

File No. 130412

Committee Item No. 4

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

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Committee: Land Use and Economic Development Date October 6, 2014

Board of Supervisors Meeting

Date _____

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Completed by: Andrea Ausberry Date October 3, 2014

Completed by: _____ Date _____

[Public Works Code - Installation of Communications Infrastructure in Excavation Projects]

Ordinance amending the Public Works Code to require the installation of City-owned communications infrastructure in excavation projects where the City has determined that it is both financially feasible and consistent with the City's long-term goals to develop the City's communications infrastructure.

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
Additions to Codes are in single-underline italics Times New Roman font.
Deletions to Codes are in ~~strikethrough italics Times New Roman font~~.
Board amendment additions are in double-underlined Arial font.
Board amendment deletions are in ~~strikethrough Arial font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. The Public Works Code is hereby amended by revising Section 2.4.4, to read as follows:

SEC. 2.4.4. DEFINITIONS.

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

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

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

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

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

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

2 "City communications infrastructure" shall mean conduits, pull boxes, and other facilities that
3 are used by the City to provide communications services.

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

5 "Department of Technology" shall mean the Department of Technology or any successor City
6 agency that is responsible for managing City communications infrastructure.

7 "Department of Technology Requirements" shall mean the Department of Technology's
8 regulations implementing the Department of Technology's participation in excavation projects by
9 installing City communications infrastructure.

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

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

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

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

23 "Incremental cost" shall mean the cost associated with adding City communications
24 infrastructure to an excavation project, including the cost of the materials needed by the City and any
25 additional labor costs.

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

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

5 ~~(m)~~—"Medium excavation project" shall mean any excavation of more than 100 but no
6 greater than 1,000 square feet.

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

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

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

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

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

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

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

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

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

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

8 "Standard City communications infrastructure specifications" shall mean the type, size, and
9 quantity of conduits, the size and frequency of pull boxes, and any other facilities that the Department
10 of Technology determines are necessary to serve the City's communications needs.

11 ~~(x)~~—"Utility excavator" shall mean any owner whose facility or facilities in the public
12 right-of-way are used to provide electricity, gas, information services, sewer service, steam,
13 telecommunications, traffic controls, transit service, video, water, or other services to
14 customers regardless of whether such owner is deemed a public utility by the California Public
15 Utilities Commission.

16
17 Section 2. The Public Works Code is hereby amended by revising Section 2.4.13, to
18 read as follows:

19 **SEC. 2.4.13. TRANSIT, PEDESTRIAN, BICYCLE, ~~AND~~ STORMWATER, AND**
20 **COMMUNICATIONS INFRASTRUCTURE IMPROVEMENTS AS PART OF PLANNING,**
21 **CONSTRUCTION, RECONSTRUCTION, AND REPAVING PROJECTS.**

22 (a) Whenever the Department or other Municipal Excavator undertakes a project
23 involving the planning, construction, reconstruction, or repaving of a public right-of-way, such
24 project shall include, to the maximum extent practicable and feasible, the following transit,
25 pedestrian, bicycle, and stormwater, and communications infrastructure improvements:

- (1) Street and pedestrian-scale sidewalk lighting;
- (2) Pedestrian and bicycle safety improvement measures, as established in any official City adopted bicycle or pedestrian safety plan or other City adopted planning documents;
- (3) Appropriate access in accordance with the Americans with Disabilities Act;
- (4) Public transit facilities accommodation, including, but not limited to designation of the right-of-way as a transit preferential street designation or bus rapid transit corridor;
- (5) Traffic calming devices;
- (6) Landscaping;
- (7) Low-impact design stormwater facilities consistent with the Stormwater Design Guidelines;
- (8) Other pedestrian and streetscape elements listed as appropriate to the relevant street type as identified and defined in the Better Streets Plan; ~~and~~
- (9) Other street and sidewalk improvements consistent with the City's "Transit First" Policy" (Section ~~16.102~~ 8A.115 of the City Charter) and "Better Streets Policy" (~~Chapter Section~~ 98.1 of the ~~San Francisco~~ Administrative Code); ~~and~~
- (10) Communications infrastructure.

(b) The Director, in consultation with the Directors of the San Francisco Municipal Transportation Agency, Department of Public Health, Planning Department, Department ~~on of~~ the Environment, San Francisco Public Utilities Commission, Department of Technology, and Mayor's Office on Disability shall develop orders, regulations, or amendments to the Department's Standard Plans and Specifications that address the improvements set forth in Subsection (a).

1 (c) To the maximum extent practicable and feasible, the Director shall condition all
2 excavation and street improvement permits on the inclusion of the improvements set forth in
3 Subsection (a). If such conditions would exceed the Director's regulatory authority, the
4 Director shall coordinate with other City departments to provide, to the maximum extent
5 practicable and feasible, said improvements on behalf of the City. As part of the decision on
6 any permit or authorization pursuant to the Public Works Code, the Director shall take into
7 account the permit activity's positive and negative impacts on the integration, enhancement,
8 or preservation of the improvements set forth in Subsection (a).
9

10 Section 3. The Public Works Code is hereby amended by adding Section 2.4.14, to
11 read as follows:

12 **SEC. 2.4.14. COORDINATION WITH DEPARTMENT OF TECHNOLOGY.**

13 (a) "Dig Once." To facilitate the Department of Technology's efforts to develop City
14 communications infrastructure, and limit excavation in the public right-of-way, an applicant for a
15 permit under Section 2.4.10 for the installation of underground conduits shall comply with the
16 requirements of this Section 2.4.14.

17 (b) Notice Required. An applicant for a permit to install underground conduits shall notify
18 the Department of Technology of its application in the manner set forth in the Department of
19 Technology Requirements at least 14 days before submitting the application to the Department.

20 (c) Approval of Application.

21 (1) Where the Department of Technology Will Participate. The Department may
22 approve an application and issue a permit if the Department finds that all of the following have
23 occurred:

24 (A) The applicant has complied with the Department of Technology
25 Requirements for notice of its application;

1 (B) The Department of Technology has not notified the applicant and the
2 Department that the Department of Technology will not participate in the proposed excavation project;
3 and

4 (C) The applicant has submitted plans consistent with the standard City
5 communications infrastructure specifications.

6 (2) Where the Department of Technology Will Not Participate. The Department
7 may approve an application and issue a permit if the Department finds that both of the following have
8 occurred:

9 (A) The applicant has complied with the Department of Technology
10 Requirements for notice of its application; and

11 (B) The Department of Technology has notified the applicant and the
12 Department that the Department of Technology will not participate in the proposed excavation project.

13 (d) Denial of Application. The Department shall deny an application for a permit if the
14 Department determines that the applicant has failed to comply with the Department of Technology
15 Requirements.

16 (e) Applicant's Incremental Costs. The Department of Technology shall be responsible for
17 the applicant's incremental costs when the Department of Technology participates in an excavation
18 project by installing City communications infrastructure.

19 (f) Exception. The requirements of this Section 2.4.14 shall not apply to an application for
20 an emergency permit under Section 2.4.22.

21
22 Section 4. The Public Works Code is hereby amended by adding Subarticle IX,
23 Sections 2.4.95 and 2.4.96, to read as follows:

24
25 **SUBARTICLE IX**

1 **OBLIGATIONS OF THE DEPARTMENT OF TECHNOLOGY**

2 **SEC. 2.4.95. INSTALLATION OF CITY COMMUNICATIONS INFRASTRUCTURE.**

3 (a) *Need for City Communications Infrastructure. The Department of Technology shall*
4 *consider adding City communications infrastructure to any permit issued for an excavation project*
5 *under this Article 2.4 to create more efficient delivery of communications services to the public and for*
6 *the City's needs.*

7 (b) *Response to Notice. Upon receipt of a notice issued pursuant to Section 2.4.14 that a*
8 *utility or municipal excavator intends to apply for an excavation permit to install underground conduit,*
9 *the Department of Technology shall review the application to determine whether it is both financially*
10 *feasible and consistent with the City's long-term goals to add City communications infrastructure to the*
11 *proposed excavation project.*

12 (1) *If the determination is affirmative, the Department of Technology does not need to*
13 *notify the applicant and the Department that the Department of Technology intends to participate in the*
14 *excavation project. The presumption will be that the Department of Technology will participate in the*
15 *excavation project by installing City communications infrastructure.*

16 (2) *If the determination is negative, the Department of Technology shall notify the*
17 *applicant and the Department in the time required by the notice that the Department of Technology*
18 *does not intend to participate in the excavation project.*

19 **SEC. 2.4.96. DEPARTMENT OF TECHNOLOGY REQUIREMENTS.**

20 (a) *Adoption of Requirements. The Department of Technology shall by order develop and*
21 *implement the Department of Technology Requirements. The Department of Technology shall use a*
22 *process to adopt the Department of Technology Requirements that ensures that municipal excavators,*
23 *utility excavators, and the general public have a meaningful opportunity to comment on the provisions*
24 *to be contained therein before they are formally adopted by the Department of Technology.*
25

1 **(b) Purpose of Requirements. The Department of Technology Requirements shall specify**
2 **the manner in which the Department of Technology will participate in excavation projects by installing**
3 **City communications infrastructure that meets the City's needs at a reasonable cost.**

4 **(c) Minimum Requirements. At a minimum, the Department of Technology Requirements**
5 **shall contain the following procedural and substantive requirements for the installation of City**
6 **communications infrastructure in excavation projects:**

7 **(1) The process for the Department of Technology to review planned excavation**
8 **projects in a timely manner to determine if City participation is feasible;**

9 **(2) The criteria to be used by the Department of Technology to decide whether to**
10 **decline to participate in excavation projects;**

11 **(3) The standard technical specifications for City communications infrastructure;**

12 **(4) The standard methodology for determining the incremental costs associated with**
13 **installing City communications infrastructure in excavation projects;**

14 **(5) The requirements and process for excavators to seek exemptions from using the**
15 **City's standard methodology for determining incremental costs when installing standard City**
16 **communications infrastructure in excavation projects; and**

17 **(6) Alternative methodologies for determining the City's incremental costs when**
18 **exemptions are granted.**

19
20 Section 5. Effective Date. This ordinance shall become effective 30 days after
21 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
22 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
23 of Supervisors overrides the Mayor's veto of the ordinance.

1 Section 6. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
2 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
3 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
4 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
5 additions, and Board amendment deletions in accordance with the "Note" that appears under
6 the official title of the ordinance.

7
8 Section 7. Department of Technology Implementation. The Department of Technology
9 shall adopt the order required by Section 2.4.96 of the Public Works Code within 90 days of
10 the effective date of this ordinance.

11
12 APPROVED AS TO FORM:
13 DENNIS J. HERRERA, City Attorney

14
15 By:


16 WILLIAM K. SANDERS
Deputy City Attorney

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REVISED LEGISLATIVE DIGEST
(Substituted 9/30/2014)

[Public Works Code - Installation of Communications Infrastructure in Excavation Projects]

Ordinance amending the Public Works Code to require the installation of City-owned communications infrastructure in excavation projects where the City has determined that it is both financially feasible and consistent with the City's long-term goals to develop the City's communications infrastructure.

Existing Law

Article 2.4 of the Public Works Code requires a permit from the Department of Public Works ("DPW") before any City department or private entity can excavate in the public right-of-way ("Excavation Permit").

Amendments to Current Law

The proposed amendments to the Public Works Code would require any person seeking an Excavation Permit from the Department of Public Works ("DPW") to notify the Department of Technology ("DT") prior to filing the permit application. The purpose of the notice is to enable DT to determine whether to participate in the project by installing its own underground communications infrastructure. Under the ordinance, the presumption would be that DT will participate in the project unless DT notifies the applicant to the contrary. The proposed legislation would require DT to pay the incremental costs of installing its communications infrastructure in the trench.

The proposed legislation would also require DT to provide guidance to applicants for Excavation Permits by adopting implementing regulations that would contain: (i) the process for reviewing planned excavation projects to determine if participation is feasible; (ii) the criteria for deciding whether to decline to participate in excavation projects; (iii) specifications for standard City communications infrastructure; (iv) the methodology for determining the incremental costs to install City infrastructure; (v) the process for seeking exemptions from using the City's standard methodology for determining incremental costs; and (vi) alternative methods for determining the City's incremental costs when exemptions are granted.

The substitute ordinance serves the same purpose as the original ordinance. The substitute ordinance, however, contains four major changes from the original ordinance:

- Deletes any reference to the San Francisco Public Utilities Commission using this process to install new electrical facilities;

- Makes DT's participation in an excavation project the default and requires DT to opt out instead;
- Provides that the City's cost for the installation of the City's communications infrastructure will be the excavator's "incremental cost" to install the City's facilities; and
- Authorizes DT to adopt implementing regulations.

Background Information

Each year in San Francisco many private entities and City agencies obtain Excavation Permits to excavate miles of the City's public right-of-ways either to install new facilities or to replace existing facilities used to provide essential services. When these projects are to install underground conduits, they offer the City an efficient and cost-effective opportunity to expand City-owned infrastructure that the City could use to provide communications services. Once a private or City excavator incurs the cost to excavate in the public right-of-way, the City could add its own underground infrastructure to these trenches at a significantly reduced cost.

The City could use this infrastructure either for City projects, including public safety projects, or to provide services to the public. The City's participation in these projects could also benefit persons living in the vicinity of a proposed excavation project, by reducing the likelihood that the City might need to excavate to install its own facilities there at a later date.

For the City to take advantage of these opportunities, it is essential that applicants for Excavation Permits notify DT of their planned excavation projects. This notice must be made sufficiently in advance of DPW issuing the permit to enable DT to evaluate whether participation in the project is financially feasible and consistent with the City's long-term goal to develop the City's communications infrastructure.

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Mohammed Nuru, Director, Department of Public Works
Ed Reiskin, Director, Municipal Transportation Agency
Barbara Garcia, Director, Department of Public Health
John Rahaim, Director, Planning Department
Melanie Nutter, Director, Department of the Environment
Harlan Kelly, Jr., General Manager, Public Utilities Commission
Marc Touitou, Director, Department of Technology
Carla Johnson, Director, Mayor's Office on Disability

FROM: Andrea Ausberry, Assistant Clerk, Land Use and Economic Development
Committee
Board of Supervisors

DATE: October 3, 2014

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Economic Development Committee has received the following proposed Substituted legislation, introduced by the Supervisor Chiu on September 30, 2014:

File No. 130412

Ordinance amending the Public Works Code to require the installation of City-owned communications infrastructure in excavation projects where the City has determined that it is both financially feasible and consistent with the City's long-term goals to develop the City's communications infrastructure.

If your department wishes to provide comments or reports, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c: Frank Lee, Department of Public Works
Kate Breen, Municipal Transportation Agency
Janet Martinsen, Municipal Transportation Agency
Greg Wagner, Department of Public Health
Scott Sanchez, Planning Department
Sarah Jones, Planning Department
AnMarie Rodgers, Planning Department
Monica Fish, Department of the Environment
Juliet Ellis, Public Utilities Commission

BOARD of SUPERVISORS



City Hall
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San Francisco 94102-4689
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TDD/TTY No. 554-5227

M E M O R A N D U M

TO: Mohammed Nuru, Director, Department of Public Works
Ed Reiskin, Director, Municipal Transportation Agency
Barbara Garcia, Director, Department of Public Health
John Rahaim, Director, Planning Department
Melanie Nutter, Director, Department of the Environment
Harlan Kelly, Jr., General Manager, Public Utilities Commission
Marc Tuitou, Director, Department of Technology
Carla Johnson, Director, Mayor's Office on Disability

FROM: Alisa Miller, Clerk, Land Use and Economic Development Committee
Board of Supervisors

DATE: May 31, 2013

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Economic Development Committee has received the following proposed legislation, introduced by the Supervisor Chiu on May 7, 2013:

File No. 130412

Ordinance amending the Public Works Code to require the installation of City-owned telecommunications and electricity infrastructure in excavation projects where the City has determined that it is both financially feasible and consistent with the City's long-term goals to develop the City's electrical and communications infrastructure; and to coordinate the installation of the infrastructure with municipal and utility excavators.

If your department wishes to provide comments or reports, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c: Frank Lee, Department of Public Works
Kate Breen, Municipal Transportation Agency
Janet Martinsen, Municipal Transportation Agency
Greg Wagner, Department of Public Health
Scott Sanchez, Planning Department
Sarah Jones, Planning Department
AnMarie Rodgers, Planning Department
Monica Fish, Department of the Environment
Juliet Ellis, Public Utilities Commission

Introduction Form

By a Member of the Board of Supervisors or the Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- ☐ 1. For reference to Committee. (An Ordinance, Resolution, Motion, or Charter Amendment)
- ☐ 2. Request for next printed agenda Without Reference to Committee.
- ☐ 3. Request for hearing on a subject matter at Committee.
- ☐ 4. Request for letter beginning "Supervisor [] inquires"
- ☐ 5. City Attorney request.
- ☐ 6. Call File No. [] from Committee.
- ☐ 7. Budget Analyst request (attach written motion).
- ☒ 8. Substitute Legislation File No. [130412]
- ☐ 9. Reactivate File No. []
- ☐ 10. Question(s) submitted for Mayoral Appearance before the BOS on []

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- ☐ Small Business Commission ☐ Youth Commission ☐ Ethics Commission
- ☐ Planning Commission ☐ Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative Form.

Sponsor(s):

Supervisor David Chiu

Subject:

Public Works Code - Installation of Communications Infrastructure in Excavation Projects

The text is listed below or attached:

See attached.

Signature of Sponsoring Supervisor: _____

David Chiu

For Clerk's Use Only: