



STAFF REPORT

CITY COUNCIL OF THE CITY OF SAUSALITO

AGENDA TITLE

Amending Section 17.08 of the Sausalito Municipal Code to Address Excavations within Ten (10) Feet Laterally of High Priority Subsurface Installations

RECOMMENDED ACTIONS

- (1) Open Public Hearing and receive public comment;
- (2) Close Public Hearing;
- (3) Waive full reading of Ordinance and read by title only;
- (4) Find that the adoption of the Ordinance is categorically exempt from the California Environmental Quality Act; and
- (5) Give first reading to an Ordinance of the City Council of the City of Sausalito Amending Chapter 17.08 of the Sausalito Municipal Code to Address Excavations within Ten (10) Feet Laterally of High Priority Subsurface Installations, and continue item to regular meeting of February 23, 2010 for second reading and adoption.

RECOMMENDED MOTION

Waive First Reading, Read by Title Only and Introduce an Ordinance of the City Council of the City of Sausalito Amending Chapter 17.08 of the Sausalito Municipal Code to Address Excavations within Ten (10) Feet Laterally of High Priority Subsurface Installations, and continue item to regular meeting of February 23, 2010 for second reading and adoption

SUMMARY:

Because the health and safety of our residents and the quality of our Bay environment are fundamentally important to the City, the incident of January 18, 2010 involving the release of untreated wastewater from a Sausalito-Marín City Sanitary District force main stimulated an analysis by Staff of State Law and the City's existing Municipal Code relevant to excavations. On that basis, Staff has proposed amendments to the existing Code to add the requirement that any excavation within the City Limits that will encroach to within ten (10) feet laterally of a "High Priority Subsurface Installation" as defined in California Government Code, Section 4216(e) requires both a City permit and the satisfactory inspection of the hand-excavated encroachment area before power-operated or power-driven construction methods may be utilized. In addition, the insurance limits for such permits are proposed to be increased to a level commensurate with the risks to human health, property and the environment associated with such construction.

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ISSUES

None identified.

CEQA: ARTICLE 19. CATEGORICAL EXEMPTIONS § 15307. Actions by Regulatory Agencies for Protection of Natural Resources, consists of actions taken by regulatory agencies as authorized by state law or local ordinance to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment. ARTICLE 19. CATEGORICAL EXEMPTIONS § 15308. Actions by Regulatory Agencies for Protection of the Environment, consists of actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. ARTICLE 19. CATEGORICAL EXEMPTIONS § 15321. Enforcement Actions by Regulatory Agencies, (a) actions by regulatory agencies to enforce or revoke a lease, permit, license, certificate, or other entitlement for use issued, adopted, or prescribed by the regulatory agency or enforcement of a law, general rule, standard, or objective, administered or adopted by the regulatory agency, and (2) the adoption of an administrative decision or order enforcing or revoking the lease, permit, license, certificate, or entitlement for use or enforcing the general rule, standard, or objective.

FISCAL IMPACT

No net impact. The City's costs in administering the permits and inspections will be paid by applicants. Staff will include this element in its next iteration of fees brought to Council for adoption.

STAFF RECOMMENDATION

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- (2) Close Public Hearing;
- (3) Waive full reading of Ordinance and read by title only;
- (4) Find that the adoption of the Ordinance is categorically exempt from the California Environmental Quality Act; and
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ATTACHMENTS

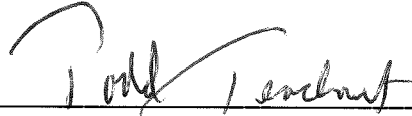
An Ordinance of the City Council of the City of Sausalito Chapter 17.08 of the Sausalito Municipal Code to Address Excavations within Ten (10) Feet Laterally of High Priority Subsurface Installations

PREPARED BY:



Jonathon Goldman
Director of Public Works

REVIEWED BY:

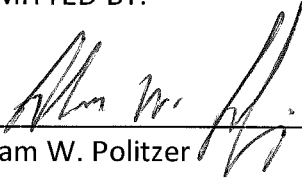


Todd Teachout
City Engineer

REVIEWED BY:

Mary Anne Wagner, Esq.
City Attorney

SUBMITTED BY:



Adam W. Politzer
City Manager

ORDINANCE NO.

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAUSALITO
AMENDING CHAPTER 17.08 OF THE SAUSALITO MUNICIPAL CODE TO
ADDRESS EXCAVATIONS WITHIN TEN (10) FEET Laterally OF HIGH
PRIORITY SUBSURFACE INSTALLATIONS**

WHEREAS, the quality of our local waters is fundamentally important to our community's health and safety; and

WHEREAS, in recent years, there have been several hazardous spills of raw sewage into the Bay which present a real environmental concern; and

WHEREAS, the City's existing code section applicable to Excavations was adopted with Ordinance No. 437 in 1951; and

WHEREAS, a recent incident involving the release of untreated sewage to public property, private property and the environment directly resulted from the use of power-driven or power-operated construction equipment that damaged a sewer force main which is identified as a "High Priority Subsurface Installation" as defined in California Government Code, Section 4216(e); and

WHEREAS, the City desires to take every reasonable effort to prevent a recurrence of such an incident.

NOW, THEREFORE, the City Council of the City of Sausalito does hereby ordain as follows:

1. The City Council of the City of Sausalito does hereby adopt the amended Chapter 17.08 of the Sausalito Municipal Code attached hereto as Exhibit "A" and incorporated herein by reference pursuant to all applicable provisions of State law.
2. The effective date of the change is _____, 2010.
3. The City Council hereby finds that the change in the Sausalito Municipal Code Section 17.08 adopted pursuant to this Ordinance is categorically exempt from the California Environmental Quality Act, California Public Resources Code Section 21000, *et seq.*, ("CEQA") under § 15307, § 15307, and § 15321 and the City Clerk, or her or his designee, is directed to cause a Notice of Exemption to be posted in accordance with CEQA.
4. This Ordinance shall be published once within fifteen (15) days after its passage and adoption in a newspaper of general circulation in the City of Sausalito.

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THE FOREGOING ORDINANCE was first read at a special meeting of the Sausalito City Council on the 2nd day of February, 2010, and was adopted at a regular meeting of the Sausalito City Council on the 23rd day of February, 2010 by the following vote:

AYES: Councilmembers:
NOES: Councilmembers:
ABSTAIN: Councilmembers:
ABSENT: Councilmembers:

MAYOR OF THE CITY OF SAUSALITO

ATTEST:

CITY CLERK

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Chapter 17 08
EXCAVATIONS GENERALLY

17.08.010 Permit--Required When.

It is unlawful for any person to make, or cause or permit to be made, any excavation, fill or drain in, under or on the surface of any land, public or private, in the City, without first obtaining a Permit, or in violation of any of the terms or conditions of such Permit; provided, however, that no Permit shall be required for excavations for the foundation or basement of any building for a building Permit has been issued, or for grading in subdivisions according to plans which have been approved by the City Council as required by Subdivision Ordinance No. 430, or for excavations by any public utility for the installation, operation, inspection, repair or replacement of any of its facilities (with the exception of trenchless, boring, jacking, moling or other excavation methods within ten (10) feet laterally of any "High Priority Subsurface Installation" as defined in California Government Code, Section 4216(e)), or for the grading or any parcel of land where no bank is left standing more than four feet in height and/or wherein less than fifty (50) cubic yards of earth is removed placed and/or otherwise disturbed in any twelve consecutive months; provided further, however, that a Permit is required for work of any magnitude where watercourses are altered. (Ord. 437 §1, 1951).

Recognizing the significant threat to public health, property and the environment that arises when visual confirmation of the precise depth and lateral extent of certain hazardous underground utilities cannot be established by surface locating methods, a Permit shall be required of any entity desiring to install, inspect, repair or replace any underground utility, appurtenance or facility by trenchless, boring, jacking, moling or other excavation methods within ten (10) feet laterally of any "High Priority Subsurface Installation" as defined in California Government Code, Section 4216(e). Further, in conformance with California Government Code Section 4216.4, the Permittee shall determine the exact location of said High Priority Subsurface Installations in conflict with the excavation by excavating with hand tools within the area of the approximate location of the High Priority Subsurface Installations in the presence of a City Inspector who shall be required to approve in writing the use of any power-operated or power-driven excavating or boring equipment within the approximate location of the High Priority Subsurface Installation. As provided for in California Government Code Section 4216.4, power-operated or power-driven excavating or boring equipment may be used for the removal of any existing pavement if there are no High Priority Subsurface Installations contained in the pavement. If documented notice of the intent to use vacuum excavation devices, or power-operated or power-driven excavating or boring equipment, has been provided to the High Priority Subsurface Installation operator or operators and it is mutually agreeable with the operator or operators and the excavator, the excavator may utilize vacuum excavation devices, or power-operated or power-driven excavating or boring equipment within the approximate location of a subsurface installation and to any depth. In such a case, the City Inspector's approval shall be made in writing along with the written agreement between Permittee and High Priority Subsurface Installation operator(s).

17.08 020 Permit--Application requirements and filing.

The Application for Permit shall be filed with the City Building Inspector in duplicate and shall set forth the following:

- A. A full identification, and the residence and business address of the applicant or his or her agent and the owner of the land on which the work is proposed to be done,
- B. A complete description and location of the property,
- C. The exact nature of the proposed work and the materials to be moved. An estimate of the approximate number of cubic yards to be moved and what disposition is to be made of the material,
- D. A statement of the manner in which it is proposed to excavate or fill and move the materials, the slope of the sides, the level of the floor, details of retaining walls and drainage structures, if any; the kind of equipment proposed to be used; and
- E. The time of commencement and completion. (Ord. 437 §2, 1951).

17.08.030 Permit--Application fees, approval and appeal procedure.

- A. At the time of filing the application the applicant shall pay a fee of one cent per cubic yard based on estimate of subsection C of Section 17.08.020, with a minimum fee of two dollars and fifty cents. Immediately upon filing the application, the city building inspector shall investigate and either approve, modify or deny the permit.
- B. Should the city building inspector modify or deny the application in whole or in part, the applicant may appeal in writing to the city council for review.
- C. Where work has commenced before proper and adequate permit is issued, all fees shall be doubled. However, such double fees do not hold the applicant free of any possible penalties as provided in Section 17.08.100. (Ord. 437 §3, 1951) .

17.08.040 Permit--Reasons for denial.

The application shall be denied if it appears to the city building inspector or the city engineer from the investigation that such excavation would remove the lateral and subjacent support of the adjacent land or would result in a dangerous topographic condition, or result in seepage or slides, or would improperly divert the flow of drainage waters, or would create or increase an attractive nuisance dangerous to public safety, or would otherwise in any manner endanger the public health or safety, or be detrimental to the public welfare, despite all precautions which the applicant is willing, ready and able to take. (Ord. 437 §4, 1951).

17.08.050 Certificate of insurance may be required.

The city building inspector or city engineer may require, as a condition to the granting of any such permit, that the deposit with the city clerk a certificate of a responsible insurance company, showing that the applicant is insured in an amount not less than a sum certain, to be fixed by the city council, not to exceed one hundred thousand dollars, or, in the case of High Priority Subsurface Installations, not to exceed five million dollars. against any loss or damage to persons or property arising directly or indirectly from the operations of the applicant or any persons acting in his behalf in carrying on any operation connected directly or indirectly with the work. (Ord. 437 §5, 1951).

17.08.060 Permit--Conditions of issuance.

- A. If, in the opinion of the city building inspector or city engineer any such excavation will create or aggravate a dangerous condition if left open, such excavation shall be enclosed by a fence sufficiently high, tight and strong to eliminate such dangerous condition.
- B. Any rock, earth, or other material which may be dropped or deposited on any public street or place by any means shall be immediately removed in a manner and to an extent satisfactory to the city engineer, at the expense of the person to whom the permit was issued.
- C. The applicant shall save, indemnify and keep harmless the city against all liabilities, judgments, costs and expenses which may in any wise accrue against the city in consequence of the granting of this Permit.
- D. Tractors (with or without lugs), steel wheeled vehicles, or heavy equipment shall not be operated on city streets without proper protection to pavement.
- E. Any damage to property, public or private, shall be repaired at expense of the permittee. (Ord. 437 §6, 1951).

17.08.070 Revocation or suspension of Permit--Appeal.

Any permit granted under this chapter may be revoked or suspended by the city building inspector, as in his discretion may seem reasonable and just, for any reason for which the issuance of such permit might lawfully be denied, or for any failure to comply with any of the terms of this chapter or of such Permit. Appeal to set aside any revocation or suspension of permit may be made in writing to the City Council. (Ord. 437 §7, 1951).

17.08.080 Expiration of Permits--Supplemental Permit issuance procedure.

In the event that any work for which a Permit has been granted under this chapter is not commenced within six months from the date of issuance of the permit, or in the event that work on said excavation or fill is at any time abandoned for a period of six consecutive months, the permit shall automatically expire, without notice, and no further work covered by the permit shall be done; however, the conditions expressed in the permit shall remain binding upon the person to whom such a Permit was issued, and all legal and equitable remedies shall be available against him for any breach thereof. When the amount of material excavated or the fill equals the number of cubic yards which the permit authorizes to be excavated or filled, no further excavation or fill may be made until a new or supplemental permit to excavate has been issued. In either event, an application for a supplemental permit to continue or enlarge the excavation or fill may be filed, setting forth all the information required in the original application. If such supplemental permit is issued, the applicant shall pay an additional inspection fee at the rate of one cent per cubic yard. (Ord. 437 §B, 1951).

17.08.090 Effect of chapter upon other Ordinances.

Nothing in this chapter, or in any Permit granted under this chapter, shall be deemed to authorize the doing or the commission of any act contrary to any term or provisions of, or without any license or Permit required by, any other Ordinance of this City. All blasting is to be done in

accordance with Ordinance No. 403 All work on City streets is to be done in accordance with Ordinance No. 408, as codified In Chapter 17.12 (Ord: 437 §9, 1951)

17 08.100 Penalties for violation.

The violation of any provision of this chapter shall be an infraction. Nothing contained in this chapter shall be construed to limit the power of the City to use all other legal or equitable remedies against any person who shall violate any term or provision of this chapter. (Ord. 1054 §6, 1990: Ord. 437 §10, 1951)