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OAKLAND

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AGENDA REPORT

TO: JOHN A. FLORES
INTERIM CITY ADMINISTRATOR

FROM: Brooke A. Levin

SUBJECT: Supplemental to Amending Oakland
Municipal Code Chapter 12.12 -
Excavation

DATE: March 4, 2015

City Administrator
Approval

Date:

3/5/15

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

Staff recommends that the City Council adopt the revised Ordinance amending Chapter 12.12 of the Oakland Municipal Code (OMC), which governs excavation and related activities in the public rights-of-way.

REASON FOR SUPPLEMENTAL

The revised Ordinance replaces the ordinance that was submitted to the City Council on March 3, 2015. The revised language clarifies several definitions; eliminates redundancies; provides flexibility to extend resurfacing beyond the immediate area of an excavation when conditions allow; and includes constructive comments received recently from utility agencies. These additional changes are in line with the overall intent of the original proposed Ordinance.

For questions regarding this report, please contact Gus Amirzehni, P.E., Engineering Design and Right-of-Way Manager at (510) 238-6601.

Respectfully submitted,

BROOKE A. LEVIN
Director, Oakland Public Works

Reviewed by:
Michael J. Neary, P.E., Assistant Director
OPW, Bureau of Engineering and Construction

Reviewed by:
Gus Amirzehni, P.E., Engineering and R.O.W Manager
Engineering Design and ROW Management Division

Item: _____
City Council
March 17, 2015

15 MAR -5 PM 4:23

DRAFT

City Attorney

OAKLAND CITY COUNCIL

ORDINANCE No. _____ C.M.S.

INTRODUCED BY COUNCILMEMBER _____

**ORDINANCE AMENDING THE OAKLAND MUNICIPAL CODE (OMC)
CHAPTER 12.12-EXCAVATION TO ENHANCE PRESERVATION OF
CITY'S STREET AND SIDEWALK ASSETS (REVISED 3/4/2015)**

WHEREAS, Oakland Municipal Code Chapter 12.12-Excavation currently regulates excavation in the public right-of-way within the City of Oakland that is under the jurisdiction and control of the Public Works Department; and

WHEREAS, standards need to be updated to enhance asset preservation and accommodate roadway and sidewalk users better; and

WHEREAS, trenching and excavation in public right of way contribute to early deterioration, cracking, structural damage, water intrusion, and undermining of the subsoil in street and sidewalk; and

WHEREAS, Studies show cuts in pavements have an overall negative impact on the performance and the life of pavement; and

WHEREAS, Public Works Department is responsible for the planning, design, construction, and maintenance of public street and sidewalk assets. The Public Works Director is also responsible for establishing and updating construction standards and maintenance thereof; therefore be it resolved that THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Section 1. OMC Chapter 12.12-Excavation is herein provided with changes underlined.

12.12.001 - General

This Chapter shall govern excavation in the public right-of-way within the City of Oakland that is under the jurisdiction and control of the Public Works. The Director of Public Works shall be responsible for managing the public right-of-way.

12.12.003 - Definitions.

For purpose of this Chapter, the following terms shall have the following meanings:

“Public Works Department” or “Public Works” shall mean the same as the Public Works Department.

“Department” shall mean the Public Works Department ~~or Oakland Public Works Department.~~

“Director of Public Works” or designee is authorized by the City Administrator for the management and operation of the Public Works Department.

“Drawdown Account” shall mean a pre-paid sum of money to cover the cost of inspections for prolonged work beyond that which a single permit fee may cover. A drawdown account may be established for any entity, private or public. Statement of account will be furnished to the entity on monthly basis or as requested.

“Utility Company” shall mean any public utility company or entity authorized to work in the public right of way providing public utility services such as water, electricity, natural gas, telephone, and communication.

~~A public utility is a business that furnishes an everyday necessity to the public at large. Public utilities provide water, electricity, natural gas, telephone service, and other essentials. Utilities may be publicly or privately owned, but most are operated as private businesses.~~

~~Typically a public utility has a Monopoly on the service it provides. It is more economically efficient to have only one business provide the service because the infrastructure required to produce and deliver a product such as electricity or water is very expensive to build and maintain. A consequence of this monopoly is that federal, state, and local governments regulate public utilities to ensure that they provide a reasonable level of service at a fair price.~~

“Engineer” shall mean authorized Public Works staff assigned to review and approve permit applications and plans or inspect the work.

“Days” shall mean calendar days.

12.12.005 – Department rules and orders.

In addition to the requirements set forth in this Chapter, the Department may adopt, maintain, and enforce such rules and orders as it deems necessary in order to preserve and maintain the public health, safety, welfare, and convenience. Each excavation in the public right-of-way pursuant to this Chapter shall be performed in accordance with the City of Oakland Standard Details for construction, Standard Plans for Public Works Construction, and ~~the adopted Green Book~~current Specifications, ~~and Special Provisions~~ for Public Works construction and any rules and orders, except where the Director, in his or her discretion, grants prior written approval to deviate from such standard plans and specifications, orders, or regulations.

Upon City’s request or on annual basis, each Utility Company shall submit a list to the City to show construction projects planned for construction in the near term (1 to 3 years) and in the long term (3 year and further).

12.12.007 – Non-transferability of permits.

Permits shall not be transferable and shall only be valid to the applicant(s) issued.

12.12.010 - Disturbance of streets—Permit.

It is unlawful for any person or Permittee to make, or cause or permit to be made, any excavation in or under the surface of any public street, alley, sidewalk, or other public place for the installation, repair or removal of any pipe, conduit, duct or tunnel or for any other purpose, without first obtaining from Public Works the permit for work shown on the plans and filed by such person or Permittee as required by the provisions of this Chapter permitting

to make such excavation. At a minimum, the following steps shall be followed:

First: Application for the permit shall be made in writing to Public Works on forms furnished. The application shall contain such information as the Director of Public Works may require and be made in quadruplicate and filed with him or her for processing. Plans and profiles in quadruplicate showing work to be done, location, limits of work, location of pavement replacement types, together with such further information as the Director of Public Works may require, shall be furnished by the applicant when requested by the Director of Public Works. If an emergency street cut, opening, or excavation is made, application for a permit shall be made on the next working day. If the street cut, opening, or excavation is to be made in a State Highway, the Permittee shall also comply with all lawful regulations of the Division of Highways, Director of Public Works, State of California, and procure from such Division all lawful permits required by the State of California.

Second: That the applicant show legal authority to occupy and use, for the purpose mentioned in said application, the streets, alleys, sidewalks or other public places wherein the excavation is proposed to be made. The Department shall issue a permit to excavate only if the owner has the legal authority to occupy and use the public right-of-way for the purposes identified in the application for the permit and the owner and its agent, if any, are in compliance with this Chapter. It is unlawful for any person to make, or to cause or permit to be made, an excavation, or to install or maintain, or to cause or permit to be installed or maintained, any tank, pipe, conduit, duct or tunnel 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 and shown on the plans filed by such person as required by the provisions of this title.

Third: All permits granted under this chapter shall imply that all pipes, conduits, vaults, ducts, and other underground installations, shall be of the quality installed in the manner, and subject to the inspection prescribed elsewhere in the Oakland Municipal Code.

Fourth: All facilities, pipes, conduits, vaults, ducts, and other underground installations within the public right-of-way granted under this Chapter servicing the Permittee or its customers shall belong to Permittee and shall be protected and made safe by Permittee.

(Prior code § 6-2.01)

12.12.020 - Public utility annual permit.

~~Any public utility~~ **Public Utility Company** possessing a franchise to install, operate, maintain or use facilities in the streets covered by permit issued hereunder, although deriving its rights to occupy such streets from franchise, shall nevertheless procure such permit to the extent necessary to enable the City to exercise reasonably its police powers over the performance of

work by such Permittee under its franchise. ~~Such public utilities~~Annual Permit may be prepared for each Utility Company for work specific to its operation which may require minimal to no excavation stated in the annual permit conditions of approval for the respective Utility Company. Utility Company may submit requests to the Director of Public Works for an annual permit to perform minor repairs and service installations. ~~If issued~~Annual Permit for short duration maintenance work not exceeding 24 hours. If approved, such permit will carry with it all the conditions and responsibilities which would apply if individual permits were issued. The utility will furnish the city with a copy of its paving order, or other pertinent document, within twenty-four (24) hours after start of the work stated in the street at each location considered to be included in the annual permit, which document Municipal Code. Utility Company shall include the annual permit number. notify the City at least 24-hours in advance of the scheduled work or activities described in the Annual Permit. City shall invoice the Utility Company on monthly basis for the hours of inspections for work covered under the Annual Permit and in accordance with the Master Fee Schedule.

Invoices are payable to the City in accordance with section 12.12.030.
(Prior code § 6-2.011)

12.12.022 - Performance deposit.

Each applicant shall submit and maintain with Public Works a bond, cash deposit, or other security acceptable to Public Works securing the faithful performance of the obligations of the owner and its agent under any permit to excavate and comply with all terms and conditions of this Chapter. The Bond or deposit shall be in the sum of \$25,000, ~~minimum,~~ or as determined by the Director of Public Works, his or her designee. Each deposit or bond shall be retained by the City for a period of three years after the satisfactory completion of the excavation.

~~Utility and other frequent a~~ Applicants may submit a single deposit for multiple excavations so long as a constant balance of \$25,000 is maintained on file with the Director of Public Works. ~~Major Utility Companies~~ or contractors performing work for utility companies are ~~may be~~ exempt from bond deposit. To meet the provisions of this section, if Director of Public Works may require contractors or utility companies to submit ~~has~~ proof of bonding.

12.12.024 - Permit fees.

Each applicant shall pay permit fees consistent with the Master Fee Schedule. ~~If the work by Permittee extends beyond the hours of inspection already included in the permit fees, Permittee shall make payments to the City for the inspection hours based on the Master Fee Schedule.~~

Director of Public Works may require a drawdown account for certain excavations within the public right-of-way. When such is required of the Permittee or his or her designee, City shall provide the Permittee the estimate of the drawdown. The Permittee shall post such drawdown before commencement of the work.

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

Notwithstanding other provisions, fees or charges shall not exceed the reasonable cost of providing the service for which the fee or charge is imposed (Government Code Section 66012-66014.)

12.12.030 - Default in payment of permit fees.

Whenever the Department of Public Works shall render to any person or Permittee a bill, invoice or statement specifying the amount of the fees and costs incurred by the City for the necessary and satisfactory completion of the work covered by a permit issued to such person or Permittee for such work under the provisions of this Chapter, and charged to and payable by such person or Permittee, payment in full of such fees and costs shall be made to Public Works within ~~fifteen (15)~~thirty (30) days after such billing. Any such bill or statement shall be deemed to have been duly rendered when deposited in the United States mail, postage prepaid, directed to the person or Permittee for whom intended at the address registered by him or her with the ~~Department of Streets~~City. If the fees and costs included in any such invoice, bill or statement are not paid in full within the said period of ~~fifteen (15)~~thirty (30) days, no further application for a permit made by such

obligor, as authorized by this Chapter, shall be approved by the Director of Public Works until payment in full of such fees and costs have been made.

(Prior code § 6-2.012)

12.12.040 - Application for permit to excavate.

When application for a permit is made as provided for in Section 12.12.010, and such application to excavate and the details shown upon the accompanying plans, when such plans are required, comply with the terms of this Chapter, and the regulations of the City Council, the application and plans shall be approved by the Director of Public Works. After such approvals, one of the plans shall be filed with the Director of Public Works as a public record.

(Prior code § 6-2.02)

12.12.050 - Excavation for sewer ~~connection~~ service.

When an application is made for a permit to excavate for the purpose of making a house connection or a sewer service line or a repair of the same, the person or Permittee making such application shall pay a fee in accordance with the ~~master fee schedule if such excavation is to be made in a dedicated street area~~Master Fee Schedule.

(Prior code § 6-2.03)

12.12.060 - Excavation for storage tanks.

Whenever any person or Permittee desires to install or repair a tank or tanks for the storage of gasoline or oil, said person or Permittee shall obtain an excavation permit and pay a fee in accordance with the ~~master fee schedule~~Master Fee Schedule.

(Prior code § 6-2.04)

12.12.070 Excavation for part of building.

When an application is made for permission to excavate within the sidewalk area for the purpose of maintaining a covered area-way, the construction plans of which are approved by the Building Inspector and a building permit issued therefor, the person making such application shall pay a fee in accordance with the master fee schedule covering only so much of the area proposed to be excavated as lies outside the walls of the structure of which the said

building permit is issued.
(Prior code § 6-2.05)

12.12.080 - Form and conditions of permit.

The application, when approved and signed by the Director of Public Works or his or her authorized representative, shall constitute the permit. Permits shall be secured before the work is commenced; and after the work is properly noticed as required in Section 12.12.100, except in the case of emergencies. Permits shall not be transferable. The permit shall provide a time limit within which the work shall be completed. The permit shall be void if the work is not commenced and completed within the date specified on the permit, unless an extension of time for good cause is granted as hereinafter provided.

(Prior code § 6-2.06)

12.12.090 - Revocation of permit.

Any permit granted hereunder may be revoked by Public Works for noncompliance with any of the provisions of this title. ~~Any and when the Director determines that the Permittee's work poses hazardous situation or constitutes a public utility possessing a franchise to install, operate, maintain or use facilities in the streets covered by permit issued hereunder, although deriving its rights to occupy such streets from franchise, shall nevertheless procure such permit nuisance, public emergency, or other threat to~~

~~the extent necessary to enable the city to exercise reasonably its police powers over the performance of work by such permittee under its franchise public health, safety, or welfare.~~

(Prior code § 6-2.061)

12.12.100 - Notice of commencement of work.

~~At least two working days before~~ Before the work is started, the ~~permittee~~ Permittee shall give written notice of the time of commencement of the work to the Director of Public Works; as described in this article. Similar written notice shall be given to Police Department and/or Fire Department, if requested on permit or a proposed temporary street closure.

Permittee shall provide written notices to each property owner or business affected by the Permittee's work as follows:

(a) 72-hour prior notice for work 5 days in duration or less in all districts except for business or commercial; or

(b) 5-day prior notice for work 5 days or less in duration in business/commercial districts;
or

(c) 10-day prior notice for work 6 days or more in duration in all districts.

In addition to the notifications stated above, ~~the~~ Permittee shall post and maintain proper work signage 72 hours prior to starting work and during work to indicate type of work, hours of work, dates of start and finish, contractor's name, contact information, and a 24/7 phone number.

The signage shall be posted at least every 100 feet along any block or as directed.

Permittee shall notify ~~the PWA Right of Way Management section~~ Public Works for inspection at least forty-eight (48) hours in advance of the intended work. For Utility Company, this notification may be reduced to twenty four (24) hours.

For emergency excavation, ~~the Permittee~~, or the applicant, if a permit has not been issued, shall post and maintain notice at the site of the excavation during the construction period. The notice shall include the name, telephone number, and address of the owner, Permittee, applicant, and its agent, a description of the excavation to be performed, and the duration of the excavation. Utility Company with marked-vehicle and a foreman present at the site are exempt from posting notifications during emergencies. The notice shall be posted at least every 100 feet, or as directed, along any block where the excavation is to take place.

(Prior code § 6-2.062)

12.12.105 - Public relations and Community Outreach.

Utility Company must maintain a policy for community notification and outreach for planning and design of utilities that may take longer than thirty days to complete, ~~extending along two city blocks or six hundred feet in length~~, or may in the opinion of the Director of Public Works have significant impact on traffic, parking, access to homes and businesses, Director of Public Works may require that the Utility Company must submit a set of construction plans with a complete public outreach plan and conduct community outreach and public relation efforts addressing detours, traffic control, duration, and address the community's concerns. Utility Company shall be prepared to show purpose and the nature of the project, alternatives, proposed route, scope, duration, short and long term impacts, traffic impact, project benefits, and accommodations for the community to maintain their daily lives. ~~Utility Company shall work closely with City staff and the community for conditions of approval prior to finalizing the plans for a permit application.~~

12.12.110 - General requirements in performance of work.

A. Public Works requires compliance with regulations for workmanship, location, size and depth of excavations as it may deem necessary for the public convenience and welfare.

B. Any monument of granite, concrete, iron or other lasting material set for the purpose of locating or preserving the lines of any street or property subdivision or a precise survey reference point within the City shall not be removed or disturbed or caused to be removed or disturbed without first obtaining permission in writing from the ~~City Manager to~~ Director of Public Works. ~~To do so (a copy of which shall be filed in the office of the City Engineer before it becomes effective);~~ said permission ~~to be granted upon condition that the person applying therefor shall cause to be replaced shall be at his or her the expense, by the City Engineer of this city,~~ of Permittee and the monument so removed or disturbed shall be replaced properly and under the direction and approval of the City Surveyor.

C. In the areas hereinafter designated as "Limited Operations Area" the following requirements shall apply in addition to all others specified in this title:

1. No work that will interfere with traffic shall be performed in any public street or roadway during the hours of seven a.m. to nine a.m. and four p.m. to six p.m. (except Sundays and Holidays).

2. No equipment, construction materials or excavated material that will interfere with traffic shall be stored on any public street or roadway during hours noted above.

3. All trenches and excavations in any public street or roadway shall be backfilled and opened to traffic, or covered with suitable steel plates securely placed and opened to traffic at all times except during actual construction operations, or where otherwise permitted in writing by the Director of Public Works. The Permittee and its agent shall protect and cover open excavations with steel plates ramped to the elevation of the contiguous street, pavement, or other public right-of-way, or otherwise protected.

4. Each section of work shall be completed or temporarily paved and open to traffic in not more than five days after commencing work unless otherwise permitted in writing by the City Engineer.

Nothing herein specified shall prohibit emergency work and/or repair necessary to insure public health and safety.

D. The work shall be coordinated with other agencies or concerns working in the area to the satisfaction of the Director of Public Works.

E. The Permittee and its agent shall keep the area surrounding the excavation clean and free of loose dirt, dust, or other debris in a manner deemed satisfactory to the City. Excavation sites shall be cleaned at the completion of each work day. In addition, the Permittee and its agent shall remove all excavated material from the site of the excavation no later than the end of each work day.

F. Unless otherwise approved by the Director of Public works, all traffic lanes shall be made safe and open to traffic and pedestrians by the end of each day of work.

G. Permittee shall maintain at all times a site and all equipment free of graffiti. Any and all graffiti markings at the sites, on equipment, barricades, and facilities shall be removed immediately by the Permittee or its contractor.

(Prior code § 6-2.07)

12.12.112 – Excavation restoration requirements.

(a) Paving restoration. In any case in which the sidewalk, street, or other public right-of-way is or is caused to be excavated, the Permittee and its agent shall restore or cause to be restored such excavation in the manner prescribed by the orders, regulations, and standard plans and City specifications for complete construction and striping. Unless otherwise directed by Director of Public Works, at a minimum, trench restoration shall include the following:

(i) Continuous and contiguous resurfacing a constant width equal to the widest part of the excavation but not narrower than the width of the affected lane (approximately 13 feet wide); and

(ii) Continuous and contiguous resurfacing of lane(s) over scattered excavations may be limited to 50 feet in length along the affected lane if the excavations are no more than 50

feet apart. But shall include the entire block if scattered excavations are more than 50 feet apart and if the total number of isolated excavations are eight or more; and

(iii) Continuous and contiguous resurfacing of a lane, one-half of the length of a block, when the total longitudinal length of excavation does not exceed one-half of the length of that block; and

(iv) Continuous and contiguous resurfacing of the entire lane along the length of a block when the total longitudinal length of excavation exceeds one-half of the length of that block; and

(v) Continuous and contiguous resurfacing of the intersections on a lane by lane basis and any affected quadrant over which a trench crosses the intersection.

(vi) As an alternate to (i) through (iv) above, trench restoration may consist of the structural pavement section for the roadway's level of service as determined by the City. If the required pavement section was less than the physical match-existing pavement required by the Standard Details, City may accept Permittee's proposal to apply the additional effort for match-existing to be utilized for a two to four inch mill-and-overlay of the entire traffic lane.

Trench restoration may shall consist of the structural trench T-cut along the perimeter per Standard Details.

If requested by the Permittee, City's testing laboratory may provide pavement information using core samples to assist Permittee in planning and design of trench pavement restoration. The expense for this work will be paid by the Permittee.

(b) Backfill and replacement of base and finished pavement. Backfilling, replacement of pavement base, and finished pavement shall be performed in a manner specified by the orders, regulations, and standard plans and specifications of the City.

(c) At a minimum, plans for excavation shall indicate the following:

(i) Open excavation limit. Excavation length shall not exceed 300 feet (one City block) before starting a new excavation (next City block).

(ii) Each excavation shall be backfilled and compacted within 72 hours from the start of work. Placement of pavement base material shall be completed within 72 hours after the excavation has been backfilled.

(iii) Unless otherwise approved by the Director of Public Works, the final trench paving shall be completed no later than 72 hours after the installation of the pavement base material.

(iv) Upon written request from the Permittee, the Director may grant written approval for modifications to the requirements of Subsection (c).

(d) In any case where an excavation is not completed or restored in the time and manner specified in the permit, this Chapter, or the orders, regulations, and standard plans and specifications of the City, the Director shall order the Permittee or its agent to complete the excavation as directed. If the Permittee or its agent should fail, neglect, or refuse to comply with the order, the Director may complete or cause to be completed such excavation in such manner as the Director deems expedient and appropriate. The Permittee or its agent shall compensate the City for costs associated with the administration, construction, consultants, equipment, inspection, notification, remediation, repair, restoration, or any other actual costs incurred by the City or other agencies or departments of the City that were made necessary by said excavation. The cost of such work also may be deducted from Permittee's deposit or drawdown account pursuant to Sections 12.12.022 & 12.12.024. The Director's determination as to the cost of any work done or repairs made shall be final. In addition, the Permittee, its agent, or other responsible party may be subject to additional enforcement actions. Completion of an excavation or restoration by City shall not relieve the Permittee or its agent from liability for future pavement failures at the excavation site for which the failure was caused by Permittee or its contractor. Only suitable material can be considered the boundaries for pavement restoration. Suitable material shall include stable pavement sections without alligator-cracks or potholes contiguous with the proposed restoration. In an event when existing pavement material is not of suitable mating material, as determined by the City, Permittee shall contact the City and meet with the Engineer to determine limits of restoration.

12.12.120 - Limited operation areas.

Limited operation areas shall be those streets so designated by resolutions duly passed by the Council of the City at a regular meeting thereof.

(Prior code § 6-2.071)

12.12.130 - Compliance with state safety orders and applicable laws.

The Permittee shall obey and enforce all lawful safety orders, rules and recommendations of the Division of Occupational Safety and Health of the Department of Industrial Relations of the state of California applicable to the work and shall comply with all applicable state and local laws, ordinances, codes and lawful regulations.

(Prior code § 6-2.091)

12.12.140 - Storage of materials in public right-of-way.

~~Construction~~ ~~When permitted~~ ~~Unless approved in writing~~ by the Director of Public Works, ~~construction~~ materials may not be stored in the public right-of-way ~~for more than five days after unloading unless approved in writing for more than five days after unloading.~~ Placement of construction materials stored in the public right-of-way is subject to review and approval of the Engineer. In no case shall such storage cause inconvenience to the public. Construction equipment shall not be stored in the public right-of-way prior to its actual use at the work site and not more than five days after its use is no longer required to perform the work. ~~Unless otherwise approved by the Engineer in writing the permittee shall be subject to the street obstruction charges according to the city master fee schedule for storage of construction materials and equipment in the public right-of-way exceeding the specified five-day period.~~ Unless otherwise approved, Permittee shall be subject to street obstruction charges according to the Master Fee Schedule. Street obstruction fees may be waived if, in the opinion of the Engineer, the Permittee was delayed in removing his or her materials and equipment from the public right-of-way by unforeseen events beyond his or her control. Labor disputes, strikes,

fires and adverse weather conditions may constitute such a delay.

Failure of the Permittee to remove his or her construction equipment and materials from the public right-of-way within twenty-four (24) hours of due notice shall authorize the City to impound said materials and equipment. Costs incurred by the City in performing this work shall be charged to the Permittee and are subject to collection.

(Prior code § 6-2.093)

12.12.150 - Completion of work by City.

If, in the judgment of the Director of Public Works, the work is unduly delayed by the Permittee, for whatever reason, if the public interests reasonably so demand that immediate action be taken, the Director of Public Works, or his or her authorized representative, may order the condition remedied by written or oral, including telephonic, communication to the Permittee. If the Permittee cannot be contacted or does not take immediate action, Public Works shall have full power to complete said work, or may contract for the completion of said work, and the cost thereof, including administrative expense, shall be charged to the Permittee.

(Prior code § 6-2.10)

12.12.160 Money collected.

All money collected by the Director of Public Works for the costs of replacements and inspection thereon as provided herein or in accordance with the Master Fee Schedule, ~~shall be credited to the general fund of said city.~~

(Prior code § 6-2.101)

12.12.170 - Use of area by City.

At all times during the performance of the work the City shall have the right to use all or any part of the area occupied by the Permittee under the permit.

(Prior code § 6-2.112)

12.12.180 - Notice of completion.

Notice of completion shall be filed with the Director of Public Works by the Permittee within ten days after completion of the work.

(Prior code § 6-2.114)

12.12.190 - Street maintenance.

After the completion of the work, the Permittee shall exercise reasonable care in inspecting for and immediately repairing and making good any injury or damage to any portion of the street which occurs as a result of work done under the permit, including any and all injury or

damage to the street which would not have occurred had such work not been done.

The Permittee shall, upon notice from the Director of Public Works or his or her authorized representative, immediately repair any injury or damage in any portion of the street which occurs as a result of the work done under the permit, including any and all damage to the street which would not have occurred had such work not been done, and which, in the opinion of the Director of Public Works or his or her authorized representative, constitutes a public hazard. In the event such repairs are not made by the Permittee within twenty-four (24) hours after notice, the Director of Public Works is authorized to make such repairs.

(Prior code § 6-2.115)

12.12.200 - Responsibility for accidents.

The Permittee shall be responsible for all claims and liabilities arising out of work performed under the permit or arising out of Permittee's failure to perform the obligations with respect to street maintenance. The Permittee shall, and by acceptance of the permit agrees to, defend, indemnify, save and hold harmless the City, its officers and employees, from and against any and all suits, claims or actions brought by any person or Permittee for or on account of any bodily injuries, disease or illness or damage to person or Permittee and/or property sustained or arising in the construction of the work performed under the permit or in consequence of Permittee's failure to perform the obligations with respect to street maintenance.

(Prior code § 6-2.116)

12.12.210 - Defects appearing after completion—Duty to repair.

If the pavement or surface of the street over said excavation should become depressed or broken at any time after the work has been completed—natural wear of the surface or improper work of some other party excepted—the Permittee shall, upon written notice from and an opportunity to be heard by the Director of Public Works or his or her authorized representative, make immediate repairs to the satisfaction of Public Works.

If said pavement is not completely restored within thirty (30) days after such notice has been given, Public Works shall have the authority to perform the restoration work at the expense of the Permittee.

(Prior code § 6-2.117)

12.12.220 - Excavations—Supervision of Director of Public Works.

All excavations, filling of excavations, and repairing of street surfaces, pursuant to the provisions of this title, shall be made under the supervision and direction of the Director of Public Works to supervise and direct all such making and filling of excavations, and repairing of street surfaces, and to require that all such excavations filling and repairing comply with the requirements of the provisions of this code and of the ordinances City.

(Prior code § 6-2.13)

12.12.230 - Conduits of utilities—Maps of locations.

~~It~~Pursuant to Government Code Section 4215, it is made the duty of every person or Permittee owning, using, controlling or having an interest in pipes, conduits, ducts or tunnels under the surface of any public street, alley, sidewalk or other public place for supplying or conveying gas, electricity, communications, water, steam, ammonia or oil in, to, or from the City, or to or from its inhabitants, or for any other purpose, upon demand of the Director of Public Works, to file with the Director of Public Works upon a ~~twenty-four (24) hours~~ten-day notice or sooner, such map or set of maps as shall be demanded by said Director of Public Works, which said map or set of maps shall show in detail the ~~exact~~ location, size, description and date of installation, if known, of all mains, laterals, services and service pipes, and of all valves, pressure regulators, drips, manholes, handholes, transformer chambers or other appliances installed beneath the surface of such public streets, alleys, sidewalks or other public places in the City belonging to, used by, or under the control of, such person or Permittee, or in which such person or Permittee has any interest.

It shall be the duty of every person or Permittee, upon demand of ~~said~~ Director of Public Works, to file such corrected map or sets of maps as shall be demanded by the Director of Public Works, showing the complete installation of all such pipes and other appliances,

including all installations made during the previous year, to and including the last day of such year. ~~Each such map shall be accompanied by an affidavit endorsed thereon, subscribed and sworn to by such person or by a member of the firm or by the president or secretary of the corporation or their authorized representative, to the effect that the same correctly exhibits the details required by this title to be shown thereon.~~

Whenever any pipe, conduit, duct, tunnel or other structure located under the surface of any public street, alley or other public place, or the use thereof is abandoned, the person or Permittee owning, using, controlling or having an interest in the same, shall within thirty (30) days after such abandonment, upon demand by the Director of Public Works, file a map giving in detail the location of the pipe, conduit, duct, tunnel or other structure so abandoned. Each map or set of maps filed pursuant to the provisions of this section shall show in detail the location of all such pipes, conduits, ducts, tunnels or other structures abandoned subsequent to the filing of the last preceding map or set of maps.

12.12.235 - supporting or protecting facilities.

The owner of any facility ~~installed in accordance with the provisions of this title~~ shall bear all costs of moving, removing, shoring up, supporting or protecting said facility in the event it becomes necessary for the City or its authorized contractor to trench or excavate under or adjacent to said facility during the construction, reconstruction, repair or maintenance of any City street or any City-controlled public sanitary sewer or storm drainage under or adjacent to said facility.

(Prior code § 6-2.14)

12.12.240 - Excavations in areas between curb and sidewalk—Permit.

It is unlawful for any person or Permittee to make, or to cause or permit to be made, any excavation under, or to remove or to cause or to permit to be removed, any earth, dirt, or other formation from under that portion of sidewalk lying between the curblineline and a line parallel thereto and distant therefrom one-fourth of the legal width of the sidewalk. Any fill material or empty space under any portion of the sidewalk or the curb and gutter caused by Permittee shall be properly backfilled and compacted to the satisfaction of the Engineer.

Provided, however, that the Director of Public Works may approve a permit for the making of excavations under the aforementioned portion of any sidewalk. Before any such permit is issued, however, a request in writing to the Director of Public Works shall be made, accompanied by a detailed plan of such excavation, showing the proposed location thereof, all appurtenances thereto and the purposes for which it is to be used. Any such excavation shall be so constructed and maintained as to afford lateral, sublateral, adjacent and overhead support of the surrounding embankments and structures satisfactory to the Director of Public Works.

This section shall not prevent the necessary excavation for laying pipes or sewer connections across such portions of the sidewalks. Any permit issued under the provisions of this section may be revoked at any time by the City Council when, in its judgment, the public need

requires it. The City shall have the right to use any portion of the excavated area constructed or maintained under the authority of the aforementioned permit for the construction and maintenance of sewers, pipelines, conduits and other public work and improvements.

(Prior code § 6-2.15)

12.12.250 - Excavations—Disposition of surplus materials.

All surplus materials removed under the provisions of this title relative to excavations shall, if required by him or her, be delivered to such points as the Director of Public Works shall direct, provided the distance such material is required to be hauled does not exceed one mile. None of the provisions of this title relative to excavations shall apply to any work done or to be done along, in or upon any public street, alley or other public place pursuant to any law of the state of California providing for the improvement thereof, or to any work done or to be done along, in or upon any such street, alley or other public place pursuant to any contract for improvement authorized by the City Council, nor to excavations made by any department, board or officer of the city in the discharge of its or his or her official duties; provided, however, that the provisions contained in ~~Section 12.12.110~~ Section 12.12.110 shall apply to all such work and to all excavations to be made along, in or upon any public street, alley or other public place.

(Prior code § 6-2.16)

12.12.260 - Trenching/excavation restrictions- in recently paved roadways - moratorium streets.

No trenching or excavation shall be permitted in any street that has been constructed or resurfaced within a five-year period prior thereto, without express permission of the Director of Public Works.

Emergency work is exempted from this title.

Replacement of trench paving shall match or exceed the most recent resurfacing pavement section depth and material or as directed by the Engineer for traffic index in accordance with the latest City of Oakland Standard Details for Public Works Construction. Work in moratorium streets may include:

(i) Relocation of utilities mandated by the State, County, or Federal agencies

(ii) Services for buildings or parcels where no other reasonable means of providing service exists. ~~In such case, Permittee or the applicant shall demonstrate the reasons for causing excavation in a moratorium street to Director of Public Works for consideration.~~

(Prior code § 6-2.161)

12.12.270 - Excavations—Emergencies.

Nothing in this title relative to excavations shall be construed to prevent any person or Permittee maintaining any pipe or conduit in any public street, alley or 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 such necessity arises; provided that the person or Permittee making such excavation shall obtain a permit on the next working day. The applicant for an emergency permit shall submit a written statement of the basis of the emergency action and describe the excavation performed and any work remaining to be performed.

(Prior code § 6-2.17)

12.12.280 - Excavation permits subject to rights in others.

Every permit for excavation in or under the surface of any public street, alley or other public place shall be granted subject to the right of the City, or of any other person responsible party

entitled thereto, to use that part of such street, alley or other public place for any purpose for which such street, alley or other public place may be lawfully used.

Provisions shall be made for access to those with disabilities and special needs in accordance with The Americans with Disabilities Act of 1990 requirements.

(Prior code § 6-2.18)

12.12.290 – Violations, administrative penalties and costs.

Except in emergencies as described in section 12.12.270, violations and penalties shall apply to responsible parties violating the municipal code.

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

12.12.291. Administrative Penalties and Costs.

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

(1) For those violations subject to the incomplete excavation provisions of Section 12.12.112(d), the responsible party shall remedy the violation as directed or be subject to the imposition of administrative penalties.

(2) For violations that create an imminent danger to public health, safety, or welfare or are otherwise subject to Section 12.12.090 the Director shall notify the responsible party to immediately remedy the violation or be subject to the imposition of administrative penalties.

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

(b) Amount of Administrative Penalties. Administrative penalties assessed pursuant to Subsection (a) shall not exceed one thousand dollars (\$1,000) per day, per violation commencing with the first day of the violation. Notwithstanding the penalty limitation set forth above, the responsible party who excavates without a valid permit may be assessed a penalty not to exceed ten thousand dollars (\$10,000.00) per day, per violation commencing

with the first day of the violation. Pursuant to Section 1.08.060, in assessing the amount of the administrative penalty, the Director may consider any one or more of the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the

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

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

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

(e) Notice Imposing Administrative Penalties. If the responsible party fails to remedy the violation within the time specified in the notice of violation or if the violation is incurable pursuant to Section 12.12.291(a) (3), the Director shall notify in writing the responsible party of the Director's imposition of administrative penalties. This notice shall include the amount of the penalties and costs and declare that such penalties and costs are due and payable to the City within thirty (30) days. The notice also shall state that the responsible party has the right, pursuant to Subsection (g), to request administrative review of the Director's determination as to the designation of the responsible party and the assessment of penalties.

(f) Finality of the Director's Determination and Collection of Assessed Penalties. If no request for administrative review is filed pursuant to Subsection (g), the Director's determination is final. Thereafter, if the penalties and costs are not paid within the time specified in Subsection (e), the Director is empowered to pursue any method of collection of such penalties and costs authorized by local law including, but not limited to deductions of the Permittee's deposit pursuant to Section 12.12.022.

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

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

Director received the request for administrative review, unless extended by mutual agreement of the affected parties. The Director shall appoint a hearing officer for such hearing.

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

(j) Conduct of the Administrative Review Hearing. The administrative review hearing is a public hearing and may be recorded. During the hearing, evidence and testimony may be presented to the hearing officer. Written decisions and findings shall be rendered by the hearing officer within ten (10) days of the hearing. Copies of the findings and decision shall be served upon the parties to the hearing by certified mail.

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

(L) Additional procedures. The Director, by Department order, may adopt additional procedures to implement this Section.

12.12.292 - Civil Penalties and Fees.

(a) If no acceptable solution has been reached, the Director may call upon the City Attorney to maintain an action for injunction to restrain or summary abatement to cause the correction or abatement of the violation of this Chapter; and for assessment and recovery of a civil penalty and reasonable attorney's fees for such violation.

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

12.12.294 - Criminal fines.

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

(b) The responsible party who violates this Article shall be deemed guilty of an infraction. Every violation determined to be an infraction is punishable by (1) a fine not exceeding \$1000 for the first violation within one year; (2) a fine not exceeding \$5000 for a second violation

within one year from the date of the first violation; (3) a fine not exceeding \$500 for the third and each additional violation within one year from the date of the first violation.

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

(d) Among other violations, citations may be issued for the following specific violations in the public right of way:

- (i) Excavation without a valid permit;
- (ii) Excavation without proof of the permit;
- (iii) Excavation without notice to the Underground Service Alert;
- (iv) Excavation without public notice;
- (v) Excavation without notification to City for inspections.

12.12.296 - Suspension of action on applications.

The responsible party who is in willful noncompliance with this Chapter shall not apply for nor be issued a permit to excavate in the public right-of-way unless the Director, by written authorization, grants a waiver to this prohibition. Willful noncompliance shall include, without limitation, deliberate acts that result in failure to: (a) satisfy any terms and conditions of this Article, the orders, regulations, or standard plans and specifications of the Department or (b) pay any outstanding assessments, fees, penalties that have been finally determined by the City or a court of competent jurisdiction.

Section 2. This ordinance shall be effective immediately upon its adoption by the City Council, subject to the provisions of Section 213 of the Charter of the City of Oakland, but shall not apply to work in private properties outside of City's right of way;

Section 3. The proposed OMC changes rely on previously adopted OMC Chapter 12.12-Excavation. The intent of these changes is to extend the life expectancy of City's street and sidewalk assets and therefore reducing the work to maintain the asset. Maintenance of City's existing assets is exempt from the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Sections 15301-15332 for Class 1 - Existing Facilities, which consists of operation, repair, maintenance, permitting, or minor alterations involving negligible or no expansion of use beyond the existing. The Environmental Review Officer is directed to file a Notice of Determination/Exemption with the County Clerk;

Section 4. Nothing in this Ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law;

Section 5. If any section, subsection, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional, the offending portion shall be severed and shall not affect the validity of the remaining portions which shall remain in full effect;

Section 6. That the record before this Council relating to this Ordinance includes, without limitation, the following:

1. Final staff reports;

2. All oral and written evidence received by the City staff, and City Council before and during the hearings on the matter;
3. Matters of common knowledge and official enactments and acts of the City such as the Oakland Municipal Code.

Section 7. That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City's decision is based are respectively: (a) the City of Oakland Public Works Department, 250 Frank H. Ogawa Plaza, 4th floor, Oakland; and (b) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st Floor, Oakland.

This ordinance shall be effective immediately upon approval by the Council of the City of Oakland.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID, and PRESIDENT GIBSON MCELHANEY

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

DATE OF ATTESTATION: _____