or installation in a safe condition until it is repaved by city forces or otherwise restored. In addition to all other applicable fees or charges, the person making the street cut shall pay for repaving at a rate to be established by the city. (Prior code § 38.03.031)

12.12.070 Opening, backfilling and paving trenches.

A. No trench shall be opened in any street for the purpose of laying pipes, conduits or ducts more than four hundred (400) feet in advance of the pipe, conduit or ducts being placed in the trench, except when the prior written consent of the director has been obtained.

B. All excavations shall comply with the standards and requirements established from time to time by the director for compaction, backfill and pavement restoration. The standards and requirements may impose different requirements for different excavations, taking into consideration relevant factors, such as: (i) the location, type and extent of excavation performed, (ii) the condition of the surface being excavated, and (iii) the period of time elapsed since the construction or most recent resurfacing of the surface being excavated. The standards and requirements shall be reviewed at least once every five years to determine whether any changes can be made to prevent or substantially reduce the degradation and damage caused to the street surface by excavation. As part of such review, the director shall provide affected utilities with an opportunity to review and comment upon the standards and requirements and any changes proposed thereto.

C. The old torn up pavements and other rubble shall be removed, together with any surplus excavated material, within one working day from the time such material is placed upon the street, provided that exceptions to this requirement may be approved by the director. After backfilling is completed, and prior to repaving the cut, the contractor or permittee shall remove all loose paving material and trim

the edges of the excavation at the street surface to the satisfaction of the director.

D. Whenever any caving occurs in the sidewalls of any excavation, the pavements above such caving shall be cut away. In no case shall any void under a pavement be filled by any side or lateral tamping. (Prior code § 38.03.032)

12.12.080 Cleaning up streets.

In every case and at all times, the work of removing from the streets all obstructions, surplus materials, debris and waste matter of every description caused by and accumulated from the excavation shall be the responsibility of the permittee. (Prior code § 38.03.033)

12.12.090 Repair of sunken pavement over excavation.

In case the pavement or the surface of the street or alley over any excavation should become depressed or broken at any time within five years after the excavation has been completed and before resurfacing of the street or alley, natural wear of the surface excepted, the permittee shall, upon written notice from the director, immediately proceed to inspect the depressed or broken area over the excavation to ascertain the cause of the failure. The permittee shall make repairs to the installation or backfill and have the pavement restored as specified by the director, within such time period as may be specified by the director. The trench cut cost recovery fee established by Section 12.12.020(C) of this chapter, shall not be charged for work performed under this section. If the pavement is not restored as specified by the director within the time period specified by the director, and unless delayed by a strike or conditions beyond permittee's control, the director may cause the work to be done after giving the permittee twenty-four (24) hours final notice. The cost thereof, including any inspection costs and administrative overhead incurred by city, shall be assessed against the permittee. After the cost is paid to city, the city shall be responsible for any future repairs of that portion of pavement over the excavation that was repaired by city forces. (Prior code § 38.03.034)

12.12.100 Failure to complete work within specified time.

If any part of the work referred to in this chapter is not completed within the time required except by reason of legal holidays or delays caused by strikes, the director may notify in writing the person performing the work to complete the work within forty-eight (48) hours thereafter, legal holidays excepted. If the work is not completed within this time period, the director shall have full power to perform the work, including such work as will restore the work area to a safe and passable condition until the work can be completed. The cost thereof, including any inspection costs and administrative overhead incurred by city, shall be assessed against the permittee. (Prior code § 38.03.035)

12.12.110 Excavation, etc., to be under supervision of the director.

Any person engaged in making or backfilling any excavation in any public street, alley, sidewalk or other public place, shall at all times while such work is in progress keep at the job location the original permit, or a copy thereof, and shall, on demand, exhibit the permit to the director or any police officer. At all times while the work is in progress the person shall also maintain at the job location, a sign, barricade, or other device bearing the person's name. (Prior code § 38.03.036)

12.12.120 Emergency excavations.

Nothing in this chapter shall be construed to prevent any person maintaining any pipe, conduit, or duct in or under any street, alley, sidewalk, or other public place by virtue of any law, ordinance or permit, from making such excavation as may be necessary for the preservation of life or property when the necessity arises, provided that the person making the excavation shall notify the director within one day after the offices of the city are first opened subsequent to the excavation. Except as specifically provided otherwise in this chapter, excavations authorized by this section shall be subject to all fees and requirements of this chapter. (Prior code § 38.03.037)

12.12.130 Blanket permits.

The director may issue blanket permits to any person to make excavations for utility service connections, for the location of trouble in utility conduits or pipes and for making repairs thereto, or for emergency purposes. Blanket permits shall be issued on a yearly basis only, and shall authorize only excavations referred to in this section. Except as specifically provided otherwise in this chapter, excavations authorized by this section shall be subject to all fees and requirements of this chapter. (Prior code § 38.03.038)

12.12.140 Liability of city.

Neither the city nor any officer or employee thereof shall be held responsible for any damages caused by any excavations in any street, alley, sidewalk or other public place made by any person under the authority of a permit issued pursuant to the provisions of this chapter. The permittee shall be solely liable for any damage or loss occasioned by any act or omission occurring in connection with the excavation, and shall fully indemnify, hold harmless and defend city, its officers and employees from and against any and all suits, actions, judgments, losses, costs, demands, claims, expenses (including attorney's fees), damages, and liabilities of every kind to which the city, its officers or employees may be subjected for injury of any type, death or property damage arising from or connected with any such act or omission. City shall promptly notify a permittee, at the address set forth in the permit, of any claim or suit served upon the city and alleging negligent or wrongful conduct by the permittee in connection with an excavation. (Prior code § 38.02.039)

12.12.150 Coordination of excavations.

A. Any utility owning, operating or installing in city streets, alleys, sidewalks or any other public places facilities providing water, sewer, gas, electric, communication, video or other utility services, shall prepare and submit to the director a utility master plan, in a format specified by the director, that shows the location of the utility's existing facilities in city streets, alleys, sidewalks and other public places, and shows all of the utility's planned major utility work in city streets, alleys, sidewalks and other public places. Utilities shall submit an initial utility master plan no later than one hundred eighty (180) days after the effective date of the ordinance adopting this section. Thereafter, each utility shall submit semi-annually, on the first regular business day of January and July, a revised and updated utility master plan. As used in this subsection, the term planned major utility work refers to any and all future excavations planned by the utility when the utility master plan or update is submitted that will affect any city street, alley, sidewalk or other public place for more than five days, provided that the utility shall not be required to show future excavations planned to occur more than five years after the date that the utility master plan or update is submitted.

B. Any city department owning, operating or installing utility facilities in city streets, alleys, sidewalks or any other public places shall prepare and submit to the director a utility master plan that shows the location of the department's existing facilities in city streets, alleys, sidewalks and other public places, and shows all of the department's planned major utility work in city streets, alleys, sidewalks and other public places. An initial utility master plan shall be submitted no later than one hundred eighty (180) days after the effective date of the ordinance adopting this section. Thereafter, each such department shall submit semi-annually, on the first regular business day of January and July, a revised and updated utility master plan. As used in this subsection, the term planned major utility work refers to any and all future excavations planned by the department when the utility master plan or update is submitted that will affect any city street, alley, sidewalk or other public place for more than five days, provided that the department shall not be required to show future excavations planned to occur more than five years after the date that the utility master plan or update is submitted.

C. The director shall make all utility master plans submitted in accordance with subsections A and B of this section, available for public inspection.

D. The director shall prepare a five year repaving plan showing the street resurfacing planned by the city for the next five years. The five year repaving plan shall be revised and updated on a semi-annual basis after receipt of the utilities' and city departments' utility master plans and updates. The director shall make the city's five year repaving plan available for public inspection. In addition, after determining the street resurfacing work that is proposed for each year, the director shall send a notice of the proposed work to all utilities that have current utility master plans on file.

E. Prior to applying for an excavation permit, any person planning to excavate in the city's streets, alleys, sidewalks or other public places shall review the utility master plans and the city's five year repaving plan on file with the director and shall coordinate, to the extent practicable, with the utility and street work shown on such plans to minimize damage to, and avoid undue disruption and interference with the public use of such streets, alleys, sidewalks or other public places.

F. Excavations in city streets disrupt and interfere with the public use of city streets and damage the pavement. The purpose of this section is to reduce this disruption, interference and damage by promoting better coordination among utilities making excavations in city streets and between these utilities and the city. Better coordination will assist in minimizing the number of excavations being made wherever feasible, and will ensure that excavations in city streets are, to the maximum extent possible, performed before, rather than after, the resurfacing of the streets by the city. Coordination also provides a means for utilities to avoid payment of a trench cut cost recovery fee either by eliminating the need for a new excavation, or, if an excavation is made, by allowing the excavation to qualify for an exemption from the trench cut cost recovery fee pursuant to Section 12.12.020(D) of this chapter. However, even utilities performing the best possible coordination will find it necessary to make excavations that do not qualify for an exemption from the trench cut cost recovery fee. For this reason, and in order to provide a further incentive for such utilities to perform the best possible coordination, if a utility coordinates its work with other utilities and/or the city so that no trench cut cost recovery fee is required for at least eighty (80) percent of the linear feet of its total excavations in city streets during a calendar year, the utility shall receive a refund, without interest, of one-quarter (twenty-five (25) percent) of the trench cut cost recovery fees the utility paid during that year. If a utility coordinates its work with other utilities and/or the city so that no trench cut cost recovery fee is required for at least ninety (90) percent of the linear feet of its total excavations in city streets during a calendar year, the utility shall receive a refund, without interest, of one-half (fifty (50) percent) of the trench cut cost recovery fees the utility paid during that year. If a utility coordinates its work with other utilities and/or the city so that no trench cut cost recovery fee is required for at least ninety-five (95) percent of the linear feet of its total excavations in city streets during a calendar year, the utility shall receive a refund, without interest, of one hundred (100) percent of the trench cut cost recovery fees the utility paid during that year. Upon appropriation by the city council, city funds authorized for the purpose of maintenance, repair or resurfacing of city streets shall be transferred to the special fund or funds created pursuant to Section 12.12.020(D) of this chapter, to replace any amount refunded pursuant to this subsection. The director shall adopt procedures for implementing this subsection. (Prior code § 38.03.040)

12.12.160 Additional requirements.

A. In addition to the requirements of this chapter, cable television franchisees and licensees shall construct facilities in accordance with the provisions of Chapter 5.28 of this code. In the event of any conflict between the requirements of this chapter and the provisions of Chapter 5.28, the provisions of Chapter 5.28 shall govern.

B. All utility installations permitted under this chapter shall, upon demand of the director, be relocated or lowered if required by the city to avoid potential conflicts with a proper governmental use of a street, alley, sidewalk or other public place. All expenses incurred in relocating, lowering lines, potholing or marking of facilities to determine their exact location after the original installation shall be paid for by the permittee.

C. Upon completion of underground or surface work permitted under this chapter and at the discretion of the director, permittee shall furnish as built plans of the installation showing a correct plan view to scale, details and a profile showing the locations of all elements of the installation based on data obtained in the field during construction.

D. Private parties and nonpublic utilities shall comply with the following additional requirements:

1. Permittee shall take out, pay for and maintain during the period in which the permit is in effect, a policy of public liability and property damage insurance protecting permittee, permittee's agents and employees against any liability, injury or death sustained or suffered by the public or damage to the property of the public by reason of the work carried on under the permit. The public liability insurance shall be for the limits of at least three hundred thousand dollars ($300,000.00) for injury to one and five hundred thousand dollars ($500,000.00) for injury to more than one person, and the property damage insurance limit shall be at least one hundred thousand dollars ($100,000.00). The insurance shall be placed with a company satisfactory to the risk management division of city, prior to the date that work under the permit is commenced. The policy or policies of insurance shall name the city, its officers and employees as additional named insureds and shall contain an endorsement precluding cancellation or reduction in coverage without giving the risk management division at least ten (10) days written notice prior thereto.

2. If required on the face thereof, the permit shall not be effective for any purpose unless and until the permittee files with the risk management division a corporate surety bond or other security approved by the risk management division in the amount specified on the face of the permit, said bond or other security to fully assure the performance by permittee of all obligations imposed upon permittee under the provisions of the permit and this chapter. (Prior code § 28.03.041)

12.12.170 Appeal of director's decision—Protest of trench cut cost recovery fee.

A. A person directly and adversely affected by a decision made by the director pursuant to the provisions of this chapter may appeal the directors decision by filing a written notice of appeal with the city manager no later than ten (10) working days after receiving notice of the director's decision. The notice of appeal shall set forth the name, mailing address and telephone number of the person appealing. The notice of appeal shall include or attach a statement describing the action being appealed, setting forth the grounds for the appeal, and describing the action requested of the city manager. The scope of the appeal shall be limited to the grounds specified in the notice of appeal. No later than thirty (30) days after the filing of a timely notice of appeal, the city manager shall render a decision on the appeal. The city manager's decision may affirm, reverse or modify the decision appealed. A copy of the city manager's decision shall be provided to the person appealing at the address shown on the notice of appeal. Said person may appeal the city manager's decision to the city council by filing a written notice of appeal no later than ten (10) working days after the city manager's decision is received by the person, in accordance with the provisions of Sections 1.24.010 and following of this code.

B. Any person required to pay a trench cut cost recovery fee pursuant to Section 12.12.020(C) of this chapter who desires to protest or otherwise challenge imposition of the fee shall tender to the city payment in full of the fee when due, accompanied by a written notice containing the following information:

1. A statement that the required payment is tendered under protest; and

2. A description of the factual and legal basis for the protest.

C. Any judicial action or proceeding to attack, review, set aside, void or annul the imposition of a trench cut cost recovery fee for which a written notice of protest is filed pursuant to subsection B of this section, shall be filed no later than ninety (90) days after the notice is received by the city. (Prior code § 38.03.042)

Attachment 5

ORDINANCE NO. 2009-

Adopted by the Sacramento City Council

Date Adopted 00/00/0000

AN ORDINANCE REPEALING AND REENACTING CHAPTER 12.12 OF THE SACRAMENTO CITY CODE, RELATING TO ENCROACHMENT PERMITS

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1

Chapter 12.12 of the Sacramento City Code is hereby repealed.

SECTION 2

Chapter 12.12 of the Sacramento City Code is hereby reenacted as follows:

ENCROACHMENT PERMITS, EXCAVATIONS, AND PLACEMENT OF FACILITIES IN PUBLIC RIGHTS-OF-WAY

ARTICLE I
IN GENERAL

12.12.010 Definitions

The following terms used in this chapter shall have the meanings set forth below:

"Applicant" means the person applying for an encroachment permit, as well as any person owning or operating facilities or requesting to install facilities for which the encroachment permit is being requested.

"City" means the City of Sacramento.

"Director" means the director of the Department of Transportation or his or her designee.

"Encroachment" means the use of City rights of way to perform excavations, construction related work, window cleaning; to access overhead or underground public or private utilities; to pressure wash sidewalks or driveways; to place or store construction equipment, materials, trailers, containers, dumpsters, or bins; or for any other similar or related purposes.

"Permittee" means the person to whom an encroachment permit is issued, as well as the person owning or operating the facility or installation for which the encroachment permit is issued.

"Person" means any individual, agency or other public or private entity, firm, business, franchisee, contractor, corporation, partnership or other combination of individuals of whatever form or character, excepting the city or a contractor performing work for the city.

"Public right of way" means the area across, beneath, in, on, over, under, along and within the public streets, roads, sidewalks, and alleys within the City and includes public utility easements dedicated to the City.

"Utility box" means any underground box, terminal or enclosure.

"Utility cabinet" means any above ground cabinet, pedestal, transformer, communications terminal or box, feature or appurtenance.

"Utility company" means a public or private entity, excluding the City of Sacramento, that provides utility services including but not limited to electricity, gas, sewer, water and communications.

"Utility pole" means any structure used to support overhead wires, cables, transformers, and appurtenances, and includes guy wires used for supporting utility poles.

"Utility vault" means any underground room providing access to subterranean utility equipment.

12.12.020 Encroachment Permit Required – Except Emergencies

It is unlawful for any person to encroach within public rights of way or other City property without first obtaining an encroachment permit from the director and to comply with the requirements of the permit.

Nothing in this chapter shall be construed to prevent any person maintaining any pipe, conduit, or duct in or under any right of way by virtue of any law, ordinance or permit, from encroaching in the public right of way as may be necessary for the preservation of life or property when the necessity arises, provided that the person shall notify the director within one day after the offices of the city are first opened subsequent to the encroachment. Except as specifically provided otherwise in this chapter, encroachments authorized by this section shall be subject to all fees and requirements of this chapter.

12.12.030 Application-Requirements

A. Before the City issues an encroachment permit, the applicant shall submit a written application on a form furnished by the director, setting forth:

1. The name and residence or business address of the applicant;
2. The location and approximate area of the encroachment;
3. The purpose, a plan or drawing, and a schedule for the proposed

period of encroachment;

4. A traffic control plan, if required.

5. Any additional information required by Article II of this Chapter relating to excavations.

B. The applicant shall pay a nonrefundable fee in an amount established by resolution of the city council to defray the city's costs to process the application and provide for site inspections. The fee may include costs incurred by the city to maintain an inventory or database of facilities that are installed, repaired or removed. If the director determines the fee to be inappropriate based on the amount of work to be done to process the application, to inspect the work and to maintain said inventory or database, or for other good cause shown, the director may waive the fee, in whole or in part.

C. No fee or requirement authorized or imposed pursuant to this chapter shall be construed to affect or alter in any way any obligation of public and private utilities with facilities installed in any public right of way to relocate the facilities at no cost to the city, in the event that relocation is required by the city to accommodate a proper governmental use of the public right of way.

12.12.040 Permit—Issuance

A. Upon receipt of a written application for an encroachment permit, the director shall determine and set forth all requirements, approve or disapprove the application, and, if approved, sign and return it to the applicant with a permit number. .

B. No permit shall be transferable.

C. Each permit shall state a time period for commencement and completion of all the permitted work. The director may grant extensions of time for good cause.

D. The director may modify the permit if circumstances or conditions appearing after commencement of the work is commenced make it impossible to comply with the requirements of the permit.

E No person in violation of any requirement of this chapter shall be issued an encroachment permit, nor shall any contractor or agent apply for or be issued an encroachment permit on the person's behalf, until the outstanding violation is corrected or a plan for correction is approved by the director, which approval shall not be unreasonably withheld. The foregoing requirement is in addition to any penalty or remedy for violation that may be imposed or sought by the city at law or equity.

12.12.050 Compliance with safety regulations

The permittee shall comply with all current federal, state and local safety regulations and all federal and state disability laws including those requiring an accessible path of travel.

12.12.060 Cleaning up streets

The permittee shall remove from the public rights of way all obstructions, surplus materials, debris and waste matter of every description caused by and accumulated from the permittee's work or activities.

12.12.070 Failure to complete work within specified time

If any part of the work referred to in this chapter is not completed within the time set forth in the permit, the director may provide written notice to the person performing the work to complete the work within forty-eight (48) hours thereafter, legal holidays excepted. If the work is not completed within this time period, the director may cause the work to be performed, including such work as will restore the work area to a safe and passable condition until the work can be completed. The cost thereof, including any inspection costs and administrative overhead incurred by city, shall be paid by the permittee within 30 days of notice of the cost.

12.12.080 All work to be under supervision of the director

Any person engaged in activities authorized under an encroachment permit shall, at all times while such work is in progress, keep at the job location the original permit, or a copy thereof, and on demand, exhibit the permit to the director or any police officer. At all times while the work is in progress the person shall also maintain at the job location, a sign, barricade, or other device bearing the person's name. If required by the director, the person performing work shall also display the permit number and the City's Construction Hotline Number.

12.12.090 Blanket permits

The director may issue blanket permits to any person to encroach within the public right of way or public utility easement for utility service connections, for the location of trouble in utility conduits or pipes and for making repairs thereto, or for emergency purposes. Blanket permits shall be issued on a yearly basis only, and shall authorize only encroachments referred to in this section. Except as specifically provided otherwise in this chapter, encroachments authorized by this section shall be subject to all fees and requirements of this chapter.

12.12.100 Liability of city

Neither the city nor any city officer or employee shall be responsible for any damage or loss caused by any encroachment or excavation in any public right of way made by any person under the authority of a permit issued pursuant to the provisions of this chapter. The permittee shall be solely liable for any damage or loss arising out of or in any way connected with such encroachment or excavation, and shall fully indemnify, hold harmless and defend city, its officers and employees from and against any and all suits, actions, judgments, losses, costs, demands, claims, expenses (including attorney's fees), damages, and liabilities of every kind arising out of or in any way connected with such encroachment or excavation, whether or not caused in part by the passive negligence of the city.

12.12.110 Additional requirements.

A. In addition to the requirements of this chapter, cable television franchisees and licensees shall construct facilities in accordance with the provisions of Chapter 5.28 of this code. In the event of any conflict between the requirements of this chapter and the provisions of Chapter 5.28, the provisions of Chapter 5.28 shall govern.

B. All utility installations permitted under this chapter shall, upon demand of the director, be relocated or modified if required by the city to avoid potential conflicts with a proper governmental use of a public right of way. All expenses incurred in relocating, lowering lines, potholing or marking of facilities to determine their exact location after the original installation shall be paid for by the permittee.

C. Upon completion of underground or surface work permitted under this chapter and at the discretion of the director, permittee shall furnish as built plans of the installation showing a correct plan view to scale, details and a profile showing the locations of all elements of the installation based on data obtained in the field during construction.

D. Permittees other than utility companies shall comply with the following additional requirements:

1. Permittee shall purchase and maintain, during the period in which the permit is in effect, insurance coverage for commercial general liability ($1,000,000 per occurrence), automobile liability ($1,000,000 per occurrence), workers compensation (statutory limits) and employer's liability ($1,000,000). Liability shall not be limited to or affected by the amount of insurance coverage required or carried by the Permittee. The insurance shall be in an acceptable form and provided to the Department of Transportation prior to the date that work under the permit is commenced.

The City of Sacramento shall be named as a certificate holder on all policies and shall be provided at least ten (10) days written notice prior to cancellation or material change in policy terms. The City of Sacramento, its officers and employees shall be named as additional insured under the general liability policy. Insurers shall have a published insurance industry financial strength rating of at least A (excellent) and a financial size category of V (10-25 million adjusted policy holder surplus). The Director of the Department of Transportation may waive these insurance requirements in whole or part if a homeowner acts as a builder to repair their own sidewalk or landscaping, maintains homeowner's insurance and is not a licensed contractor.

2. If required on the face thereof, the permit shall not be effective for any purpose unless and until the permittee files with the risk management division a bond or other security approved by the risk management division in the amount specified on the face of the permit, said bond or other security to fully assure the performance by permittee of all obligations imposed upon permittee under the provisions of the permit and this chapter.

12.12.120 Enforcement.

Violation of the terms, conditions and requirements of this Chapter and any permit issued pursuant to this chapter by the permit holder shall subject the permit holder to the following actions and penalties:

A. Administrative Penalties. The director may issue an order imposing an administrative penalty to any person violating any provision of this chapter.

1. Notwithstanding any contrary provision of this code, each day a violation of the following code provisions occurs shall constitute a separate violation, and shall be subject to a separate penalty:

   a. Section 12.12.020;

   b. Section 12.12.070;

   c. Section 12.20.080;

2. If applicable, additional administrative penalties may be assessed in accordance with the provisions of Chapter 12.20.

3. The administrative penalty for each violation of any provision of this chapter shall be seven hundred and fifty dollars ($750.00). Violations of a specific section of this chapter by the same person occurring during the same work but located in different blocks or located in the same block but occurring on different days or at different times on the same day shall constitute separate violations for which separate administrative penalty orders may be issued.

4. In addition to the aforementioned penalties, the city may withhold issuance of permits for encroachment or excavation in a city street (issued pursuant to Chapter 3.76 or Chapter 12.12 of this code) to any person receiving a final administrative penalty order for a violation of any specific provision of this chapter three times within a two year period; the city may withhold issuance of permits for a period of not longer than two years after said administrative penalty orders are final. Multiple administrative penalty orders issued for continuing violations occurring on the same calendar day shall be considered one administrative penalty order for purposes of this section.

B. Imposition of the Administrative Penalties. The administrative penalty order shall be imposed in accordance with the provisions of Section 128.010 of this code, and shall contain the following:

1. The name and address of the violating party, if known;

2. The location, date and time of the violation;

3. A description of the act(s) or condition(s) violating this chapter;

4. The amount of the administrative penalty, with instructions for submitting payment to the city;

5. A statement indicating that the administrative penalty may be appealed, in accordance with the provisions of Section 1.28.010(D)(4) of this code, by filing a written notice of appeal with the city clerk no later than twenty (20) days after the order is issued to the violator;

6. A statement indicating that the order imposing the administrative penalty shall be final if it is not appealed within the time required;

7. A statement indicating that a party upon whom a final administrative penalty has been imposed may seek review of the order imposing the penalty pursuant to California Code of Civil Procedure Sections 1094.5 and 10946. (Ord. 2005-082 § 1: Ord. 2002-004 § 8, 2002)

All other remedies available to the City including but not limited to criminal and civil proceedings.

ARTICLE II
ADDITIONAL REQUIREMENTS FOR EXCAVATIONS

12.12.130 Permit requirements for excavations

It is unlawful for any person to make or cause to be made any excavation in the public right of way, or any other public place for the installation, repair or removal of any pipe, conduit, duct, tunnel, utility pole, or any other facility or installation or for any other purpose without first obtaining from the director an encroachment permit in compliance with this Article.

12.12.140 Permit—Requirements.

In addition to the requirements for an encroachment permit set forth in Article I, an application to excavate shall include the following:

A. The specific location and area of the excavation, including its approximate length and width, and, if the excavation is in a street, whether it is parallel or transverse to the direction of the travel lanes. The applicant shall attach to the application form a plan showing the location of the proposed excavation, the dimensions thereof, and any other details the director may require.

B. Except as otherwise provided by franchise or agreement, at the time any permit is issued for excavation of a paved street, the applicant shall pay a trench cut cost recovery fee, in addition to the fee required by Article I of the chapter. The fee shall not exceed an amount reasonably necessary to recover the estimated costs for all future maintenance, repair or resurfacing that would be necessary to fully mitigate the

damage and degradation caused by the excavation to the pavement located adjacent to the trench where the excavation occurs. The fee shall be highest for excavations in newly surfaced streets and shall decrease as the age of the street surface being excavated increases. The amount of the trench cut cost recovery fee shall be established from time to time by resolution of the city council. The director shall adopt procedures requiring the payment of the trench cut cost recovery fees by all city departments and divisions performing excavations in city streets.

C. The trench cut cost recovery fee required by subsection B of this section, shall not be charged for the following excavations: (1) excavations in a street that the city has scheduled for resurfacing either during the fiscal year (July 1st through June 30th) when the encroachment permit is issued or during the immediately following fiscal year; (2) excavations in a street where the existing pavement quality is already so poor that the pavement quality index, as defined by the city's pavement management system, is less than four on the date the encroachment permit is issued; (3) excavations for potholing or to install utility poles; (4) excavations that will include resurfacing of the street where the excavation is made, provided that the resurfacing is approved by the director; and (5) excavations made for a utility relocation required by the City to accommodate a proper governmental use of a street, alley, sidewalk or other public place. As used in this chapter, the term resurfacing shall mean any repaving, overlay, seal or reconstruction which constructs a new pavement surface over the entire width of the street, excluding crack seals.

D. All moneys paid to the city under subsection B of this section, shall be deposited in a special fund or funds and shall be expended only for the resurfacing of city streets.

E. Except for requirements subject to the exclusive jurisdiction of another regulatory agency, the location, depth and other physical characteristics of any facilities for which an encroachment permit is issued shall be subject to approval of the director, and all backfilling, compaction and pavement restoration performed for any excavation shall comply with the requirements of this chapter.

F. No fee or requirement authorized or imposed pursuant to this chapter shall be construed to affect or alter in any way any obligation of public and private utilities with facilities installed in the public right of way to relocate the facilities at no cost to the city, in the event that relocation is required by the city to accommodate a proper governmental use of the public right of way.

12.12.150 Restoration of pavement.

Unless otherwise specified in the permit, restoration of the pavement or other surface of any right of way or other public place shall be performed by the permitee. Nothing in this section shall relieve the person opening or tearing up any pavement from the responsibility to maintain the excavation or installation in a safe condition until it is repaved or restored.

If the temporary pavement over an excavation is not maintained in a safe and acceptable manner until restored, and the permittee does not respond or is not able to respond in a timely manner to repair or replace any temporary pavement as required by the director, the director may cause the work to be done. The cost thereof, including any inspection costs and administrative overhead incurred by the city, shall be assessed against the permittee.

12.12.160 Opening, backfilling and paving trenches.

A. No trench shall be opened in any street for the purpose of laying pipes, conduits or ducts more than four hundred (400) feet in advance of the pipe, conduit or ducts being placed in the trench, except when the prior written consent of the director has been obtained.

B. All excavations shall comply with the standards and requirements established from time to time by the director for compaction, backfill and pavement restoration. The standards and requirements may vary for different excavations, taking into consideration relevant factors, such as: (i) the location, type and extent of excavation performed, (ii) the condition of the surface being excavated, and (iii) the period of time elapsed since the construction or most recent resurfacing of the surface being excavated. The standards and requirements shall be reviewed at least once every five years to determine whether any changes can be made to prevent or substantially reduce the degradation and damage caused to the street surface by excavation. As part of such review, the director shall provide affected utility companies with an opportunity to review and comment upon the standards and requirements and any changes proposed thereto.

C. The excavated pavement and other rubble shall be removed, together with any surplus excavated material, within one working day from the time such material is placed upon the street, provided that exceptions to this requirement may be approved by the director. After backfilling is completed, and prior to repaving the cut, the contractor or permittee shall remove all loose paving material and trim the edges of the excavation at the street surface to the satisfaction of the director.

D. Whenever any caving occurs in the sidewalls of any excavation, the pavements above such caving shall be cut away. In no case shall any void under a pavement be filled by any side or lateral tamping.

12.12.170 Repair of sunken pavement over excavation.

In case the pavement or the surface of the street or alley over any excavation should become depressed or broken at any time within five years after the excavation has been completed and before resurfacing of the street or alley, natural wear of the surface excepted, the permittee shall, upon written notice from the director, immediately proceed to inspect the depressed or broken area over the excavation to ascertain the cause of the failure. The permittee shall make repairs to the installation or backfill and have the pavement restored as specified by the director, within such time period as may be specified by the director. The trench cut cost recovery fee established by Section

12.12.140(B) of this chapter, shall not be charged for work performed under this section. If the pavement is not restored as specified by the director within the time period specified by the director, and unless delayed by a strike or conditions beyond permittee's control, the director may cause the work to be done after giving the permittee twenty-four (24) hours final notice. The cost thereof, including any inspection costs and administrative overhead incurred by city, shall be assessed against the permittee. After the cost is paid to city, the city shall be responsible for any future repairs of that portion of pavement over the excavation that was repaired by city forces.

12.12.190 Coordination of excavations.

A. Any utility company owning, operating or installing in rights of way or any other public places facilities providing water, sewer, gas, electric, communication, video or other utility services, shall prepare and submit to the director a utility master plan, in a format specified by the director, that shows the location of the utility company's existing facilities in city streets, alleys, sidewalks and other public places, and shows all of the utility company's planned major utility work in city streets, alleys, sidewalks and other public places. Utilities shall submit an initial utility master plan no later than one hundred eighty (180) days after the effective date of the ordinance adopting this section. Thereafter, each utility company shall submit semi-annually, on the first regular business day of January and July, a revised and updated utility master plan. As used in this subsection, the term planned major utility work refers to any and all future excavations planned by the utility company when the utility master plan or update is submitted that will affect any public right of way or other public place for more than five days, provided that the utility company shall not be required to show future excavations planned to occur more than five years after the date that the utility master plan or update is submitted.

B. Any city department owning, operating or installing utility facilities in public rights of way shall prepare and submit to the director a utility master plan that shows the location of the department's existing facilities in rights of way and other public places, and shows all of the department's planned major utility work in rights of way and other public places. An initial utility master plan shall be submitted no later than one hundred eighty (180) days after the effective date of the ordinance adopting this section. Thereafter, each such department shall submit semi-annually, on the first regular business day of January and July, a revised and updated utility master plan. As used in this subsection, the term planned major utility work refers to any and all future excavations planned by the department when the utility master plan or update is submitted that will affect any public right of way or other public place for more than five days, provided that the department shall not be required to show future excavations planned to occur more than five years after the date that the utility master plan or update is submitted.

C. The director shall make all utility master plans submitted in accordance with subsections A and B of this section available for public inspection.

D. The director shall prepare a five year repaving plan showing the street resurfacing planned by the city for the next five years. The five year repaving plan shall

be revised and updated on a semi-annual basis after receipt of the utility company's and city departments' utility master plans and updates. The director shall make the city's five year repaving plan available for public inspection. In addition, after determining the street resurfacing work that is proposed for each year, the director shall send a notice of the proposed work to all utility companies that have current utility master plans on file.

E. Prior to applying for an encroachment permit, any person planning to excavate in the public right of way or other public places shall review the utility master plans and the city's five year repaving plan on file with the director and shall coordinate, to the extent practicable, with the utility and street work shown on such plans to minimize damage to, and avoid undue disruption and interference with the public use of such rights of way or other public places.

F. Excavations in city streets disrupt and interfere with the public use of city streets and damage the pavement. The purpose of this section is to reduce this disruption, interference and damage by promoting better coordination among utility companies making excavations in city streets and between those utility companies and the city. Better coordination will assist in minimizing the number of excavations being made wherever feasible, and will ensure that excavations in city streets are, to the maximum extent possible, performed before, rather than after, the resurfacing of the streets by the city. Coordination also provides a means for utility companies to avoid payment of a trench cut cost recovery fee either by eliminating the need for a new excavation, or, if an excavation is made, by allowing the excavation to qualify for an exemption from the trench cut cost recovery fee pursuant to Section 12.12.140 of this chapter. However, even utility companies performing the best possible coordination will find it necessary to make excavations that do not qualify for an exemption from the trench cut cost recovery fee. For this reason, and in order to provide a further incentive for such utility companies to perform the best possible coordination, if a utility company coordinates its work with other utility companies and/or the city so that no trench cut cost recovery fee is required for at least eighty (80) percent of the linear feet of its total excavations in city streets during a calendar year, the utility company shall receive a refund, without interest, of one-quarter (twenty-five (25) percent) of the trench cut cost recovery fees the utility company paid during that year. If a utility company coordinates its work with other utility companies and/or the city so that no trench cut cost recovery fee is required for at least ninety (90) percent of the linear feet of its total excavations in city streets during a calendar year, the utility company shall receive a refund, without interest, of one-half (fifty (50) percent) of the trench cut cost recovery fees the utility company paid during that year. If a utility company coordinates its work with other utility companies and/or the city so that no trench cut cost recovery fee is required for at least ninety-five (95) percent of the linear feet of its total excavations in city streets during a calendar year, the utility company shall receive a refund, without interest, of one hundred (100) percent of the trench cut cost recovery fees the utility company paid during that year. Upon appropriation by the city council, city funds authorized for the purpose of maintenance, repair or resurfacing of city streets shall be transferred to the special fund or funds created pursuant to Section 12.12.140(D) of this chapter, to replace any amount refunded pursuant to this subsection. The director shall adopt procedures for implementing this subsection.

12.12.200 Appeal of director's decision—Protest of trench cut cost recovery fee.

A. A person directly and adversely affected by a decision made by the director pursuant to the provisions of this chapter may appeal the director's decision by filing a written notice of appeal with the city manager no later than ten (10) working days after receiving notice of the director's decision. The notice of appeal shall set forth the name, mailing address and telephone number of the person appealing. The notice of appeal shall include or attach a statement describing the action being appealed, setting forth the grounds for the appeal, and describing the action requested of the city manager. The scope of the appeal shall be limited to the grounds specified in the notice of appeal. No later than thirty (30) days after the filing of a timely notice of appeal, the city manager shall render a decision on the appeal. The city manager's decision may affirm, reverse or modify the decision appealed. A copy of the city manager's decision shall be provided to the person appealing at the address shown on the notice of appeal. Said person may appeal the city manager's decision to the city council by filing a written notice of appeal no later than ten (10) working days after the city manager's decision is received by the person, in accordance with the provisions of Sections 1.24.010 and following of this code.

B. Any person required to pay a trench cut cost recovery fee pursuant to Section 12.12.140(B) of this chapter who desires to protest or otherwise challenge imposition of the fee shall tender to the city payment in full of the fee when due, accompanied by a written notice containing the following information:

1. A statement that the required payment is tendered under protest; and

2. A description of the factual and legal basis for the protest.

C. Any judicial action or proceeding to attack, review, set aside, void or annul the imposition of a trench cut cost recovery fee for which a written notice of protest is filed pursuant to subsection B of this section, shall be filed no later than ninety (90) days after the notice is received by the city.

ARTICLE III
UTILITY FACILITIES

12.12.210 Purpose.

The purpose of this article is to promote the general health, safety and welfare of the citizens of the City of Sacramento by:

A. Establishing guidelines for the placement in the public right of way or private property of utility poles, boxes, cabinets, vaults and related facilities.

B. Establishing guidelines for the visual appearance of utility poles, boxes, cabinets, vaults and related facilities in order to insure that their appearance will not adversely impact the aesthetic quality of City neighborhoods.

C. Establishing guidelines to ensure compliance with disability access laws and safe passage of pedestrian and vehicular traffic.

D. Establishing guidelines to ensure the public is notified of proposed utilities on or adjacent to their property.

12.12.220 Permits and approvals.

No person shall install any utility pole, cabinet, vault or box or related facilities in any street without first obtaining an encroachment permit from the City; pay any fees and post any security required by the City; and in the course of constructing, installing, replacing, maintaining or repairing any utility pole, box, vault, cabinet or related facilities, comply with all applicable requirements of the City and any terms or conditions of encroachment permits, licenses, authorizations or approvals.

For large scale or long term projects, the director shall be authorized to establish special fees and payment plans to defray the costs incurred by the Department of Transportation to supervise and regulate the installation of utility boxes and utility cabinets within the streets of the City. The director is authorized to approve reasonable schedules for installation of utility boxes and utility cabinets within the City streets for the purpose of promoting safety, reducing inconvenience to the public, and insuring adequate restoration and repair of the streets. A person and its officers, agents, contractors and subcontractors shall comply with any and all such schedules.

12.12.230 Use of streets—Interference, Appearance, and Accessibility.

Each utility pole, box, vault, cabinet and related facilities, shall be located, installed and maintained so that none of the facilities: endanger the lives or safety of persons; interfere or damage public improvements; unnecessarily hinder or obstruct the free use of public rights of way or other public property; or cause any interference with the rights and reasonable convenience of property owners who adjoin any of the streets or other public property where the utility pole, box or cabinet is located.

The following standards shall constitute minimum standards for the location and appearance of above ground utility poles, boxes, vaults, cabinets and related facilities unless otherwise approved by the director.

A. Interference

1. Utility cabinets shall not be placed at locations where the City Traffic Engineer determines based on engineering standards, that such placement would create a hazard. These locations include driveways, intersections, and road tapers where stopping sight distance is required.

2. Utility cabinets shall not be placed in planter strips between the sidewalk and the curb.
3. Utility boxes and cabinets shall be placed at property lines whenever possible.
4. Utility vaults installed for private development should be installed on private property to avoid diminishing planter or mow strips.
5. To the extent practicable and reasonable, each company shall accommodate the desires of any property owner respecting location within easements or rights-of-way traversing private land of the property owner.

B. Appearance

1. Utility cabinets shall be no higher than six feet unless otherwise approved by the director.
2. No exposed conduit or raceways will be permitted and all conductors, transformers, and other related equipment shall be concealed, except pole risers or drops.
3. Utility cabinets requiring power shall have the power pedestals attached to the utility cabinets.
4. No more than one utility cabinet per lot and adjacent sidewalk shall be allowed unless otherwise approved by the director.
5. Utility Boxes placed in sidewalks shall be centered in sidewalk flags.
6. Utility Vaults should be located behind the curb and not within the sidewalk whenever possible.
7. Colors shall be from earth tone ranges and utility cabinet coatings shall be graffiti resistant.

C. Accessibility

1. Utility poles and utility cabinets shall not be placed within the sidewalk or within any element of a pedestrian ramp and shall comply with disability access laws.
2. Utility poles shall be located behind sidewalks and out of pedestrian travel ways whenever possible.
3. All utility box grates and covers shall be non-slip, withstand heavy vehicular loading, and be adjustable to grade unless otherwise approved.
4. Utility Box ventilation grates shall be of a non-slip, heal-safe design, and shall not be located in high volume pedestrian areas whenever possible.

12.12.240 Restoration of Public right of way.

Any disturbance by a person of pavement, sidewalk, driveways, landscaping, striping or other surfaces shall be restored, repaired or replaced to the condition existing prior to the disturbance as determined by the director.

Any disturbance of landscaping, fencing or other improvements upon private property, including private property traversed by easements or rights-of-way utilized by a person, shall, at the sole expense of the person, be promptly repaired, restored, or replaced to the reasonable satisfaction of the property owner as soon as possible. Each person shall, through authorized representatives, make a reasonable attempt to personally contact the owners or occupants of private property in advance of entering such property for the purpose of commencing any installation of facilities within easements or rights-of-way traversing such property.

12.12.250 Erection of poles or structures for overhead cables, wires or lines.

Except as otherwise permitted by law, franchise or elsewhere in this Code, no company shall be authorized to construct or install new poles or new wire-holding structures for commercial uses on or within public rights of way or City owned property for the purpose of placing overhead cables, wires, lines or other facilities unless approved by the Director.

12.12.260 Undergrounding.

Except as otherwise permitted by law, franchise or elsewhere in this Code, in all areas of the City where the cables, wires and other similar facilities of a utility company are placed underground, each utility company shall construct and install its cables, wires and other facilities underground. Utility cabinets may be placed above ground if existing technology reasonably requires, but shall be of such size and design and shall be so located as not to be unsightly or unsafe as determined by the director.

In any area of the City where there are certain cables, wires and similar facilities of a utility company underground and at least one operable cable, wire or like facility of a utility company suspended above ground from poles, a utility company may construct and install its cables, wires and other facilities from the same poles.

With respect to any cables, wires and similar facilities constructed and installed by a utility company above ground, the company shall, at its sole expense, reconstruct and re-install such cables, wires or other facilities underground pursuant to any project under which the cables, wires or other like facilities of such utilities are placed underground within an area. The duty of a utility company to underground shall arise if all existing above ground like facilities of such utilities are required to be placed underground.

12.12.270 Removal following termination or dissolution of permittee.

Upon dissolution or termination of a permittee, the permitee, at its sole expense, shall, unless relieved of the obligation by the City, remove from the streets all aboveground facilities, and properly abandon underground facilities as determined by the City, including, but not limited to utility poles, boxes, vaults, cabinets, cables attached to or suspended from poles, which are not purchased by another company and any related facilities.

12.12.280 Acquisition by successor permittee

Any person acquiring the assets or facilities of a dissolved or terminated permittee, shall apply for and obtain such encroachment permits, licenses, authorizations or other approvals and pay such fees and deposit such security as required by the City, shall conduct and complete the work of removal in compliance with all such requirements, and shall restore the streets to the same condition they were in before the work of removal commenced. The work of removal shall be completed not later than one year following the date of termination or dissolution of the prior permittee.

12.12.290 Maintenance and repair.

The permittee shall maintain their above ground utilities and utility cabinets in good condition and repair.

Adopted by the City of Sacramento City Council on by the following vote:
Ayes:

Noes:

Abstain:

Absent:

_____
MAYOR

Attest:

_____
City Clerk

Passed for Publication:
Published:
Effective: