

TITLE 7
PUBLIC WORKS

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CHAPTER 1.
DATUM PLANE

Sections:

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7-1.01. Established.

The official base or datum plane shall be the elevation of mean high tide of San Francisco Bay, as determined by the City Engineer from which all grades and elevations in the City shall be determined, such base being thirty-seven and forty-seven hundredths feet (37.47') below a certain iron monument near the northwest corner of San Pablo Avenue and Park Avenue in the City, which monument is hereby established as one of the benchmarks for the City.

(Sec. 1, Ord. 311, thereafter codified in Sec. 24.2 E.T.C.)

7-1.02. Monuments.

(a) Removal or Disturbance of Monuments. It is hereby declared to be unlawful for any person maliciously to remove or disturb or cause to be removed or disturbed, any monument, azimuth, reference or witness mark set for the purpose of locating or preserving the lines of any street or property subdivision or as a benchmark, or any control monument as defined in Division 8 of the Public Resources Code of the State of California within the City of Emeryville.

(b) Permission and Bond for Moving Monuments. In the event it becomes necessary to remove or disturb a monument, a person so doing shall first obtain permission in writing from the City Engineer and post a bond in the amount of one thousand dollars (\$1,000.00) if deemed necessary by the City Engineer.

(c) Violation. The violation of subsections (a) and (b) of this section shall be a misdemeanor as specified in Title 1, Chapter 2, Section 1-2.01 of this Code.

(Ord. 82-012, eff. Aug. 17, 1982)

CHAPTER 2.
EXCAVATIONS AND
ENCROACHMENTS IN THE PUBLIC
RIGHT OF WAY*

* Former Chapter 2, "Excavations," was adopted by Ordinance 221 and originally codified as Sections 24.13 – 24.28 of the Emeryville Town Code. It was subsequently recodified as Sections 7-2.01 – 7-2.13 of this code. Ordinance 00-003 amended the chapter in its entirety. Ordinance 221, as amended by Ordinance 440, were formerly codified in this chapter.

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7-2.01. Definitions.

(a) "Applicant" shall mean any owner or duly authorized agent of such owner, who has

submitted an application for an encroachment permit.

(b) “City” shall mean the City of Emeryville.

(c) “Department” shall mean the Department of Public Works.

(d) “Deposit” shall mean any bond, cash deposit or other security provided by the applicant.

(e) “Director” shall mean the Director of the Department of Public Works or authorized designee and shall include the term “City Engineer.”

(f) “Encroachment” shall mean any infringement or improvements on, under, over or across the public right of way.

(g) “Encroachment agreement” shall mean an agreement between the City and: (1) an applicant that is a utility or other person installing, using or maintaining facilities in the public right of way; (2) an applicant that is subject to an ongoing franchise or use fee or franchise or fee agreement; or (3) an applicant for which it is in the City’s best interests to enter into an encroachment agreement.

(h) “Encroachment permit” or “permit” shall mean a written permit to perform an excavation or any other infringement or improvement on, under, over or across the public right of way that has been granted by the Department in accordance with this chapter.

(i) “Excavation” shall mean any opening in the surface or subsurface of the public right of way.

(j) “Facility” or “facilities” shall mean any and all cables, cabinets, ducts, conduits, converters, equipment, drains, handholds, manholes, pipes, pipelines, splice boxes, surface location markers, tunnels, utilities, vaults and other appurtenances or tangible things owned, leased, operated or licensed by an owner or person that are located or proposed to be located in the public right of way.

(k) “Owner” shall mean any person, corporation, partnership, agency or other entity who owns facilities that are or proposed to be installed or maintained in the public right of way.

(l) “Overlay” shall mean an application of at least one and one-half inches (1½) thickness of asphaltic concrete on the street surface.

(m) “Permittee” shall mean the applicant to whom an encroachment permit has been granted by the Department in accordance with this chapter, and includes the owner.

(n) “Person” shall mean any natural person, corporation, partnership, governmental agency or any other entity.

(o) “Public right of way” shall mean the area across, along, beneath, in, on, over, under, upon or within the dedicated public alleys, boulevards, courts, curbs, easements, lanes, paths, places, roads, sidewalks, streets and ways within the City of Emeryville, as they now exist or hereafter will exist and that are under the permitting jurisdiction of the Department.

(p) “Slurry seal” shall mean an asphaltic emulsion with a sand aggregate that is used to “seal” the street from surface water and replaces the fine aggregate at the surface of the street.

(q) “Utility” shall mean any person owning, operating or installing in the public right of way facilities for providing water, sewer, gas, electric, telecommunication, cable, traffic controls, transit service, steam, video, Internet or other utility services.

(Sec. 2 (part), Ord. 00-003, eff. July 21, 2000)

7-2.02. Permit Required.

(a) No person shall make, cause or permit to be made any excavation in the public right of way or make any improvements on, under, over or across the public right of way without first obtaining an encroachment permit from the Department, with the exception of projects undertaken by the City. No encroachment permit shall be issued if the applicant does not have legal authority to occupy and use the public right of way for the purposes identified in the application.

(b) The Director shall require an applicant to enter into an encroachment agreement with the City if: (1) the applicant is a utility or other person installing, using or maintaining facilities

in the public right of way; (2) the applicant is subject to an ongoing franchise or use fee or franchise or fee agreement; or (3) it is in the City's best interests to enter into an encroachment agreement. An encroachment agreement may not obviate the need for an encroachment permit.

(Sec. 2 (part), Ord. 00-003, eff. July 21, 2000)

7-2.03. Orders, Regulations, Rules and Standards of City.

In addition to the requirements set forth in this chapter, the Department shall adopt such orders, regulations, rules or standards as it deems necessary in order to preserve and maintain the public health, safety, welfare and convenience. All work in the public right of way pursuant to this chapter shall be performed in accordance with such orders, regulations, rules or standards, except when the Director grants prior written approval to deviate from such orders, regulations, rules or standards due to the given circumstances and in the best interests of the City. These standards shall include compaction, backfill and pavement restoration requirements.

(Sec. 2 (part), Ord. 00-003, eff. July 21, 2000)

7-2.04. Permit Application.

Any person requiring a permit pursuant to this chapter shall submit an application in the format and manner specified by the Director and shall include:

(a) The name, address, telephone number and facsimile number of the applicant, owner and contractor. A telephone number shall be provided for a 24-hour contact.

(b) A description of the location, purpose, method of construction and surface area of the proposed excavation or encroachment.

(c) A plan showing the proposed location and dimensions of the excavation or encroachment and the facilities to be installed, maintained or repaired in connection with the excavation or encroachment and such other details as the Department may require. The appli-

cant shall provide as-built drawings prior to the issuance of a notice of completion as required by the Department.

(d) The proposed start of work and estimated duration, including the duration of the restoration of the public right of way disturbed by the excavation or encroachment.

(e) Documentation of the franchise, easement, permit, license, statute or other legal instrument that authorizes the owner to use or occupy the public right of way for the purpose described in the application. If the owner is not the applicant, then the applicant must also provide written authorization to act on behalf of the owner.

(f) Documentation showing that the contractor undertaking the work has the appropriate license under the State of California.

(g) Written certification that all material to be used in the work, including materials for the restoration of the public right of way, will be on hand and ready to use prior to any portion of the work beginning.

(h) Written certification that the applicant and owner are in compliance with all terms and conditions of this chapter, as well as the Department orders, regulations, rules and standards; and that the applicant and owner are not subject to any outstanding assessments, fees, penalties or other charges of the City.

(i) Written certification of the value of the work to be undertaken.

(j) A current business license tax certificate for the owner and applicant issued by the City.

(k) Evidence of payment of the deposit for the administrative/inspection fee; performance security; and any other appropriate fees or charges.

(l) Evidence of insurance for the owner, applicant and/or contractor as specified by the Department.

(m) Evidence of appropriate environmental or safety review, such as an approved health and safety plan.

(n) Any other information that may reasonably be required by the Department. (Sec. 2 (part), Ord. 00-003, eff. July 21, 2000)

7-2.05. Action on Permit Application.

(a) After receipt of an application for an encroachment permit, the Department shall determine whether the application is complete. If the application is deemed to be incomplete, the Department shall advise the applicant in writing of the reasons for rejecting the application as incomplete.

(b) If the application is deemed complete, the Director shall deny, approve or conditionally approve the application. In order to preserve and maintain the public health, welfare, safety and convenience, the Director may condition a permit with specified requirements including but not limited to, those that limit or modify the facilities to be installed or maintained, the location of the facilities to be installed or maintained and the time, place and manner of excavation.

(c) An application shall be denied or conditionally approved if there is no longer capacity in the public right of way or if there is no longer capacity in the public right of way without jeopardizing the City's ability to undertake future public projects including but not limited to undergrounding overhead utilities pursuant to Chapter 4 of Title 7.

(d) An application may be denied for the following reasons:

(i) If previous work done by the applicant or owner was not done in the manner prescribed by this chapter or such person has willfully failed to comply with the requirements of this chapter. An applicant who continues to be in willful noncompliance with an already issued encroachment permit may not apply for any subsequent encroachment permit until the applicant comes into compliance or if the Director waives this prohibition.

(ii) If the applicant does not have the legal authority to occupy and use the public right of

way for the purposes identified in the application.

(iii) Failure to comply with the requirements of this chapter, including standards for excavation and backfilling adopted by the Department.

(iv) The application area is subject to the moratorium on excavations pursuant to this chapter.

(v) It is determined not to be in the best interests of the City.

(e) If the application is denied, the Department shall advise the applicant in writing.

(f) If the application is approved or conditionally approved, the Department shall issue a permit to the applicant, which shall be kept at the job site at all times and be presented upon demand.

(g) The permit shall be limited to the location, extent of excavation or encroachment, time, duration and purpose set forth in the application unless otherwise conditioned in the permit.

(h) Issuance of a permit pursuant to this chapter is in no way a precedent for any other permit, agreement or encroachment or waiver of any franchise fee.

(Sec. 2 (part), Ord. 00-003, eff. July 21, 2000)

7-2.06. Commencement of Work.

Permittee shall notify the Director within two (2) working days prior to commencing work under a permit.

(Sec. 2 (part), Ord. 00-003, eff. July 21, 2000)

7-2.07. Duration and Validity of Permits; Nontransferability of Permits.

Permits shall be void if construction is not begun within thirty (30) calendar days of the date of the permit or if the work has not been completed within the specified duration. The Director may extend the permit upon written request of the permittee. Permits are not transferable

(Sec. 2 (part), Ord. 00-003, eff. July 21, 2000)

7-2.08. Prohibition on Open Trenches.

No trench shall be left open at the end of a work day unless steel plated in accordance with the Department's standards.
(Sec. 2 (part), Ord. 00-003, eff. July 21, 2000)

7-2.09. Permit Provisions.

Encroachment permits issued by the Department shall address: responsibility of the owner and applicant; indemnification of the City; insurance and bonding requirements for the applicant and owner; deposit and fee requirements; warranty of work for two (2) years; participation in coordination efforts pursuant to this chapter; safety requirements; traffic control; cleaning of area; signage; notification to the Underground Service Alert; restoration standards; abandonment; submittal of as-built plans; inspection; relocation; work hours; technical requirements and any other conditions deemed in the City's best interests.
(Sec. 2 (part), Ord. 00-003, eff. July 21, 2000)

7-2.10. Fees; Deposits; Bonds.

(a) Application and Inspection Fees. Prior to the issuance of an encroachment permit, applicants shall be required to deposit the estimated fee for administrative review and inspection of the work in accordance with the Department's fee schedule. Upon the completion of the work, the City shall refund to the permittee any amount of the deposit that remains in excess. If the fees for administrative review and inspection exceed the amount of the deposit, the permittee shall submit the additional amount within five (5) business days of notification from the City.

(b) Performance Security for Encroachment Permits. Prior to the issuance of an encroachment permit and in order to ensure the completion of the work in accordance with the requirements of this chapter, applicant shall be required to: deposit one thousand dollars (\$1,000.00) with the City; provide a performance bond in the amount of ten thousand dollars (\$10,000.00) that is issued by a surety admitted

to do such business in the State of California and on the form provided by the City; or provide other security acceptable to the Director.

(c) Performance and Warranty Security for Encroachment Agreements. Performance and warranty security for encroachment agreements shall be in accordance with the agreement, which may exceed the amounts set forth in subsection (b) above, and as determined to be in the best interests of the City.

(d) Additional Fees. In the instances when administration of this chapter or inspection will be unusually costly to the Department, the Director may require the applicant to pay an additional sum in excess of the amount charged elsewhere in this chapter. Upon the completion of the work, the City shall refund to the permittee any amount of the additional fees that remain in excess. If the costs incurred by the City exceed the amount of the additional fees, the permittee shall submit the additional amount within five (5) business days of notification from the City.

(Sec. 2 (part), Ord. 00-003, eff. July 21, 2000)

7-2.11. Stop Work Order; Permit Modification; Permit Revocation.

The Director may issue a stop work order, impose new conditions on the permit or revoke a permit if the Director has determined that a person has violated this chapter or any condition of the permit; that an excavation poses a hazardous situation or constitutes a public nuisance, public emergency or threat to the public health, safety or welfare; or when the Director determines that it is in the City's best interests.

(Sec. 2 (part), Ord. 00-003, eff. July 21, 2000)

7-2.12. Restoration of the Right of Way Prior to Completion of the Work.

(a) Every permittee excavating or encroaching on the public right of way shall undertake such work diligently and restore the right of way to a like new condition.

(b) The Department shall adopt standards for the restoration and backfilling of excavations within the public right of way, with which every permittee must comply, unless waived in writing by the Director in the best interests of the City.

(c) Prior to completion of the work, permittee shall immediately notify the Department in order for the work to be inspected. If the work meets the requirements of this chapter, including any permit conditions, then such notice of completion shall be noted on the application or otherwise in writing.

(d) If the work is not completed within the time required or is not acceptable, then the Director shall notify the permittee in writing. Within forty-eight hours of such notice, permittee shall restore the work so it meets the requirements of this chapter, including any permit conditions, and remedy all deficiencies including subsurface material or pavement becoming depressed, broken or otherwise failing. If the permittee fails to do the restoration or backfill work after such notice, then the City may undertake such work at the expense of the permittee and/or owner. The Director's determination of the cost of the work performed shall be final. If the permittee fails to compensate the City within five (5) business days of notification, then the City can take whatever actions are necessary to recover its damages, costs and expenses, including but not limited to withholding the amount due with payment made from the performance deposit or any remaining administrative or inspection fee amounts, commencing an action against the bond. Repair or restoration by the City shall not relieve the permittee and owner from any and all liability at the site of the repair or restoration including but not limited to future failures.

(e) The City may undertake the incomplete or inadequate restoration or repair work at the expense of the permittee and/or owner without notification to the permittee, if the Director has determined that a person has violated this chapter or any condition of the permit; that an excavation poses a hazardous situation or constitutes

a public nuisance, public emergency or threat to the public health, safety or welfare; or when the Director determines that it is in the City's best interests.

(Sec. 2 (part), Ord. 00-003, eff. July 21, 2000)

7-2.13. Warranty.

(a) Permittee's work shall be warranted for two (2) years to ensure the continued compliance with the requirements of this chapter, including the conditions of any encroachment permit.

(b) The permittee and owner shall be responsible for continual inspection of the work during the warranty period to ensure that if deficiencies arise in the work, such as subsurface material or pavement becoming depressed, broken or otherwise failing, that these deficiencies will be remedied immediately. Any other deficiencies in the work shall be remedied within forty-eight (48) hours of notification by the Department. If the deficiencies are not remedied, then the City shall repair or restore, or cause to be repaired or restored, such deficiencies in such manner as the Director deems expedient and appropriate at the expense of the owner and/or permittee. The Director's determination of the cost of the repair or restoration performed shall be final. If the permittee fails to compensate the City within five (5) business days of notification, then the City can take whatever actions are necessary to recover its damages, costs and expenses, including but not limited to withholding the amount due with payment made from the performance deposit or any remaining administrative or inspection fee amounts, commencing an action against the bond. Repair or restoration by the City shall not relieve the permittee and owner from any and all liability at the site of the repair or restoration including but not limited to future failures.

(c) The City may undertake the restoration or repair work at the expense of the permittee and/or owner without notification to the permittee, if the Director has determined that a

person has violated this chapter or any condition of the permit; that an excavation poses a hazardous situation or constitutes a public nuisance, public emergency or threat to the public health, safety or welfare; or when the Director determines that it is in the City's best interests. (Sec. 2 (part), Ord. 00-003, eff. July 21, 2000)

7-2.14. Emergency Excavations or Encroachments.

Nothing contained in this chapter shall be construed to prevent any person from taking action necessary for the preservation of life or property when such necessity arises during days or times when the Department is closed. The Department shall be notified as soon as possible of such work, but in any event within two (2) hours after the Department's offices are first opened. Upon notification to the Department, the person shall submit an application for a permit for the work. Any emergency work done shall be limited to preservation work and not expanded without first obtaining a permit. Excavations done pursuant to this section shall be subject to all fees and requirements of this chapter.

(Sec. 2 (part), Ord. 00-003, eff. July 21, 2000)

7-2.15. Moratorium Areas.

Permission to excavate in newly constructed, repaved, overlaid or resurfaced streets shall not be granted for five (5) years after completion of the work as evidenced by the filing of a notice of completion, with the exceptions of:

- (a) Emergency work that is necessary for the preservation of life or property.
- (b) Interruption of essential utility service.
- (c) Work that is mandated by city, state or federal legislation.
- (d) Service for buildings where no other reasonable means of providing essential utility service exist.
- (e) Work when the permittee agrees to slurry seal the entire width of the street for the length of the excavation or pay the City to do this overlay work.

(f) Other situations deemed by the Director to be in the best interest of the City.

All permits that are issued under the exceptions set forth above shall be in accordance with all other requirements of this chapter. (Sec. 2 (part), Ord. 00-003, eff. July 21, 2000)

7-2.16. Identification of Visible Facilities.

Each visible facility in the public right of way shall be clearly identified with the name of the owner of the facility, in accordance with Department rules or standards.

(Sec. 2 (part), Ord. 00-003, eff. July 21, 2000)

7-2.17. Relocation of Facilities.

(a) Within thirty (30) days of receipt of a written request from the City, permittee and/or owner shall relocate its facilities at its sole cost and expense if the facility interferes with a project of the City of Emeryville or Emeryville Redevelopment Agency.

(b) Within thirty (30) days of receipt of a written request from the City, permittee and/or owner shall at its sole cost and expense locate any subsurface facility by potholing when required by the City for the purpose of confirming the location of existing facilities in order to design or construct public facilities.

(Sec. 2 (part), Ord. 00-003, eff. July 21, 2000)

7-2.18. Abandonment of Facilities.

(a) Whenever a facility is abandoned in the right of way, the person owning, using, controlling or having an interest in the facility shall within thirty (30) days after such abandonment file a statement in writing with the Department, including a detailed description of the facility's location, including a map and/or plans.

(b) Any facility not occupied within three (3) years from the date of final inspection shall be deemed abandoned. Substructures shall be considered occupied so long as there are active facilities in at least one of the ducts of the substructure.

(c) Upon abandonment, the City may require the facility to be removed by the owner at

its own expense or at the City's discretion, all or part of the facility may be abandoned in place with ownership deemed to be transferred to and vested in the City at no cost to the City.

(Sec. 2 (part), Ord. 00-003, eff. July 21, 2000)

7-2.19. Coordination of Excavations.

(a) Any utility owning, operating or installing in the public right of way facilities for providing water, sewer, gas, electric, telecommunication, cable, traffic controls, transit service, steam, video, Internet or other utility services shall prepare and submit to the Director a utility master plan, in the format specified by the Director and including maps, that shows the location of the utility's existing facilities in the public right of way and shows the utility's planned major work exceeding fifteen (15) calendar days in duration or one hundred (100) feet to be excavated in the right of way for the next five (5) years. Utilities shall submit the initial master plan within ninety (90) days after the effective date of the ordinance codified in this chapter and prior to the issuance of any encroachment permit. Each utility shall then submit an annual update by July 1 of each year.

(b) The Director shall prepare a five-year street construction and repaving plan that will be updated on an annual basis after receipt of the updated utility master plans and to address changed circumstances. The Director shall make the five-year construction and repaving plan available for public inspection and shall send it to all utilities that have submitted a utility master plan.

(c) Prior to applying for an encroachment permit, the applicant shall coordinate to the greatest extent possible with the utility and street work shown on five-year construction and repaving plans in order to avoid undue disruption and interference with the public use of the public right of way.

(d) Pursuant to an encroachment agreement with the City and in order to reduce the number of street excavations, utilities shall cooperate in planning, locating and constructing utility joint trenches with other similar utilities and/or the City by:

(i) placing additional similar conduits or other facilities, which shall then be made available to third parties at a fair market value on a first-come, first-served basis, nondiscriminatory basis.

(ii) allowing other utilities to place their facilities in any trenches that have not been completed at the time the request is made assuming that an agreement can be reached regarding cost-sharing for the joint trench.

(e) Utilities shall participate in meetings with the City and other utilities to better facilitate coordination of activities.

(Sec. 2 (part), Ord. 00-003, eff. July 21, 2000)

7-2.20. Violation of this Chapter.

The Director shall have authority to enforce the provisions of this chapter. The Director shall serve written notice on any person to abate a violation of this chapter; Department orders, rules, regulations and standards; the terms and conditions of any permit; or requirement to deposit fees or other charges. Any person responsible for violating this chapter may be subject to the penalties specified in this Code and chapter. (Sec. 2 (part), Ord. 00-003, eff. July 21, 2000)

7-2.21. Remedies; Penalties.

The City may seek any or all of the following remedies in the event of a violation of any provision of this chapter; the Department's orders, rules, regulations and standards; or any term, condition or limitation of any permit:

(a) Public Nuisance. As set forth in Section 1-2.01(c), any violation of the provisions of this chapter shall be deemed a public nuisance and may be abated in accordance with Chapter 11 of Title 6 of this Code.

(b) Administrative Penalties.

(i) The Director shall notify the person responsible for a violation that he or she has forty-eight (48) hours to correct or otherwise remedy the violation or be subjected to the imposition of administrative penalties. For violations that create an immediate threat to the public health,

safety or welfare, or are otherwise subject to emergency remediation or abatement, the person responsible shall be notified that they must immediately remedy the violation or be subjected to the imposition of administrative penalties.

(ii) Administrative penalties assessed pursuant to subsection (a) shall not exceed five hundred dollars (\$500.00) per day, per violation until the violation is corrected or otherwise remedied to the satisfaction of the Director or the assessed penalty paid. In assessing the administrative penalty, the Director may consider any one or more of the following: the nature and seriousness of the misconduct, 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.

(iii) 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.

(iv) If the person designated as responsible fails to remedy the violation within the time specified in the notice, then the Director shall notify the person in writing of the imposition of penalties and costs and declare that such penalties and costs are due and payable to the City within thirty (30) days.

(v) Any person who has been assessed administrative penalties and costs may seek administrative review by filing an appeal with the City Manager or designee within ten (10) days of the date of notice of the imposition of the penalties. The appeal shall specify the details of the appeal. If no appeal is filed within the ten (10) days, then the Director's determination is final and the Director is authorized to pursue any method of collection authorized by local law, including deductions of permittee's deposit.

(vi) With ten (10) days of receipt of an appeal, the affected parties shall be notified by certified and regular mail of a date, time and place for the City Manager or designee to hear

the appeal. The parties to the hearing may submit written information for prior consideration.

(vii) The hearing will not be conducted in accordance with the formal rules of evidence, but a written decision will be rendered within ten (10) days of the hearing. The decision of the City Manager or designee shall be final.

(c) Civil Penalties.

(i) The Director may call upon the City Attorney to maintain an action for injunction, summary abatement or abatement of any violation of this chapter, and for assessment and recovery of a civil penalty and reasonable attorneys' fees for such violation.

(ii) Any person who violates this chapter may be liable for a civil penalty, not to exceed five hundred dollars (\$500.00) per day per violation, which penalty shall be assessed and recovered in a civil action brought in the name of the City by the City Attorney in any court of competent jurisdiction. In assessing the amount of the civil penalty, the court may consider any one or more of the following: the nature and seriousness of the misconduct, 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. The City Attorney may also seek recovery of attorneys' fees and costs incurred in bringing a civil action pursuant to this section.

(iii) In undertaking enforcement of this chapter, the City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, any obligation for which the City is liable in money damages to any person who claims that any breach of duty related to or arising from this chapter proximately caused their injury.

(d) Criminal Penalties. The City may institute criminal proceedings in the enforcement of this chapter as set forth in Chapter 2 of Title 1 of this Code.

(Sec. 2 (part), Ord. 00-003, eff. July 21, 2000)

CHAPTER 3.
SIDEWALKS, CURBS AND
DRIVEWAYS

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- 7-3.16 Curbs: Construction: Time
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**7-3.01. Sidewalks and Curbs:
Construction: Permission
Required: Exceptions.**

It shall be unlawful for any person to construct, or cause to be constructed any sidewalk or curb without first obtaining from the Street Superintendent permission to do so, unless the construction of such sidewalk or curb shall have been ordered or authorized by the Council. (Sec. 5, Ord. 311, thereafter codified in Sec. 24.8, E.T.C.)

**7-3.02. Sidewalks and Driveways:
Construction or Repair:
Permits Required:
Exceptions.**

It shall be unlawful for any person to repair or construct, or cause to be repaired or constructed, by private contract any cement sidewalk or cement driveway, or to cut any curb for the purpose of constructing a driveway, or to begin an excavation for the purpose of constructing a sidewalk or driveway without first obtaining a permit in writing to do so from the Street Superintendent; provided, however, a property owner, when notified by the Street Superintendent to repair an existing sidewalk, may make such repairs to the extent of not more than twenty-five (25) square feet without the necessity of obtaining a permit therefor. (Sec. 1, Ord. 301, thereafter codified in Sec. 24.29, E.T.C.)

**7-3.03. Sidewalks and Curbs:
Permits.**

Permits shall be obtained from the Building Department and shall be on the same form and have the same cost as a building permit. (Ord. 83-03, eff. June 21, 1983)

**7-3.04. Sidewalks and Driveways:
Construction or Repair:
Permits: Denial.**

(a) In no case shall a permit be granted to any person to construct sidewalks where the Council has declared its intention to construct such sidewalks under the general laws of the State.

(b) In the event any of the terms or conditions of this chapter are not complied with within the time fixed for compliance, no further permit shall be issued to such person while such person causes or permits such noncompliance to continue.

(Sec. 7, Ord. 301, thereafter codified in Secs. 24.40 and 24.41, E.T.C.)

**7-3.05. New Sidewalk and Curb:
When Required.**

Sidewalk and curb shall be constructed where nonexistent and or repaired where failing to meet the minimum standards set by the City Engineer as a condition of all building permits for the construction of new structures and for all nonresidential construction with a value of five thousand dollars (\$5,000.00) or more.

(Ord. 83-03, eff. June 21, 1983)

**7-3.06. Maintenance of Sidewalk and
Curb: When Required.**

All owners of commercial and industrial property shall be required to maintain the curb and sidewalk abutting their properties to the minimum standards set by the City Engineer.

(Ord. 83-03, eff. June 21, 1983)

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7-3.07. Curb and Gutter: Standards.

Standards for the construction and repair of curb, gutter and sidewalk shall be set by the City Engineer and changed from time to time as deemed necessary by the City Engineer.
(Ord. 83-03, eff. June 21, 1983)

7-3.08. Sidewalks and Driveways: Construction or Repair: Persons Responsible.

The construction or repair of sidewalks or driveways performed pursuant to a permit issued pursuant to the provisions of this chapter shall be performed by or under the supervision of the designated permittee, who shall also be the person who is responsible to the owner or contractor for such work. In the event it shall at any time be ascertained that any work is being done, or has been done, pursuant to a permit issued to a person other than the person responsible to the owner or contractor for such work, the person doing, or having done the work shall be guilty of violating the provisions of this chapter.

(Sec. 8, Ord. 301, thereafter codified in Secs. 24.43 and 24.44, E.T.C.)

7-3.09. Sidewalks and Driveways: Construction or Repair: Time Limits: Specifications.

All sidewalks and driveways shall be repaired or constructed in every particular in accordance with the permit therefor issued pursuant to the provisions of this chapter. Such work shall be completed within thirty (30) days after the date of the permit, unless an extension of time thereon is granted by the Street Superintendent, and such work shall be in accordance with such specifications as may be adopted by resolution of the Council from time to time for the private construction and repair of sidewalks and driveways.

(Sec. 9, Ord. 301, thereafter codified in Sec. 24.45, E.T.C.)

7-3.10. Sidewalks and Driveways: Construction or Repair: Time Limits: Expiration.

If all the private construction or repair work of any sidewalk or driveway is not completed at the expiration of the time allowed by the permit issued pursuant to the provisions of this chapter and in accordance with the provisions of this chapter, the Street Superintendent may notify the contractor to complete such work within two (2) days.

(Sec. 6, Ord. 301, thereafter codified in Sec. 24.38, E.T.C.)

7-3.11. Sidewalks and Driveways: Construction or Repair: Use of Streets for Materials and Appliances.

Any permit granted pursuant to the provisions of Section 7-3.02 of this chapter shall carry with it the right to place, or cause to be placed, upon the street adjacent to the place where the construction, alteration, or repair work is to be performed such materials and appliances as may be necessary for use in performing such work; provided, however, such materials and appliances shall not occupy one-third (1/3) of the roadway in front of such construction work and shall be placed thereon subject to the direction and approval of the Street Superintendent. In no event shall such materials and appliances be placed within five feet (5') of any railroad or streetcar track. All materials, debris, and appliances shall be so placed as not to obstruct any gutterway, catchbasin, or portion of the street other than that lawfully occupied by such obstruction. The permit granted shall prescribe the date when work shall begin and the time of the occupancy of the street; provided, however, the Street Superintendent may order such materials, appliances, and debris, or any portion thereof, to be removed within three (3) days after written notice. The placing of materials, appliances, and debris upon the street for the purpose of such construction work, and the removal thereof,

shall be held to be a part of such construction work.

(Sec. 5, Ord. 301, thereafter codified in Sec. 24.37, E.T.C.)

7-3.12. Sidewalks: Construction: Lines and Grades.

Sidewalks shall be constructed so that the surface shall rise from the stone curb grade at a uniform rate of one-fourth inch (1/4") to the foot; provided, however, on streets where the intersecting streets have different widths of sidewalks, the slope shall be averaged at the corners. All sidewalks shall be constructed to the official lines and grades established by the City Engineer.

(Sec. 4, Ord. 311, thereafter codified in Secs. 24.5 and 24.7, E.T.C.)

7-3.13. Curbs: Construction: Permits Required.

It shall be unlawful for any person to construct, or cause to be constructed by private contract independently of other street work, any concrete curb on any street without first obtaining a permit in writing to do so from the Street Superintendent.

(Sec. 10, Ord. 301, thereafter codified in Sec. 24.47, E.T.C.)

7-3.14. Deleted by 83-03.

7-3.15. Deleted by 83-03.

7-3.16. Curbs: Construction: Time Limits: Specifications.

The permit required by Section 7-3.13 of this chapter shall provide for the completion of the work within a specified time, to be determined by the Street Superintendent, which time may be extended by the Street Superintendent. Such permit shall further provide that the work shall be in conformity with the specifications filed and to the satisfaction and acceptance of the Street Superintendent.

(Sec. 12, Ord. 301, thereafter codified in Sec. 24.49, E.T.C.)

7-3.17. Curbs: Construction: Corner Radii.

Curblines at each and every street corner shall be connected by and constructed on a circular curve with a radius as follows: Where the sidewalk spaces of the intersecting streets are on the same width, the radius shall be equal to the width of either of the sidewalk spaces, but where the sidewalk spaces of the intersecting streets are of unequal width, the radius shall be equal to the narrower of the two (2) sidewalk spaces; provided, however, the curb radius on the southeast corner of Green Street and Powell Street shall be forty feet (40'); and provided, further, in each and every case, such circular curve shall be tangent to both of the curblines which it connects. Each point at the top of the curb at which such circular curve is tangent shall be called and shall be known as the "return."

(Sec. 3, Ord. 311, thereafter codified in Sec. 24.4, E.T.C.)

7-3.18. Permits: Posting.

All permits for construction issued pursuant to the provisions of this chapter shall be posted conspicuously on the job.

(Sec. 7, Ord. 301, thereafter codified in Sec. 24.42, E.T.C.)

7-3.19. Deleted by 83-03.

CHAPTER 4.

UNDERGROUND UTILITY FACILITIES

Sections:

- 7-4.01 Definitions
- 7-4.02 Hearings: Notices: Determinations
- 7-4.03 Designation of Underground Utility Districts
- 7-4.04 Unlawful Acts
- 7-4.05 Exceptions: Emergencies or Unusual Circumstances

7-4.06	Other Exceptions
7-4.07	Notices to Property Owners and Utility Companies
7-4.08	Responsibility of Utility Companies
7-4.09	Responsibility of Property Owners
7-4.10	Responsibility of City
7-4.11	Extensions of Time

7-4.01. Definitions.

For the purposes of this chapter, unless otherwise apparent from the context, certain words and phrases used in this chapter are defined as follows:

(a) “Commission” shall mean the Public Utilities Commission of the State.

(b) “District” or “Underground Utility District” shall mean that area in the City within which poles, overhead wires, and associated overhead structures are prohibited as such area is described in a resolution adopted pursuant to the provisions of Section 7-4.03 of this chapter.

(c) “Person” shall mean and include individuals, firms, corporations, and partnerships and their agents and employees.

(d) “Poles, overhead wires, and associated overhead structures” shall mean poles, towers, supports, wires, conductors, guys, stubs, platforms, crossarms, braces, transformers, insulators, cutouts, switches, communication circuits, appliances, attachments, and appurtenances located aboveground within a District and used or useful in supplying electric, communication, or similar or associated services.

(e) “Utility” shall mean and include all persons or entities supplying electric, communication, or similar or associated services by means of electrical materials or devices.

(Sec. 1, Ord. 68-05)

7-4.02. Hearings: Notices: Determinations.

The Council may from time to time set public hearings to ascertain whether the public necessity, health, safety, or welfare requires the re-

moval of poles, overhead wires, and associated overhead structures within designated areas of the City and the underground installation of wires and facilities for supplying electric, communication, or similar or associated services. The City Clerk shall notify by mail all affected property owners, as shown on the last equalized assessment roll, and utilities concerned of the time and place of such hearings at least ten (10) days prior to the date thereof. Each such hearing shall be open to the public and may be continued from time to time. At each such hearing all persons interested shall be given an opportunity to be heard. The decision of the Council shall be final and conclusive.

(Sec. 2, Ord. 68-05)

7-4.03. Designation of Underground Utility Districts.

If, after any public hearing provided for in Section 7-4.02 of this chapter, the Council finds that the public necessity, health, safety, or welfare requires such removal and such underground installations within a designated area, the Council, by resolution, shall declare such designated area an Underground Utility District and order such removal and underground installations. Such resolution shall include a description of the area comprising such District and shall fix the time within which such removal and underground installations shall be accomplished and within which affected property owners shall be ready to receive underground services. A reasonable time shall be allowed for such removal and underground installations, having due regard for the availability of the labor, materials, and equipment necessary for such removal and for the installation of such underground facilities as may be occasioned thereby.

(Sec. 3, Ord. 68-05)

7-4.04. Unlawful Acts.

Whenever the Council creates an Underground Utility District and orders the removal of poles, overhead wires, and associated overhead structures therein, as set forth in Section 7-4.03

of this chapter, it shall be unlawful for any person or utility to erect, construct, place, keep, maintain, continue, employ, or operate poles, overhead wires, and associated overhead structures in such District after the date such overhead facilities are required by resolution to be removed, except such overhead facilities which may be required to furnish services to an owner or occupant of property prior to the performance by such owner or occupant of the underground work necessary for such owner or occupant to continue to receive utility service, as set forth in Section 7-4.09 of this chapter, and for such reasonable time required to remove such facilities after such work has been performed, and except as otherwise provided in this chapter.

(Sec. 4, Ord. 68-05)

7-4.05. Exceptions: Emergencies or Unusual Circumstances.

Notwithstanding the provisions of this chapter, overhead facilities may be installed and maintained for a period not to exceed ten (10) days, without authority of the Council, in order to provide emergency services. The Council may grant special permission, on such terms as the Council may deem appropriate, in cases of unusual circumstances, without discrimination as to any person or utility, to erect, construct, install, maintain, use, or operate poles, overhead wires, and associated overhead structures.

(Sec. 5, Ord. 68-05)

7-4.06. Other Exceptions.

The provisions of this chapter and any resolution adopted pursuant to the provisions of Section 7-4.03 of this chapter shall not apply to the following types of facilities, unless otherwise provided in such resolution:

(a) Any municipal facility or equipment installed under the supervision and to the satisfaction of the City Engineer;

(b) Poles or electroliers used exclusively for street lighting;

(c) Overhead wires (exclusive of supporting structures) crossing any portion of a District within which overhead wires have been prohibited, or connecting to buildings on the perimeter of a District, where such wires originate in an area from which poles, overhead wires, and associated overhead structures are not prohibited;

(d) Poles, overhead wires, and associated overhead structures used for the transmission of electric energy at nominal voltages in excess of thirty-four thousand five hundred (34,500) volts;

(e) Overhead wires attached to the exterior surface of a building by means of a bracket or other fixture and extending from one (1) location on the building to another location on the same building or to an adjacent building without crossing any public street;

(f) Antennas, associated equipment, and supporting structures used by a utility for furnishing communication services;

(g) Equipment appurtenant to underground facilities, such as surface-mounted transformers, pedestal-mounted terminal boxes and meter cabinets, and concealed ducts; and

(h) Temporary poles, overhead wires, and associated overhead structures used or to be used in conjunction with construction projects.

(Sec. 6, Ord. 68-05)

7-4.07. Notices to Property Owners and Utility Companies.

Within ten (10) days after the effective date of a resolution adopted pursuant to the provisions of Section 7-4.03 of this chapter, the City Clerk shall notify all affected utilities and all persons owning real property within the District thereby created of the adoption of such resolution. The City Clerk shall further notify such affected property owners of the necessity that, if they, or any person occupying such property, desire to continue to receive electric, communication, or similar or associated services, they, or such occupant, shall provide all the necessary facility changes on their premises so as to receive such services from the lines of the supply-

ing utilities at a new location, subject to the applicable rules, regulations, and tariffs of the respective utilities on file with the Commission.

Such notification by the City Clerk shall be made by mailing a copy of the resolution adopted pursuant to the provisions of Section 7-4.03 of this chapter, together with a copy of the provisions of this chapter, to the affected property owners, as such are shown on the last equalized assessment roll, and to the affected utilities.

(Sec. 7, Ord. 68-05)

7-4.08. Responsibility of Utility Companies.

If underground construction is necessary to provide utility service within a District created by any resolution adopted pursuant to the provisions of Section 7-4.03 of this chapter, the supplying utility shall furnish that portion of the conduits, conductors, and associated equipment required to be furnished by it under its applicable rules, regulations, and tariffs on file with the Commission.

(Sec. 8, Ord. 68-05)

7-4.09. Responsibility of Property Owners.

(a) Connections Required: Failure to Comply: Notices. Every person owning, operating, leasing, occupying, or renting a building or structure within a District shall construct and provide that portion of the service connection on his property between the facilities referred to in Section 7-4.08 of this chapter and the termination facility on or within such building or structure being served, all in accordance with the applicable rules, regulations, and tariffs of the respective utilities on file with the Commission. If such work is not accomplished by any person within the time provided for in the resolution enacted pursuant to the provisions of Section 7-4.03 of this chapter, the City Engineer shall give a notice in writing to the person in possession of such premises, and a notice in writing to the owner thereof as shown on the

last equalized assessment roll, to provide the required underground facilities within ten (10) days after the receipt of such notice.

(b) Connections Required: Failure to Comply: Notices: Service: Posting. The notice provided for in subsection (a) of this section to provide the required underground facilities may be given either by personal service or by mail. In the case of service by mail on either of such persons, the notice shall be deposited in the United States mail in a sealed envelope, with postage prepaid, addressed to the person in possession of such premises at such premises, and the notice shall be addressed to the owner thereof as such owner's name appears, and shall be addressed to such owner's last known address as such address appears on the last equalized assessment roll and, when no address appears, to General Delivery, City of Emeryville. If such notice is given by mail, the notice shall be deemed to have been received by the person to whom the notice was sent within forty-eight (48) hours after the mailing thereof. If such notice is given by mail to either the owner or occupant of such premises, the City Engineer, within forty-eight (48) hours after the mailing of such notice, shall cause a copy thereof, printed on a card not less than eight inches (8") by ten inches (10") in size, to be posted in a conspicuous place on such premises.

(c) Connections Required: Failure to Comply: Notices: Form. The notice given by the City Engineer to provide the required underground facilities shall particularly specify what work is required to be done and shall state that if such work is not completed within thirty (30) days after the receipt of such notice, the City Engineer will provide such required underground facilities, in which case the cost and expense thereof will be assessed against the property benefited and become a lien upon such property.

(d) Failure to Do the Work: Performance of Work by City: Costs: Reports. If, upon the expiration of the thirty (30) day period, the required underground facilities have not been provided, the City Engineer shall forthwith proceed to do

the work; provided, however, if such premises are unoccupied and no electric or communications services are being furnished thereto, the City Engineer, in lieu of providing the required underground facilities, shall have the authority to order the disconnection and removal of any and all overhead service wires and associated facilities supplying utility service to such property. Upon the completion of the work by the City Engineer, he shall file a written report with the Council setting forth the fact that the required underground facilities have been provided and the cost thereof, together with a legal description of the property against which such cost is to be assessed. The Council shall thereupon fix a time and place for hearing protests against the assessment of the cost of such work upon such premises, which time shall not be less than ten (10) days thereafter.

(e) Failure to Do the Work: Performance of Work by City: Costs: Reports: Hearings: Notices. The City Engineer shall forthwith, upon the time for hearing such protests having been fixed, give notice in writing to the person in possession of such premises and to the owner thereof, in the manner set forth in subsection (b) of this section, of the time and place the Council will pass upon such report and will hear protests against such assessment. Such notice shall also set forth the amount of the proposed assessment.

(f) Failure to Do the Work: Performance of Work by City: Costs: Reports: Hearings. Upon the date and hour set for the hearing of protests, the Council shall hear and consider the report and all protests, if there shall be any, and then proceed to affirm, modify, or reject the assessment.

(g) Failure to Do the Work: Performance of Work by City: Costs: Assessments: Liens. If any assessment is not paid within five (5) days after its confirmation by the Council, the amount of the assessment shall become a lien upon the property against which the assessment is made by the City Engineer, and he is hereby directed to turn over to the Assessor and Tax

Collector a notice of lien on each of such properties on which the assessment has not been paid, and the Assessor and Tax Collector shall add the amount of such assessment to the next regular bill for taxes levied against the premises upon which such assessment was not paid. Such assessment shall be due and payable at the same time property taxes are due and payable and, if not paid when due and payable, shall bear interest at the rate of six percent (6%) per year. (Sec. 9, Ord. 68-05)

7-4.10. Responsibility of City.

The City shall remove, at its own expense, all City-owned equipment from all poles required by the provisions of this chapter to be removed in ample time to enable the owner or user of such poles to remove the poles within the time specified in the resolution enacted pursuant to the provisions of Section 7-4.03 of this chapter. (Sec. 10, Ord. 68-05)

7-4.11. Extensions of Time.

In the event any act required by this chapter or by the resolution adopted pursuant to the provisions of Section 7-4.03 of this chapter cannot be performed within the time provided on account of shortages of materials, war, restraint by public authorities, strikes, labor disturbances, civil disobedience, or any other circumstances beyond the control of the actor, the time within which such act will be accomplished shall be extended for a period equivalent to the time of such limitation. (Sec. 11, Ord. 68-05)

CHAPTER 5.

GRADING

Sections:

7-5.01	Definitions
7-5.02	Purpose
7-5.03	Inspections
7-5.04	Excavations
7-5.05	Fills
7-5.06	Protective Devices

- 7-5.07 Repairs of Excavations and Fills Constituting Nuisances
- 7-5.08 Drainage
- 7-5.09 Safety Precautions
- 7-5.10 Certificates of Approved Soil Testing Agencies
- 7-5.11 Protection of Adjacent Property: Fences and Guardrails
- 7-5.12 Placement of Earth, Rock and the Like: Limitations
- 7-5.13 False Statements and Data
- 7-5.14 Permits: Required
- 7-5.15 Permits: Exceptions
- 7-5.16 Permits: Applications
- 7-5.17 Permits: Applications: Accompanying Scale Plans and Drawings
- 7-5.18 Permits: Applications: Referral to the Director of Redevelopment
- 7-5.19 Permits: Fees
- 7-5.20 Permits: Issuance or Denial: Conditions
- 7-5.21 Performance Bonds
- 7-5.22 Liability Insurance
- 7-5.23 Permits: Transferability
- 7-5.24 Permits: Revocation
- 7-5.25 Permits: Denial or Revocation: Appeals
- 7-5.26 Permits: Expiration: Renewal

7-5.01. Definitions.

For the purposes of this chapter, unless otherwise apparent from the context, certain words and phrases used in this chapter are defined as follows:

- (a) “Approved,” when referring to a method, shall mean a method which the City Engineer finds will produce the results specified in this chapter.
- (b) “Approved soil testing agency” shall mean an agency which the City Engineer finds has technically qualified personnel and adequate facilities for making the required soil tests.

(c) “Architect” shall mean a person who practices or offers to practice architecture and who is licensed to do so by the State.

(d) “Excavation” shall mean any act by which earth, sand, gravel, rock, or any other material is cut into, dug, quarried, uncovered, removed, displaced, relocated, or bulldozed, and shall include the conditions resulting therefrom.

(e) “Fill” shall mean any act by which earth, sand, gravel, rock, or any other material is deposited, placed, pushed, pulled, or transported to a place other than the place from which it was excavated and shall include the conditions resulting therefrom.

(f) “Grading” shall mean an excavation or fill, or any combination thereof, and shall include the conditions resulting from any excavation or fill.

(g) “Land surveyor” shall mean a person who practices or offers to practice land surveying and who is licensed to do so by the State.

(h) “Person” shall mean any individual, firm, copartnership, joint venture, association, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit, except the United States of America or the State.

(i) “Registered civil engineer” shall mean a person who practices or offers to practice civil engineering and is licensed to do so by the State.

(j) “Registered landscape architect” shall mean a person who practices or offers to practice landscape architecture and is licensed to do so by the State.

(Secs. 1 through 10, Ord. 79-02, eff. Mar. 29, 1979)

7-5.02. Purpose.

The unregulated excavation and filling of property in the course of the physical development of the City, including development in and around watercourses and public rights-of-way, have heretofore caused extensive damages to public and private property and have resulted in numerous hazardous conditions. The purpose of this chapter is to require that excavations and

fills and construction in and around water-courses and public rights-of-way be performed in accordance with good engineering practices, thereby reducing to a minimum the hazards and damages to public and private property from such work.

(Sec. 11, Ord. 79-02, eff. Mar. 29, 1979)

7-5.03. Inspections.

(a) Generally. The City Engineer shall cause the inspections set forth in subsection (b) of this section to be made when so requested by the holder of a permit under this chapter and shall either approve that portion of the work completed or shall notify the permit holder wherein the same fails to comply with this chapter.

(b) Notification of City Engineer. The permittee or his agent shall notify the City Engineer:

(1) Initial Inspections. When he is ready to begin grading and not less than twenty-four (24) hours before any grading is to be commenced;

(2) Rough Grading. Upon the completion of all rough grading, at least twenty-four (24) hours before such inspection is to be made; and

(3) Final Inspections. Upon the completion of all work, including the installation of all drainage or other structures.

(c) Special Structures. All retaining walls, crib walls, and wing walls shall be built under a permit from, and an inspection by, the Building Official.

(d) Disapproval Because of Conditions. If the City Engineer finds that the soil or other conditions are not as stated in the application for a grading permit, he may refuse to approve further work until approval is obtained or a revised grading plan is submitted which will conform to the existing conditions.

(Sec. 12, Ord. 79-02, eff. Mar. 29, 1979)

7-5.04. Excavations.

(a) Slope Standards. No excavation shall be made with a cut face steeper in slope than one (1) horizontal to one (1) vertical, unless a retain-

ing wall or other approved support is provided to support the face of the excavation.

(b) Slope Standards: Deviations. The City Engineer, upon a request, may permit deviations from the slope standards set forth in subsection (a) of this section, provided the owner shall furnish the City Engineer with a written opinion of a civil engineer licensed by the State and experienced in erosion control, who shall be acceptable to the City Engineer, certifying that the civil engineer has investigated the site and that the proposed deviations will not endanger any property.

(c) Flatter Cut Faces. The City Engineer may require the excavation to be made with a cut face flatter in slope than one (1) horizontal to one (1) vertical if he finds the material in which the excavation is to be made unusually subject to erosion or if other conditions make such flatter cut necessary for stability or safety.

(d) Applicability of Provisions. This section shall apply to all excavations in the City, regardless of whether a permit is required by this chapter for such excavations.

(Sec. 13, Ord. 79-02, eff. Mar. 29, 1979)

7-5.05. Fills.

(a) Compaction. All fills shall be compacted, unless the City Engineer finds that such compaction is not required as a safety measure, to aid in preventing the saturation, slipping, or erosion of the fill.

(b) Slope Standards. No fill shall be made which creates any exposed surface steeper in slope than one and one-half (1-1/2) horizontal to one (1) vertical. The City Engineer, upon a request, may permit deviations from such standards provided the owner shall furnish the City Engineer with a written opinion of a civil engineer licensed by the State and experienced in soil compaction and erosion control, who shall be acceptable to the City Engineer, certifying that the civil engineer has investigated the site and the proposed deviations will not endanger any property.

(c) **Flatter Surfaces.** The City Engineer may require that a fill be constructed with an exposed surface flatter than one and one-half (1-1/2) horizontal to one (1) vertical if he finds that, under the particular conditions, such flatter surface is necessary for stability and safety.

(d) **General Requirements.** Fills shall be compacted, inspected, and tested in accordance with the following provisions:

(1) The space over which fills are to be made shall first be cleared of all trash, brush, trees, stumps, timber, or debris and shall be scarified.

(2) All filling shall be done with good, sound earth or gravel, and no oil cake, macadam bituminous pavement, concrete, or other lumping material shall be used in the fill, unless such material is scattered, and the lumps do not exceed four inches (4") in diameter and are not placed within one foot (1') of the subgrade.

(3) When an existing fill is to be widened or a new fill is to be made on any property, the new material shall be bonded to the old by plowing deep, longitudinal furrows or by removing the topsoil and vegetation and by compacting the fill upon a series of layers.

(4) All exposed fill slopes shall be protected immediately upon completion with an improved erosion-control device, such as planting or the placing of wattling or straw matting.

(5) Fill material, after compaction, shall have a minimum relative density of not less than ninety percent (90%) of maximum dry density, or such lesser percentage as specified by the City Engineer, as determined by the modified AASHTO soil compaction tests or other approved testing methods giving equivalent test results, in all portions of the fill requiring compaction.

(6) A written report, in duplicate, of the compaction, showing the location and depth of the test holes, materials used, moisture conditions, and relative dry density obtained from all tests, prepared and submitted by an approved soil testing agency or registered civil engineer, shall be submitted to the City Engineer. If the fill is to support buildings or structures, the re-

port shall include recommendations as to the recommended soil-bearing pressures.

(e) **Applicability of Provisions.** This section shall apply to all fills in the City, regardless of whether a permit is required by this chapter for such fill, except that the tests and reports specified by this section shall not be necessary in connection with fills for which no permit is required.

(Sec. 14, Ord. 79-02, eff. Mar. 29, 1979)

7-5.06. Protective Devices.

The owner of any property on which an excavation or fill has been made pursuant to a permit granted under this chapter, or any other person or agent in control of such property, shall maintain in good condition and repair all retaining walls, cribbing, drainage structures, planted slopes, and other protective devices shown in the approved plans or drawings submitted with the application for the grading permit.

(Sec. 15, Ord. 79-02, eff. Mar. 29, 1979)

7-5.07. Repairs of Excavations and Fills Constituting Nuisances.

Whenever the City Engineer shall determine by an inspection that any existing excavation or fill from any cause has become a menace to life or limb, or endangers property, or affects the safety, usability, or stability of a public way, the owner of the property upon which such excavation or fill is located, or other person or agent in control of the property, upon the receipt of a notice in writing from the City Engineer to do so, within one hundred eighty (180) days after the date of such written notice, shall repair or reconstruct such excavation or fill so that it will conform to the requirements of this chapter or otherwise repair, reconstruct, strengthen, or eliminate such excavator fill in a manner satisfactory to the City Engineer so that it will no longer constitute a menace or danger as set forth in this section. Any person receiving a notice as set forth in this section may appeal from

the notice of the City Engineer as set forth in Chapter 4 of Title 1 of this Code.
(Sec. 16, Ord. 79-02, eff. Mar. 29, 1979)

7-5.08. Drainage.

Provisions shall be made to prevent any surface water from damaging the cut face of an excavation or the sloping surface of a fill. All drainage provisions shall be of such design as to carry surface water to the nearest practical street, storm drain, or natural watercourse approved by the City Engineer as a safe place to deposit and receive such water.
(Sec. 17, Ord. 79-02, eff. Mar. 29, 1979)

7-5.09. Safety Precautions.

If, at any stage of work on an excavation or fill, the City Engineer shall determine by an inspection that the nature of the formation is such that further work, as authorized by an existing permit, is likely to endanger any property or public way, the City Engineer may require, as a condition to allowing further work to be done, that such reasonable safety precautions be taken as the City Engineer considers advisable to avoid such likelihood of danger. Such safety precautions may include, but shall not be limited to, specifying a flatter exposed slope; the construction of additional drainage facilities; berms; terracing; or compaction or cribbing.
(Sec. 18, Ord. 79-02, eff. Mar. 29, 1979)

7-5.10. Certificates of Approved Soil Testing Agencies.

In addition to the inspection of any fill made by the City Engineer, the City Engineer may require a certificate by an approved soil testing agency based on tests of the fill at selected stages. If favorable conditions exist, the City Engineer, by prior approval, may waive the requirements for supervision of or soil tests by an approved soil testing agency.
(Sec. 19, Ord. 79-02, eff. Mar. 29, 1979)

7-5.11. Protection of Adjacent Property: Fences and Guardrails.

No person shall excavate on land sufficiently close to the property line to endanger any adjoining public street, sidewalk, alley, or other public property without supporting and protecting such public street, sidewalk, alley, or other public property from settling, cracking, or other damages which might result from such excavation. Should the nature of the excavation create a hazard to life unless adequately fenced, the applicant may be required to construct approved fences or guardrails to safeguard persons using the public street, sidewalk, alley, or other public property.
(Sec. 20, Ord. 79-02, eff. Mar. 29, 1979)

7-5.12. Placement of Earth, Rock, and the Like: Limitations.

(a) No person shall dump, move, place, or leave any earth, sand, gravel, rock, stone, or other excavated or exposed material so as to cause the same to be deposited upon, or to roll, flow, or wash over, the premises of another, without the express consent of the owner of such premises so affected, or upon or over any public place or way.

(b) No person, when hauling any earth, sand, gravel, rock, stone, or other excavated material over any public street, alley, or other public place, shall allow such material to blow or spill over and upon such street, alley, or place, or on adjacent private property.

(c) When any earth, sand, gravel, rock, stone, or other excavated material is caused to be deposited upon, or to roll, flow, or wash upon, any public place or way, the person responsible therefor shall cause the same to be removed from such public place or way within thirty-six (36) hours. In the event it is not so removed, the City Engineer shall cause such removal, and the cost of such removal by the City Engineer shall be paid to the City by the person who failed to so remove the material, and the City Engineer may require an applicant

for a permit issued under the provisions of this chapter to post and maintain a cash bond in an amount sufficient in his opinion to assure such removal. Such bond shall be in addition to the performance bond required by this chapter. (Sec. 21, Ord. 79-02, eff. Mar. 29, 1979)

7-5.13. False Statements and Data.

No person who prepares or signs any application, plan or drawing shall willfully make any false statement or furnish false data therein or thereon. (Sec. 22, Ord. 79-02, eff. Mar. 29, 1979)

7-5.14. Permits: Required.

No person shall do any grading without a permit therefor from the City Engineer if such grading would result in any of the following:

- (a) An excavation or fill in excess of twenty (20) cubic yards;
- (b) An excavation three feet (3') or more below a two (2) (horizontal) to one (1) (vertical) descending slope from any property line or a fill three feet (3') or more above a two (2) (horizontal) to one (1) (vertical) ascending slope from any property line;
- (c) An excavation or fill within a public sewer, water main, storm drain, or power line easement; or
- (d) An excavation or fill which will encroach on or alter a natural drainage channel or watercourse.

No person shall construct, reconstruct, alter, repair, or install any structure in any natural watercourse without a permit therefor from the City Engineer. A separate permit shall be required for each separate noncontiguous site. One (1) permit may cover both an excavation and a fill on the same site made with excavated materials. (Sec. 23, Ord. 79-02, eff. Mar. 29, 1979)

7-5.15. Permits: Exceptions.

No permit shall be required by virtue of this chapter for any of the following:

- (a) Grading pursuant to a permit for an excavation in a public street;
- (b) Grading in connection with a public improvement or public works for which inspections are provided by the City;
- (c) Grading by a public utility or mutual service company in private easements;
- (d) An excavation below the finish grade for basements and footings of a building, swimming pool, or underground structure authorized by a valid building permit where the cost of such excavation is included in the building permit evaluation. This exception shall not affect the applicability of this chapter to, nor the requirement of, a grading permit for any fill made with the material from such excavation; or
- (e) Grading by a public agency which possesses the power to levy an ad valorem tax. (Sec. 24, Ord. 79-02, eff. Mar. 29, 1979)

7-5.16. Permits: Applications.

To obtain a permit as required by this chapter, the applicant shall first file an application therefor in writing, in triplicate, on forms furnished by the City Engineer. The application shall be signed by the owner of the property where the work is to be performed or by his duly authorized agent, and such agent's authority shall be shown in writing. Every such application shall contain the following information:

- (a) The purpose of the work and a statement as to whether the purpose of the excavation is to prepare the site for a subdivision or private development under the Subdivision Map Act of the State;
- (b) The amount of material proposed to be excavated and the amount of fill in cubic yards;
- (c) The legal description of the property on which the work is to be performed;
- (d) The street address at the point of access to the property where the work is to be performed;

(e) The name and address of the owner of the property on which the work is to be performed;

(f) A description of the equipment and methods to be used in performing the work;

(g) The name of any person who will haul excavated materials to or from the property where the work is to be performed;

(h) The name, address, and telephone numbers of the persons who shall have effective control of the work;

(i) The name, address, and telephone numbers of all persons, if any, who will receive the excavated materials or who will have any interest in the proceeds of the sale or disposal of such materials;

(j) The estimated dates for starting and completing the work to be done; and

(k) Such further applicable information as the City Engineer may require in order to carry out the purpose of this chapter.

(Sec. 25, Ord. 79-02, eff. Mar. 29, 1979)

7-5.17. Permits: Applications: Accompanying Scale Plans and Drawings.

The application required by Section 7-5.16 of this chapter shall be accompanied by scale plans or drawings, in triplicate, prepared by a registered landscape architect, registered civil engineer, land surveyor, or architect, showing the following:

(a) The property lines of the property on which the work is to be performed;

(b) The location of any building or structure on the property where the work is to be performed and the location of any building or structure on land of adjacent property owners which is within fifteen feet (15') of the property on which the work is to be performed;

(c) The elevations, dimensions, location, extent, and slopes of all work proposed to be done, shown on a contour map, and a certification of the quantity of the excavation and fill involved;

(d) Detailed plans of all walls, cribs, drains, dams, or other protective devices to be constructed in connection with or as a part of the proposed work, together with a map showing the drainage area and estimated cubic-feet-per-second runoff of the area served by any drain; and

(e) Such further applicable plans or drawings as the City Engineer may require in order to carry out the purpose of this chapter.

The City Engineer may waive the requirement for scale plans or drawings if he finds that the information on the application is sufficient to show that the work will conform to the requirements of this chapter.

(Sec. 26, Ord. 79-02, eff. Mar. 29, 1979)

7-5.18. Permits: Applications: Referral to the Director of Redevelopment.

When the grading is to be done on a site which is intended to be subdivided into three (3) or more parcels, or which involves more than ten thousand (10,000) cubic yards of excavation or fill, the application shall be referred to the Director of Redevelopment for study. The Director of Redevelopment shall report on any aspect of the proposed grading, excavation, or fill that relates to or affects the General Plan or any other zoning plan or zoning regulation of the City. The Director of Redevelopment, upon the completion of the investigation, shall transmit his report and findings and recommendations to the City Engineer, and no permit shall be issued until such report has been received.

Failure of the Director of Redevelopment to act within fifteen (15) days after the referral of the application to him shall be deemed an approval, and the permit may thereafter be issued. (Sec. 27, Ord. 79-02, eff. Mar. 29, 1979)

7-5.19. Permits: Fees.

(a) A fee for each grading permit shall be paid to the City Engineer as set forth in the following table:

100 cubic yards or less	\$15.00
101 to 1,000 cubic yards	\$15.00 for the first 100 cubic yards plus \$7.00 for each additional 100 cubic yards or fraction thereof
1,001 to 10,000 cubic yards	\$78.00 for the first 1,000 cubic yards plus \$6.00 for each additional 1,000 cubic yards or fraction thereof
10,001 cubic yards and over	\$132.00 for the first 10,000 cubic yards plus \$27.00 for each additional 10,000 cubic yards or fraction thereof

(b) Before accepting a set of plans and specifications for checking, the City Engineer shall collect a plan-checking fee. The amount of the plan-checking fee for grading shall be fifty dollars (\$50.00).

(c) An additional fee shall be charged for a grading permit which involves constructing, reconstructing, altering, repairing, or installing any structure in any natural watercourse. Such fee shall be one dollar (\$1.00) for each one hundred dollars (\$100.00), or fraction thereof, of estimated value up to one thousand dollars (\$1,000.00). If the estimated value of the work exceeds one thousand dollars (\$1,000.00), there

shall be an additional fee of fifty cents (\$.50) for each one hundred dollars (\$100.00), or fraction thereof, of estimated value in excess of the one thousand dollars (\$1,000.00).

(d) For excavations and fill on the same site, the fee shall be based on the volume of the excavation or fill, whichever is greater.
(Sec. 28, Ord. 79-02, eff. Mar. 29, 1979)

7-5.20. Permits: Issuance or Denial: Conditions.

(a) Whenever, in the judgment of the City Engineer, the proposed work would directly or indirectly create a hazard to human life or endanger adjoining property or property at a higher or lower level, or any public sewer, storm drain, watercourse, street, street improvement, or any other public property, the application shall be denied. If, in the opinion of the City Engineer, the danger or hazard can be eliminated by the erection or installation of walls, cribs, or other devices or by a specified method of performing the work, the City Engineer may grant the permit upon the condition that the specified protection and precautionary work shall be done to his satisfaction or upon the condition that a special method of performing the work shall be used.

(b) In granting any permit under this chapter, the City Engineer may attach such conditions thereto as may be reasonably necessary to prevent danger to public or private property or to prevent the operation from being conducted in a manner hazardous to life or property or in a manner likely to create a nuisance. Such conditions may include, but shall not be limited to, the following:

(1) Limitations on the hours of operation or the period of the year in which the work may be performed;

(2) Restrictions as to the size and type of equipment;

(3) The designation of routes upon which materials may be transported;

(4) The place and manner of the disposal of excavated materials;

(5) Requirements as to the laying of dust, prevention of noise, and other results offensive or injurious to the neighborhood, the general public, or any portion thereof;

(6) The designation of maximum or minimum slopes to be used if they vary from those prescribed in this chapter;

(7) Regulations as to the use of public streets and places in the course of such work;

(8) Regulations as to the degree of compaction of the fill material;

(9) Requirements as to paving private driveways and roads constructed under the permit;

(10) Requirements for the safe and adequate drainage of the site;

(11) A requirement that the approval of the City Engineer be secured before any work which has been commenced may be discontinued;

(12) A requirement that men and equipment be provided at the site during storms to prevent incomplete work from endangering life or property; and

(13) Requirements for the fencing of excavations or fills which would be hazardous without such fencing.

(Sec. 29, Ord. 79-02, eff. Mar. 29, 1979)

7-5.21. Performance Bonds.

(a) Whenever an application for a grading permit is filed for the excavation or fill of twenty (20) cubic yards or more in any area of the City where, in the opinion of the City Engineer, the nature of the work regulated by this chapter is such that if left incomplete it will create a hazard to human life or endanger adjoining property, or property at a higher or lower level, or any street or street improvement, or any other public property, the City Engineer, before issuing the permit, may require the applicant to guarantee faithful performance and payment of labor and materials in an amount determined by the City Engineer, but not less than fifty percent (50%) nor more than one hundred percent (100%) of the total estimated cost of the work, including the corrective work necessary to re-

move and eliminate geological hazards, by one (1) of the following methods:

(1) Surety Bond. A bond executed by the applicant as principal and a corporate surety authorized to do business in the State as surety in a form furnished by the City Engineer and approved by the City Attorney;

(2) Cash Bond. A cash deposit with the City Engineer; or

(3) Instrument of Credit and Agreement. An instrument of credit from one (1) or more financial institutions subject to regulation by the State or Federal government pledging that the funds necessary to meet the performance are on deposit and guaranteed for payment, and an agreement that the funds designated by the instrument shall become trust funds for the purpose of and in the amount sufficient to cover the cost of the project, including the corrective work necessary to remove and eliminate geological hazards. Such instrument of credit and agreement shall first be approved by the City Attorney.

(b) An additional cash deposit may be required by the City Engineer in the form of a cash bond sufficient to cover the costs of site cleanup and debris removal if, in the opinion of the City Engineer, it is warranted.

(c) Where grading is required on property adjacent to the grading site under a permit to complete a project satisfactorily, the owner of such adjacent property need not provide an additional performance bond if the original is of sufficient amount to include such additional grading.

(d) Each bond and agreement shall be effective upon the date of the filing of the application and shall remain in effect until the work authorized by the grading permit is completed and approved by the City Engineer.

(e) Whenever the City Engineer shall find that a default has occurred in the performance of any term or condition of any grading permit, written notice of the fact of the default thereof shall be given to the principal and to the corporate surety, financial institution, or depositor by

the City Attorney. Such notice shall state the work to be done, the estimated cost thereof, and the period of time deemed by the City Engineer to be reasonably necessary for the completion of such work. Thirty (30) days after the receipt of such notice the surety shall either cause the required work to be performed or, in lieu thereof, pay the City Engineer the estimated cost of doing the work as set forth in the notice, plus an additional sum equal to ten percent (10%) of the estimated cost but not to exceed the principal sum of the bond. Upon the receipt of such money, the City Engineer shall proceed by such mode as he deems convenient to cause the required work to be performed and completed, but no liability shall be incurred therein other than for the expenditure of the sum in hand thereof.

(f) If a cash bond has been posted, notice of the default, as set forth in subsection (e) of this section, shall be given to the principal, and if the principal fails to cause the required work to be resumed as set forth in such notice within thirty (30) days of the receipt thereof, the City Engineer shall proceed without delay and without further notice or proceedings whatsoever to use the cash deposit, or any portion thereof, and cause the required work to be completed by such mode as he deems convenient with the approval of the City Attorney. The balance of such cash deposit, if any, upon the completion of the work, shall be returned to the depositor or his successors or assigns after deducting ten percent (10%) thereof.

(g) If an instrument of credit is used to guarantee performance, notice of the default shall be given, as set forth in subsection (e) of this section, to the principal and to the financial institution issuing such instrument of credit, and if the principal fails to cause the required work to be resumed as set forth in such notice within thirty (30) days after the receipt thereof, the City Attorney shall make a demand upon the financial institution for the payment of the estimated cost, plus an additional ten percent (10%) of the estimated cost, from the trust fund held by such financial institution pursuant to the agreement.

Upon the receipt of such sum, the City Engineer shall proceed without delay and without further notice or proceedings whatsoever to use such sum, or any portion thereof, and cause the required work to be completed by such mode as he deems convenient. The balance of such cash deposit, if any, upon the completion of the work, shall be returned to the financial institution or its successors or assigns after deducting ten percent (10%) thereof.

(Sec. 30, Ord. 79-02, eff. Mar. 29, 1979)

7-5.22. Liability Insurance.

If, in the opinion of the City Engineer, the nature of the work regulated by this chapter is such that it might create a hazard to human life or endanger adjoining property, or property at a higher or lower level, or any street or street improvement, or any other public property, the City Engineer, before issuing the permit, may require that the applicant for the permit file a certificate showing that he is insured against claims for damages for personal injuries as well as claims for property damages, including damages to the City by the deposit or washing of material onto City streets, which may arise from or out of the performance of the work, whether such performance shall be by himself, his subcontractor, or any person directly or indirectly employed by him, and the amount of such insurance shall be prescribed by the City Engineer in accordance with the nature of the risks involved. Any such insurance shall include protection against liability arising from completed operations.

(Sec. 31, Ord. 79-02, eff. Mar. 29, 1979)

7-5.23. Permits: Transferability.

No permit required by this chapter shall be transferred without the written permission of the City Engineer.

(Sec. 32, Ord. 79-02, eff. Mar. 29, 1979)

7-5.24. Permits: Revocation.

Any permit issued pursuant to this chapter may be revoked by the City Engineer after a notice and hearing for:

(a) The violation of any condition of the permit;

(b) The violation of any provision of this chapter or any other applicable law relating to the work; or

(c) The existence of any condition or the doing of any act constituting or creating a nuisance or endangering the lives or property of others.

Written notice of the time and place of such hearing shall be served upon the person to whom the permit was granted, or his agent or employee engaged in the work, at least three (3) days prior to the date set for such hearing. Such notice shall contain a brief statement of the grounds to be relied upon for revoking such permit. Such notice may be given either by the personal delivery thereof to the person to be notified or deposited in the United States mail in a sealed envelope with postage prepaid, addressed to such person to be notified at the address appearing in his application. In the event any appeal is taken from the decision of the City Engineer as set forth in Section 7-5.25 of this chapter, all work shall be stopped while the appeal is pending.

(Sec. 33, Ord. 79-02, eff. Mar. 29, 1979)

7-5.25. Permits: Denial or Revocation: Appeals.

Any applicant for a permit or any permittee aggrieved by any action or decision of the City Engineer may appeal to the Council within the time and in the manner provided in Chapter 3 of Title 9 of this Code (Subdivisions).

(Sec. 34, Ord. 79-02, eff. Mar. 29, 1979)

7-5.26. Permits: Expiration: Renewal.

Every permit issued pursuant to the provisions of this chapter shall expire at the end of the period of time set forth in the permit. If the

permittee shall be unable to complete the work within the specified time, he shall, prior to the expiration of the permit, present in writing to the City Engineer a request for an extension of time setting forth therein the reason for the requested extension. If, in the opinion of the City Engineer, such an extension is necessary, he may grant additional time for the completion of the work.

(Sec. 35, Ord. 79-02, eff. Mar. 29, 1979)

CHAPTER 6.**REQUIRED INSTALLATIONS OF PUBLIC IMPROVEMENTS****Sections:**

7-6.01	Prerequisites to Issuance of Building Permits
7-6.02	Agreements: Surety Bonds
7-6.03	Exceptions

7-6.01. Prerequisites to Issuance of Building Permits.

No building permit shall be issued for the erection of buildings or structures on lots or building sites which are contiguous or adjacent to public or private streets unless street improvements, including sidewalks, are installed in accordance with the Standard Specifications for Public Works Construction on file in the office of the City Clerk.

(Sec. 1, Ord. 78-019)

7-6.02. Agreements: Surety Bonds.

Notwithstanding the provisions of Section 7-6.01 of this chapter requiring the installation of public street improvements prior to the issuance of a building permit, an agreement may be made to construct such public improvements at the time of the completion of the building or structure and before any occupancy permit is granted; provided, however, no such agreement shall be valid until it has been secured by a good and sufficient surety bond or cash deposit adequate to cover all costs and administrative expenses of the installation in the event of default.

Such agreements shall be executed by the City Engineer.
(Sec. 2, Ord. 78-019)

7-6.03. Exceptions.

Where the City Engineer finds that an official street grade has not been established or that the installation of such public improvements would adversely affect the flow of drainage or result in damages to, or the creation of a hazardous condition to, public or private improvements or the use thereof, no such public improvements need be installed.
(Sec. 3, Ord. 78-019)

CHAPTER 7.

STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION

Sections:

7-7.01	Adoption
7-7.02	Amendments
7-7.03	Severability
7-7.04	Violations: Penalties

7-7.01. Adoption.

The Standard Specifications for Public Works Construction, 1976 Edition, three (3) copies of which are on file in the office of the City Clerk for public record and inspection, is hereby adopted by reference and made a part of this chapter as though set forth in this chapter in full.
(Sec. 1, Ord. 78-018)

7-7.02. Amendments.

The Council may make changes in either the type and character of materials used or the methods of construction whenever, in the opinion of the Council, the public interest will best be served. Such changes shall be in the form of amendments to said Standard Specifications for Public Works Construction and shall have the force of law.
(Sec. 3, Ord. 78-018)

7-7.03. Severability.

The Council hereby declares that if any section, paragraph, sentence, or word of said Standard Specifications for Public Works Construction is for any reason held to be invalid, the Council would have adopted said Standard Specifications for Public Works Construction and each section, paragraph, sentence, or word thereof irrespective of the fact that any one (1) or more sections, paragraphs, sentences, or words be declared unconstitutional.
(Sec. 2, Ord. 78-018)

7-7.04. Violations: Penalties.

It shall be unlawful for any person to violate any provision or to fail to comply with any of the requirements of this chapter or said Standard Specifications for Public Works Construction. Any person violating any provision of this chapter or said Standard Specifications for Public Works Construction or failing to comply with any of its requirements shall be deemed guilty of a misdemeanor and shall be punishable as set forth in Chapter 2 of Title 1 of this Code.
(Sec. 4, Ord. 78-018)

CHAPTER 8.

SANITARY SEWER USE

Sections:

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ARTICLE 1. TITLE AND DEFINITIONS

7-8.101. Title.

This chapter shall be known as the “Sanitary Sewer Use Ordinance of the City of Emeryville.”
(Sec. 1, Ord. 82-013, eff. Nov. 25, 1982)

7-8.102. Definitions.

Except where the context otherwise requires, the definitions given in the following subsections govern the construction of this chapter:

(a) “Sewer facilities” shall mean and include the sanitary sewerage collection systems owned and operated by the City and all appurtenances thereto, and all portions thereof.

(b) “City” shall mean the City of Emeryville.

(c) “Person” shall mean and include any person, firm, association, organization, partnership,

corporation, public corporation, political subdivision, county, district, or the State of California or the United States of America or any department or agency thereof.

(Sec. 1, Ord. 82-013, eff. Nov. 25, 1982)

ARTICLE 2. SEWER CONNECTIONS

7-8.201. Sewer Connection Fee Fund.

The Sewer Connection Fee Fund is hereby established. Money collected by the City for sewer connection fees shall be deposited in the Sewer Connection Fee Fund and shall be used only to increase the capacity of the sanitary sewer system by construction of additions or modifications to the sanitary sewer system. Any interest earned on the fund shall remain in the fund.

(Sec. 2, Ord. 82-013, eff. Nov. 25, 1982)

7-8.202. Sewer Connection Requirement.

The owner of every premises, such as a house, building, or property used for human occupancy, employment, commercial or industrial purposes, recreation, or other purpose, situated within the City and abutting on any street, alley, or right-of-way in which there is now located or may in the future be located, a public sanitary sewer, is required to install, at his own expense and as soon as practicable, suitable toilet facilities therein or thereon, and to connect, without any undue delay, and, in no event at a date later than ninety (90) days following official notice from the City Engineer, such premises directly with the proper public sewer in accordance with the provisions of this chapter.

(Sec. 2, Ord. 82-013, eff. Nov. 25, 1982)

7-8.203. Connection Applications.

Applications for connections to a City sewer shall, in every case, be made by the owner or his agent on a form furnished by the City. Each application shall be supplemented by such plans, specifications, analyses of strength and quantity of wastewater to be produced, flow data, or

other information as shall, in the judgment of the City Engineer, be considered pertinent. In the case of every industrial sewer service connection, irrespective of whether a new physical connection is to be made, a new or amended application shall be filed with the City (1) upon change of ownership of the property served, (2) upon change of occupancy, or (3) upon change of any activity resulting in changes in type of industrial waste. The holders of all permits issued hereunder shall be subject at all times to all applicable Federal, State, and local laws and regulations. At no time and in no way shall the holder of any permit acquire or be regarded as having acquired a vested or continuing right to maintain or to have continued any connection to the public sewer.

(Sec. 2, Ord. 82-013, eff. Nov. 25, 1982)

7-8.204. Cost of Sewer Connection.

The connection to the public sewer, including the piping within any public street right-of-way, shall be properly installed in accordance with applicable codes at the sole expense of the owner of the property served. Such connections shall not be made without required approved permits issued by the City Engineer, upon receipt of an acceptable complete application and payment of all applicable fees and charges.

(Sec. 2, Ord. 82-013, eff. Nov. 25, 1982)

7-8.205. Sewer Connection Fees.

A sewer connection fee shall be paid as a condition of the issuance of a building permit. A sewer connection fee shall be levied whenever the use of the property changes and is expected by the City to discharge a greater amount of sewage than was discharged under the previous use. The charge shall be calculated as a single-family dwelling equivalent.

A single-family dwelling equivalent (SFDE) shall be defined as the average volume of wastewater discharged from an average single-family dwelling over a thirty (30) day period of time. For the purposes of this chapter, one (1) SFDE shall equal five thousand (5,000) gallons.

Each single-family living unit in a multiple-family dwelling, apartment house, condominium, or any other multiple-family structure shall be considered one (1) SFDE, except units which contain two (2) rooms or less or one (1) bedroom or less. Each living unit which contains one (1) bedroom or less, not more than two (2) rooms total, shall be considered a one-half (1/2) SFDE. All nonresidential use shall be charged based on the anticipated volume of water use. The City may verify actual water use after issuance of the building permit and assess a supplemental sewer connection charge in the event that actual water use is greater than the original estimate upon which the sewer connection charge was calculated.

(Sec. 2, Ord. 82-013, eff. Nov. 25, 1982)

7-8.206. Amount of Charge.

The sewer connection charge for an SFDE is set at five hundred seventy dollars (\$570.00). This rate shall be adjusted annually on July 1 by Resolution of the City Council to reflect the change in the Engineering News Record (ENR) Connection Cost Index during the preceding twelve (12) months. The March ENR Construction Cost Index value shall be used as the basis of adjustment.

(Sec. 2, Ord. 82-013, eff. Nov. 25, 1982, as amended by Sec. 1, Ord. 90-7, eff. Aug. 9, 1990)

7-8.207. Construction of Trunk Sewer in Lieu of Payment of Sewer Construction Fees.

The sewer connection fee may be waived where the applicant agrees to construct, at no cost to the City, a new trunk sanitary sewer from his development or interceptor sewer which is determined to have adequate capacity.

All facilities constructed by the applicant must be designed by a registered professional engineer and must be constructed to City standards. (Sec. 2, Ord. 82-013, eff. Nov. 25, 1982)

ARTICLE 3. SEWER USE REGULATIONS

7-8.301. Use of Public Sewers Required.

All sewage, waste and wastewater shall be discharged to City sanitary sewers except as hereinafter provided.

(Sec. 3, Ord. 82-013, eff. Nov. 25, 1982)

7-8.302. Prohibitions on Discharges.

No person shall discharge wastes to a City sewer which cause, threaten to cause, or are capable of causing, either alone or by interaction with other substances:

(a) A fire or explosion;

(b) Obstruction of flow in the City's sewerage system or injury of the system or damage to the system. This prohibition shall include, without limitation, the following substances: any sand, cement, cinders, ashes, metal, glass or other heavy solids; any straw shavings, animal hair, feathers, paunch manure or other fibrous matter; any tar, asphalt, resins, plastics or other viscous substance;

(c) Toxic substances that create a danger to life or safety of humans;

(d) A strong, offensive odor; or prevention of the effective maintenance or operation of the sewerage system;

(e) Air pollution by the release of toxic or malodorous gases or malodorous, noxious or corrosive gas-producing substances;

(f) Interference with City sewers, pump stations or other wastewater conveyance facilities;

(g) A detrimental environmental impact or a nuisance in the waters of the State or a condition which violates the rules and regulations of any public agency having regulatory jurisdiction over the City; and

(h) Quantities or rates of flow which overload the City's sewerage system, or cause excessive collection or treatment costs.

(Sec. 3, Ord. 82-013, eff. Nov. 25, 1982)

7-8.303. Authority to Require Special Treatment Facilities or Measures.

Whenever deemed necessary by the City Engineer, the owner shall at his own expense provide such treatment or take such other measures as shall be required in order to reduce or eliminate objectionable waste characteristics or to reduce the rate of discharge of wastewater being deposited in the sewer, so that the same may be received therein:

(a) Without causing any damage to or any undue interference with the operation of the sewerage system;

(b) Without causing violation of the City's NPDES permit or water quality requirements;

(c) Without causing hazard of any kind to humans or animals.

In the event pretreatment or special facilities are required to make the industrial wastes acceptable as provided under this chapter, the applicant shall be required to furnish plans, approved prior to construction, showing the method of collection and pretreatment proposed to be used, and a permit shall not be issued until said plans or required modifications thereof have been checked and approved by the City Engineer. All such facilities shall then be installed in conformity with aforementioned approved plans.

(Sec. 3, Ord. 82-013, eff. Nov. 25, 1982)

7-8.304. Discharge into Storm Drain Prohibited.

It shall be unlawful to discharge within the City any wastewater or polluted waters into any storm drain or natural outlet or channel.

(Sec. 3, Ord. 82-013, eff. Nov. 25, 1982)

7-8.305. Prohibited Infiltration/Inflow Discharges.

No person shall discharge or cause to be discharged any rainwater, stormwater, groundwater, street drainage, subsurface drainage, or yard drainage, into any pipe which is directly or indi-

rectly connected to the sanitary sewerage system.

(Sec. 3, Ord. 82-013, eff. Nov. 25, 1982)

7-8.306. Prohibition on Use of Diluting Waters.

The use of diluting waters to meet the requirement standards for discharge of waste into the sewer is prohibited.

(Sec. 3, Ord. 82-013, eff. Nov. 25, 1982)

7-8.307. Prohibition on Unpolluted Water.

Unpolluted water, including, but not limited to cooling water, process water, or blowdown from cooling towers or evaporative coolers, shall not be discharged through direct or indirect connection to a City sewer unless a permit is issued by the City. The City may approve the discharge of such water only when no reasonable alternative method of disposal is available. If a permit is granted for the discharge of such water into a City sewer, the user shall pay the applicable user charges and fees and shall meet such other conditions as required by the City Engineer.

(Sec. 3, Ord. 82-013, eff. Nov. 25, 1982)

7-8.308. Prohibitions on Radioactive Wastes.

No person shall, and it shall be unlawful to, discharge, cause to be discharged, or permit to be discharged, any radioactive waste into the sewerage system; provided, however, that:

(a) Persons authorized to use radioactive materials by the California Department of Health Services or other governmental agency empowered to regulate the use of radioactive materials may discharge, cause to be discharged, or permit to be discharged such wastes, provided that such wastes are discharged in strict conformance with the current California radiation control regulations for safe disposal of such wastes as they now exist or may hereafter be amended;

(b) The person so acting does so in compliance with all applicable rules and regulations of the City and all other regulatory agencies;

(c) The person so acting must have a permit to do so from the City Engineer.
(Sec. 3, Ord. 82-013, eff. Nov. 25, 1982)

7-8.309. Limitations on the Use of Garbage Grinders.

Waste from garbage grinders shall not be discharged into the sewerage system except:

(a) Wastes generated in preparation of food normally consumed on the premises, such as in a home or restaurant;

(b) In other cases where the user has obtained a permit for that specific use from the City Engineer, and agrees to undertake whatever self-monitoring is required to enable the City Engineer to equitably determine the charges and fees based on the waste constituents and characteristics. Such grinders must shred the waste to a degree that all particles will be carried freely under normal flow conditions prevailing in the sewerage system, with no particle greater than one-half inch (1/2") (1.27 centimeters). Garbage grinders shall not be used for grinding plastic, paper products, inert materials, garden refuse, or waste products, resulting from the handling, storage and sale of fruits and vegetables in wholesale and retail produce establishments and wastes from plants engaged in the preparation, processing or preserving of foods not intended primarily for immediate consumption. Such discharge shall not cause the City to violate water quality requirements imposed on it by State or Federal regulatory agencies.
(Sec. 3, Ord. 82-013, eff. Nov. 25, 1982)

7-8.310. Limitations on Point of Discharge.

No person shall discharge any substances directly into a manhole or similar opening in a City sewer other than through an approved building sewer.
(Sec. 3, Ord. 82-013, eff. Nov. 25, 1982)

7-8.311. Prohibitions on Stored Liquid Wastes.

Liquid wastes that have been collected and held in tanks or containers shall not be discharged into the sewerage system, unless first approved in writing by the City Engineer, including payment of processing charges. Wastes of this category include but are not limited to:

- (a) Septic tank pumpings;
- (b) Chemical toilet wastes;
- (c) Pleasure boat wastes;
- (d) Industrial wastes collected in containers or tanks;
- (e) Oils and grease; and
- (f) Any other material, not classified as residential sewage, including chemicals and other materials stored on the premises of the user which might, directly or indirectly, enter the City sewer, accidentally, or otherwise.
(Sec. 3, Ord. 82-013, eff. Nov. 25, 1982)

7-8.312. Wastewater Volume Determination: Metered Water Supply.

When charges and fees are based upon the water usage, such charges and fees shall be applied against the total amount of water used from all sources unless, in the opinion of the City Engineer, significant portions of water received are not discharged to a City sewer. The total amount of water used from public and private sources will be determined by means of public meters or private meters, installed and maintained at the expense of the user and as approved by the City Engineer.
(Sec. 3, Ord. 82-013, eff. Nov. 25, 1982)

7-8.313. Metered Wastewater Volume and Metered Diversions.

When charges and fees are based upon water usage and when, in the opinion of the City Engineer, a significant portion of the water received from any metered source does not flow into the City sewer because of the principal activity of the user or removal by other means, the user charges and fees will be applied against the vol-

ume of water discharged from such premises into the City sewer. Written notification and proof of the diversion of water must be provided by the user and approved by the City if the user is to avoid the application of the charges and fees against the total amount of water used from all sources. The user may install a meter of a type and at a location approved by the City Engineer and at the user's expense. Such meters shall measure either the amount of sewage discharged or the amount of water diverted. Such meters shall be maintained at the expense of the user and be tested for accuracy at the expense of the user when deemed necessary by the City Engineer. For users who, in the opinion of the City Engineer, divert a significant portion of their flow from a city sewer, the charges and fees may be based upon measurement of the flow and volume to be discharged prepared by the user and approved by the City Engineer. The measurement must include the method, calculations and type of equipment used to determine the wastewater volume.

(Sec. 3, Ord. 82-013, eff. Nov. 25, 1982)

7-8.314. Discharge Reports.

The City Engineer may require that any person discharging wastewater into a City sewer file a periodic discharge report. The discharge report may include, but need not be limited to: nature of process; volume; rates of flow; mass emission rate; production quantities; hours of operation; number and classification of employees; or other information which relates to the generation of waste, including wastewater constituents and characteristics in the wastewater discharge. Such reports may also include the chemical constituents and quantity of liquid or gaseous materials stored on site even though they may not normally be discharged, or any chemicals or raw materials not in liquid or gaseous form which are stored on the premises, and could reach the City's sewerage system by accidental spillage or washdown of spillage.

(Sec. 3, Ord. 82-013, eff. Nov. 25, 1982)

7-8.315. Mandatory Wastewater Discharge Permits.

All major contributing industries proposing to connect or to discharge into a City sewer or discharging into a city sewer must comply with applicable permits and fees.

(Sec. 3, Ord. 82-013, eff. Nov. 25, 1982)

7-8.316. Monitoring Facilities.

The City Engineer may require the user to construct at his own expense, sampling manholes or monitoring facilities to allow inspection, sampling, and flow measurement of the building sewer or internal plumbing and drainage systems and may also require sampling or metering equipment to be provided, installed, and operated at the user's premises, but the City may, when such location would be impractical or cause undue hardship on the user or City, require a sampling facility to be constructed in the public street or right-of-way and located so that it will not be obstructed by landscaping or parked vehicles, assuming that such location consent is first obtained from the public agency having jurisdiction of such public area. The City Engineer may require the user to provide and operate an independent power supply for the monitoring facilities.

If the monitoring facility or sampling manhole is inside the user's fence, there shall be accommodations to allow access for City personnel. There shall be ample room in or near such sampling manhole to allow accurate sampling and compositing of samples for analysis. The manhole, sampling, and measuring equipment shall be maintained at all times in a safe and proper operating condition at the expense of the user.

Whether constructed on public or private property, the sampling and monitoring facilities shall be provided in accordance with the City's requirements and all applicable local agency requirements, construction standards and specifications. Construction shall be completed within one hundred twenty (120) days following written notification by the Engineer, unless a time extension is granted by the City Engineer.

In the event that no special facility is available, the point of inspection shall be considered to be the nearest downstream manhole in the City sewer.

(Sec. 3, Ord. 82-013, eff. Nov. 25, 1982)

7-8.317. Inspection and Sampling.

The City may inspect the facilities of any user to ascertain whether the purpose of this chapter is being met and all requirements are being complied with. Persons or occupants of premises where wastewater is created or discharged shall allow the City Engineer, or his representative, ready access at all times to all parts of the premises for the purpose of inspection or sampling in the performance of any of their duties. The City shall have the right to establish on the user's property such devices as are necessary to conduct sampling or metering operations. Where a user has security measures in force which would require proper identification and clearance before entry into its premises, the user shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, personnel from the City will be permitted to enter without delay for the purpose of performing their specific responsibilities.

(Sec. 3, Ord. 82-013, eff. Nov. 25, 1982)

7-8.318. Pretreatment.

Users shall make wastewater acceptable to the City under the limitations established herein before discharging into any City sewer. Any facility required to pretreat wastewater to a level acceptable to the City shall be provided and maintained at the user's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the City Engineer for review, and shall be approved by the City before construction of the facility. The review and approval of such plans and operating procedures will in no way relieve the user from the responsibility of modifying the facility as necessary to produce an effluent complying with the provisions of this chapter. Any subsequent changes in the pretreatment facilities or method

of operating affecting the effluent shall be reported to and approved by the City.

(Sec. 3, Ord. 82-013, eff. Nov. 25, 1982)

7-8.319. Protection From Accidental Discharge.

Each user shall provide protection from accidental discharge of prohibited materials or other wastes regulated by this chapter. Facilities, to prevent accidental discharge of prohibited materials, shall be provided and maintained at the user's expense. Detailed plans showing facilities and operating procedures to provide this protection shall be submitted to the City Engineer for review prior to construction of the facility.

The review of such plans and operating procedures will in no way relieve the user from the responsibility of modifying the facility as necessary to provide the protection necessary to meet the requirements of this chapter. Any costs to the City arising from accidental discharge shall be paid by the user.

(Sec. 3, Ord. 82-013, eff. Nov. 25, 1982)

7-8.320. Confidential Information.

To the extent authorized by applicable State of California and or Federal Statutes and Regulations:

(a) All information and data on a user obtained from reports, questionnaires, permit applications, permits and monitoring programs and from inspection shall be available to the public or other governmental agencies without restriction unless the user specifically requests and is able to demonstrate to the satisfaction of the City Engineer that the release of such information would divulge information, processes or methods which would be detrimental to the user's competitive position;

(b) When requested by the person furnishing a report, the portions of a report which might disclose trade secrets or secret processes shall not be made available to governmental agencies for use in making studies; provided, however, that such portions of a report shall be available for use by the State or any State agency in judi-

cial review or enforcement proceedings involving the person furnishing the report;

(c) Wastewater constituents and characteristics will not be recognized as confidential information; and

(d) Information accepted by the City Engineer as confidential shall not be transmitted to any governmental agency or to the general public by the City unless prior and adequate notification is given to the user.

(Sec. 3, Ord. 82-013, eff. Nov. 25, 1982)

7-8.321. Special Agreements.

Special agreements and arrangements between the City and any persons or agencies may be established when in the opinion of the City Engineer unusual or extraordinary circumstances compel special terms and conditions.

(Sec. 3, Ord. 82-013, eff. Nov. 25, 1982)

ARTICLE 4. CHARGES AND FEES

7-8.400. General.

All costs of operation, maintenance, rehabilitation and improvement of the City's sanitary sewers shall be paid by the users of the City's sanitary sewers. General funds shall not be used for this purpose. Revenues collected from the users of the City's sanitary sewers shall be reserved for this single purpose and shall not be expended for any other purpose. Interest earned on the various funds shall remain in those funds.

(Sec. 4, Ord. 82-013, eff. Nov. 25, 1982)

7-8-401. Sewer Funds are Established.

A total of three (3) sewer funds are established as follows:

- (a) Operation and Maintenance Fund;
- (b) Sewer Rehabilitation/Replacement Fund;
- (c) Relief Sewer Construction Fund.

All revenues collected shall be allocated between each of the three (3) funds in accordance with the percentage of the budgeted amounts contained in the official approved budget for the fiscal year in which the revenue is collected. The amounts so deposited in each fund shall be

reserved for expenditures appropriated to that fund, as described in the paragraphs which follow, except that loans may be made against one (1) or more funds to supplement funds deposited in another fund to meet the needs of a particular project approved by the City Council.

(a) Operation and Maintenance Fund. All expenditures budgeted and required for the normal, routine operation and maintenance and incidental repair and improvement of the sanitary sewers shall be from this fund. The following line budget items shall be included, as a minimum, in each annual budget for this fund:

- (1) Personnel services;
- (2) Supplies and services;
- (3) Marina maintenance and utilities (pump station);
- (4) Sewer system studies and minor rehabilitation;
- (5) Sewer maintenance equipment.

All maintenance equipment expenditures shall be paid from this fund. Example expenditures include purchase of maintenance equipment, purchase of manhole castings, covers, and other materials required for sewer system maintenance, and contracts for the design and construction of the same.

(b) Sewer Rehabilitation/Replacement Fund. All expenditures for the design and rehabilitation, repair, sealing or construction of improvements to sanitary sewers requiring replacement because of structural failure, excessive infiltration/inflow, or other defects, shall be paid from this fund.

(c) Relief Sewer Construction Fund. All expenditures for the design and construction of relief sewers required to convey peak flows from infiltration/inflow shall be paid from this fund.

(Sec. 4, Ord. 82-013, eff. Nov. 25, 1982)

7-8.402. User Classifications Established.

For the purpose of the levy of sewer use charges, the following classification of users is established:

(a) Single-Family Residential User (SF). This classification shall include single-family homes and each single-family living unit of a duplex, multiplex or multiple-family service, if each single-family living unit is served by its own water meter. Where two (2) or more single-family living units are served by a common water meter, the rates for the multiple-family classification shall apply;

(b) Multiple-Family Use (M). User where more than one (1) single-family living unit is served by a common water meter;

(c) Commercial Service (C). All commercial, retail, wholesale and miscellaneous small industrial users which do not qualify under one (1) of the other classifications shall be included in this classification;

(d) Institutional (I). All schools, churches, medical facilities and governmental users;

(e) Parks (P). All parks having sanitary sewer service;

(f) Heavy Industrial (HI). All industrial and commercial users, except multifamily residential services, which have a sewer connection larger than four inches (4") in diameter and have a water service greater than three-quarter inch (3/4") in diameter.

(Sec. 4, Ord. 82-013, eff. Nov. 25, 1982)

7-8.403. User Rates Established.

Sewer use charges shall be established by City Council Resolution and shall require annual adjustment to be determined by the Council to be appropriate. Any adjustments of rates shall be equally applied to all user classifications.

(Sec. 4, Ord. 83-013, eff. Nov. 25, 1982)

7-8.404. Collection of User Charges.

The City reserves the right to collect the user charge monthly, bimonthly, semiannually, or annually, by separate billings to the user, an additional charge on the user's water bill, or by an annual levy collected by the County Tax Collector on the tax rolls. Each delinquent user charge shall automatically become a lien on the real property from which the sewer connection has

been made; after ninety (90) days delinquent, the City may place the delinquent user charge plus estimated user charge for an additional nine (9) months on the tax rolls for collection.

(Sec. 4, Ord. 82-013, eff. Nov. 25, 1982)

7-8.405. Appeal Procedures.

If the user charge is believed to be incorrect or not equitable, an individual user may appeal the charge to the City Engineer within thirty (30) days of receipt of the bill. The appeal shall be in writing and shall clearly state the reason that the charge is believed to be in error. The City Engineer shall make a determination of the appeal within thirty (30) days of receipt of the written statement from the user. User charges determined to be in error shall be corrected by the City and the appropriate credits and/or adjustments shall be made by the City to the user. The City Engineer's determination may be appealed to the City Council whose determination is final.

(Sec. 4, Ord. 82-013, eff. Nov. 25, 1982)

7-8.406. Special Charges.

The City may assess additional charges to any discharge of commercial sewage or industrial waste if such discharge results in costs to the City attributable to such discharge. Examples of City costs incurred include cleaning of grease, solids, or debris from the sewers, repairing sewers damaged by discharges, damage to equipment or injury of personnel from toxic or hazardous gases or volatile fractions of the discharge to the sewer, or any other financial liability incurred by the City as a result of the industrial waste or commercial sewage discharge. Such charge or any fines or penalties waste or commercial sewage discharge. Such charge or any fines or penalties imposed by the City or others as a result of violation of sewer use ordinances, shall be added to the user's bill and shall, if delinquent, be collected in accordance with the provisions of Section 7-8.404.

(Sec. 4, Ord. 82-013, eff. Nov. 25, 1982)

7-8.407. City User Charges are in Addition to User Charges Levied by Others.

The sewer use charges provided by this chapter are in addition to any and all sewer use charges and water sales charges levied by others.

(Sec. 4, Ord. 82-013, eff. Nov. 25, 1982)

ARTICLE 5. ENFORCEMENT

7-8.501. Responsibility.

The primary responsibility for enforcement of the provisions of this chapter shall be vested in the City Engineer, or agents of the City as he shall designate; and, provided further, that designated field inspectors or other employees of the City are hereby authorized to act as agents of the City for and on behalf of the City Engineer with the power to inspect and issue notices for violations of this chapter.

(Sec. 5, Ord. 82-013, eff. Nov. 25, 1982)

7-8.502. Accidental Discharges: Notification of Discharge.

Users shall notify the City Department of Public Works or Police Department by telephone immediately upon accidentally discharging wastes in violation of this chapter.

This notification shall be followed, within four (4) days of the date of occurrence, by a detailed written statement describing the causes, volume and nature of the accidental discharge and the measures being taken to prevent future occurrence. Such notification will not relieve users of liability for any expense, loss or damage to the sewerage system or for any fines imposed on the City on account thereof by any regulatory agencies.

(Sec. 5, Ord. 82-013, eff. Nov. 25, 1982)

7-8.503. Accidental Discharges: Notices to Employees.

A notice shall be furnished and permanently posted on the bulletin of each commercial and industrial user advising employees who to con-

tact in case of an accidental discharge in violation of this chapter.

(Sec. 5, Ord. 82-013, eff. Nov. 25, 1982)

7-8.504. Issuance of Cease and Desist Orders.

When the City Engineer finds that a discharge of waste has taken place or is likely to take place in violation of this chapter, the City Engineer may issue an order to cease and desist such discharge, or practice, or operation likely to cause such discharge and direct that those persons not complying shall:

- (a) Comply forthwith;
- (b) Comply in accordance with a time schedule set forth by the City Engineer; or
- (c) Take appropriate remedial or preventive action.

(Sec. 5, Ord. 82-013, eff. Nov. 25, 1982)

7-8.505. Submission of Time Schedule.

When the City Engineer finds that a discharge of waste is taking place, has been taking place or threatens to take place, in violation of prohibitions or limitations prescribed in this chapter, or wastewater source control requirements, effluent limitations or pretreatment standards, the City Engineer may require the user to submit for approval, with such modifications as he deems necessary, a detailed time schedule of specific actions which the user shall take in order to prevent or correct a violation of requirements.

(Sec. 5, Ord. 82-013, eff. Nov. 25, 1982)

7-8.506. Emergency Corrections.

In the event repairs, construction, or other public work is performed on any premises pursuant to any provision of law relating to the emergency performance of public work and the expenditure of public funds therefor, or pursuant to any other provision of law authorizing public work in private property in order to correct, eliminate or abate a condition upon such premises which threatens to cause, causes, or has caused a violation of any provision of this chap-

ter, or of any other requirement of law, the user responsible for the occurrence or condition giving rise to such work, the occupant and the owner of the premises shall be liable, jointly and severally to the City for such public expenditures.

(Sec. 5, Ord. 82-013, eff. Nov. 25, 1982)

**7-8.507. Damage to Facilities:
Additional Remedy.**

When a discharge of wastes causes an obstruction, damage, or any other impairment to City facilities, the City, after providing the user with notice and opportunity to be heard, may assess a charge against the user for the work required to clean or repair the facility and add such charge to the user's charges and fees.

(Sec. 5, Ord. 82-013, eff. Nov. 25, 1982)

7-8.508. Termination of Service.

The City may terminate or cause to be terminated wastewater service to any premises if a violation of any provision of this chapter is found to exist or if a discharge of wastewater causes or threatens to cause a condition of contamination, pollution, or nuisance as defined in this chapter. Before termination of service, the involved user (permittee, etc.,) shall be provided notice and an opportunity to be heard unless an emergency situation exists requiring summary termination in order to protect the public health and safety. This provision is in addition to other statutes, rules or regulations, authorizing termination of service for delinquency in payment.

(Sec. 5, Ord. 82-013, eff. Nov. 25, 1982)

7-8.509. Appeals.

(a) Any user, permittee, applicant or other person aggrieved by any decision, action, finding, determination, order or directive of the City Engineer, made or authorized pursuant to the provisions of this chapter, or relating to any permit issued pursuant to said sections, or interpreting or implementing the same, may file a written request with the City Engineer for reconsideration thereof within ten (10) days of

such decision, action, finding, determination, or order, setting forth in detail the facts supporting each user's or person's request for reconsideration. The City Engineer shall render a final decision within fifteen (15) days of the receipt of such request for reconsideration.

(b) Any user, permittee, applicant, or other person aggrieved by the final determination of the City Engineer may appeal such determination to the City Council within fifteen (15) days after notification of the final determination of the City Engineer, and shall set forth in detail the facts and reasons supporting the appeal in writing. The appeal shall be heard by the City Council within forty-five (45) days from the date of filing the Notice of Appeal. The appellant, the City Engineer, and such other persons as the Council may deem appropriate, shall be heard at the hearing on such appeal. Upon conclusion of hearing, the Council may affirm, reverse or modify the final determination of the City Engineer as the Council deems just and equitable, and in furtherance of the provisions, purposes and intent of this chapter. During the pendency of any such appeal, the final determination of the City Engineer shall remain in full force and effect. The Council's determination on the appeal shall be final.

(Sec. 5, Ord. 82-013, eff. Nov. 25, 1982)

7-8.510. Falsification of Information.

It shall be unlawful knowingly to make any false statement, representations, record, report, plan or other document, or knowingly to tamper with, bypass, or render inaccurate any sample monitoring device or equipment installed or operated pursuant to this chapter or of any permit issued under this chapter. In addition to any punishment or remedy provided by law, any such falsification or tampering shall be grounds for revocation of any permit.

(Sec. 5, Ord. 82-013, eff. Nov. 25, 1982)

7-8.511. Public Nuisance.

Waste or wastewater discharge, threatened waste or wastewater discharge, or any condition or act in violation of any provision of this chapter or of any provision of any permit issued pursuant to this chapter or of any order or directive of the City Engineer authorized by the provisions of this chapter, is hereby declared to be a public nuisance. Such nuisance may be abated, removed or enjoined and damages assessed therefor, in any manner provided by law. (Sec. 5, Ord. 82-013, eff. Nov. 25, 1982)

7-8.512. Damage to Sewerage System.

No person(s) shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance or equipment which is a part of the sewerage system. Any person(s) violating this provision shall be subject to immediate arrest under charge of disorderly conduct. (Sec. 5, Ord. 82-013, eff. Nov. 25, 1982)

7-8.513. Civil Penalties.

Any person who intentionally or negligently violates any provision of any permit issued pursuant to the chapter, or who intentionally or negligently discharges waste or wastewater which causes pollution, or who so violates any cease and desist order, prohibition, effluent limitation, national standard of performance or national pretreatment or toxicity standard, may also be in violation of the Porter-Cologne Act and subject to its sanctions including civil penalty. (Sec. 5, Ord. 82-013, eff. Nov. 25, 1982)

7-8.514. Misdemeanor.

Every person who violates any provisions of this chapter is guilty of a misdemeanor and punishable as provided in Health and Safety Code Section 4766. (Sec. 5, Ord. 82-013, eff. Nov. 25, 1982)

7-8.515. Remedies Cumulative.

The remedies provided for in this chapter shall be cumulative and not exclusive, and shall be in addition to any and all other remedies available to the City. (Sec. 5, Ord. 82-013, eff. Nov. 25, 1982)

7-8.516. Validity.

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, no other provision of this chapter will be affected thereby. (Sec. 5, Ord. 82-013, eff. Nov. 25, 1982)

CHAPTER 9.**INFORMAL BIDDING PROCEDURES****Sections:**

7-9.01	Informal Bid Procedures
7-9.02	Contractors' List
7-9.03	Notice Inviting Informal Bids
7-9.04	Award of Contracts

7-9.01. Informal Bid Procedures.

Public projects, as defined by Section 20161 of the California Public Contract Code, in accordance with the limits listed in Section 22032 of the Public Contract Code, may be let by the informal procedures set forth in Section 22032, *et seq.* of the Public Contract Code. (Sec. 2 (part), Ord. 03-005, eff. June 19, 2003)

7-9.02. Contractors' List.

The Public Works Director shall develop and maintain a list of contractors in accordance with the provisions of Public Contract Code section 22034 and the criteria promulgated from time to time by the California Uniform Construction Cost Accounting Commission ("Commission"). (Sec. 2 (part), Ord. 03-005, eff. June 19, 2003)

7-9.03. Notice Inviting Informal Bids.

(a) If a public project subject to the provisions of this Chapter is to be performed, a notice inviting formal bids shall be mailed to all contractors for the category of work to bid as shown

on the list developed in accordance with Section 7-9.02 and to all construction trade journals as specified by the Commission in accordance with Section 22036 of the Public Contract Code. Additional contractors and/or construction trade journals may be notified at the discretion of the department soliciting bids, provided, however:

(1) If there is no list of qualified contractors maintained by the City for the particular category of work to be performed, the notice inviting bids shall be sent only to the construction trade journals specified by the Commission; and

(2) The project or service is proprietary in nature such that it can be obtained only from a certain contractor or contractors. The notice inviting informal bids may then be sent exclusively to such contractor.

(b) All mailing of notices to contractors and construction trade journals pursuant to this section shall be completed not less than ten (10) calendar days before bids are due.

(c) The notice inviting informal bids shall describe the project in general terms and how to obtain more detailed information about the project, and state the time and place for the submission of bids.

(Sec. 2 (part), Ord. 03-005, eff. June 19, 2003)

7-9.04. Award of contracts.

The City Manager or his or her designee shall make recommendations to the City Council for purposes of award of contracts under this Chapter.

(Sec. 2 (part), Ord. 03-005, eff. June 19, 2003)

CHAPTER 10.

URBAN FORESTRY ORDINANCE

Sections:

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7-10.02	Purpose
7-10.03	Definitions
7-10.04	Maintenance of Street Trees
7-10-05	Planting and Removal of Street Trees
7-10-06	Protection of Trees and Landscape Material
7-10-07	Nuisance Trees; Abatement
7-10-08	Materials Deleterious to Plant Growth Prohibited
7-10-09	Paving Prohibited on Park or Parkway
7-10-10	Exceptions
7-10-11	Urban Forestry Account
7-10-12	Penalties for Violation of Ordinance

7-10-01. Title.

The ordinance codified in this chapter shall be known as the Emeryville Urban Forestry Ordinance.

(Sec. 2 (part), Ord. 03-015, eff. Nov. 20, 2003)

7-10-02. Purpose.

The Emeryville Urban Forestry Ordinance is enacted to further the following public purposes:

(a) To realize the optimum benefits of trees on the City's streets and public places, including favorable modification of microclimates, mitigation of air, water and noise pollution, reduction of soil erosion and runoff, enhancement of the visual environment, and promotion of community pride;

(b) To integrate street planting and maintenance with other urban elements and amenities, including but not limited to utilities, vehicular and pedestrian traffic;

(c) To promote efficient, cost-effective management of the City's urban forest by coordinating public and private efforts within a

comprehensive and professional management system;

(d) To promote the attractiveness of the City to residents and visitors;

(e) To reduce the public hazard, nuisance, and expense occasioned by improper tree selection, planting, and maintenance;

(f) To create and maintain a unified urban-forest resource, enhancing the City's overall character and sense of place; and

(g) To provide a mechanism by which a "street tree" may be removed, as well as the imposition of penalties for any unauthorized removal or violations of the Urban Forestry Ordinance.

(Sec. 2 (part), Ord. 03-015, eff. Nov. 20, 2003)

7-10-03. Definitions.

Unless the context otherwise clearly indicates, the words and phrases used in this chapter shall be defined as follows:

(a) "Cumulative diameter" shall refer to the sum diameter of the trunks of multi-stemmed trees, or to the sum diameter of the trunks of several trees, when measured at 4½ feet above natural grade.

(b) "Department" shall mean the Department of Public Works or the Department's designee.

(c) "Director" shall mean the Director of the Department of Public Works or the Director's designee.

(d) "Injure" or "injury" shall mean any act which harms or damages a tree, including but not limited to impact, cutting, carving, transplanting, or knocking over, and includes but is not limited to the following: injurious attachment of any rope, wire, nail, advertising poster, or other contrivance to any street tree; intentionally or negligently allowing any gaseous liquid or solid substance that is harmful to a tree to come into contact with a tree; setting fire or intentionally or negligently permitting any fire to burn when such fire or the heat therefrom will injure any part of any tree; pruning which in and

of itself will kill or cause a tree to decline; or severing of all or part of a tree.

(e) "Landscape material" shall mean any tree, shrub, groundcover or other plant.

(f) "Maintenance" shall mean those actions necessary to promote the life, growth, health, or beauty of a tree. Maintenance includes both routine and major activities. "Routine maintenance" shall include adequate watering to ensure the tree's growth and sustainability; weed control; removal of tree-well trash; staking; fertilizing; routine adjustment and timely removal of stakes, ties, tree guards, and tree grates; bracing; and sidewalk repairs related to the tree's growth or root system. "Major maintenance" shall include structural pruning as necessary to maintain public safety and to sustain the health, safety, and natural growth habit of the tree; pest and disease-management procedures as needed and in a manner consistent with public health and ecological diversity; replacement of dead or damaged trees.

(g) "Nuisance tree" shall mean any tree that poses a hazard to person or property. A tree may be deemed a nuisance if it or any part of it: (1) appears dead, dangerous, or likely to fall; (2) obstructs or damages a street or sidewalk; (3) harbors a serious disease or infestation threatening the health of other trees; (4) interferes with vehicular or pedestrian traffic; (5) obstructs official street cleaning activities; or (6) poses any other significant hazard or potential hazard, as determined by the Department.

(h) "Parking strip" or "parkway" shall mean the area between the property line and roadway, except sidewalk and curb, if any.

(i) "Replacement value fee" shall mean a fee equal to the value of the removed street tree as determined by the Department or by a Department-selected arborist.

(j) "Street tree" shall mean any tree growing within the public right-of-way, including unimproved public streets and sidewalks, and any tree growing on land under the jurisdiction of the City of Emeryville.

(Sec. 2 (part), Ord. 03-015, eff. Nov. 20, 2003)

7.10.04. Maintenance of Street Trees.

(a) Responsibilities of Property Owners. It shall be the duty of all public agencies and property owners whose property is not zoned medium density residential (R-M) and whose lots or portions of lots abut, front or are adjacent to any street tree, to maintain such street tree. This duty shall include both routine and major maintenance of the street tree. This duty shall be extended to any property owner whose property is zoned medium density residential (R-M) where the conditions of development approval require maintenance.

(b) Responsibilities of the Department. The Department shall maintain all street trees and landscapes on properties zoned medium density residential (R-M) and those landscapes that are not the responsibility of any other entity under the preceding subsection. In addition, the Department may, at the Department's discretion, determine to undertake the regular routine and/or major maintenance of certain street trees or corridors of street trees to promote consistency in the maintenance of trees or when in the public interest.

(c) Liability. Nothing in this Chapter shall be deemed to impose any liability upon the City of Emeryville or upon any of its officers or employees or agents, or to relieve the owner and occupant of any private property from the duty to keep trees upon such property or under his or her control, in a safe condition.

(d) Department Street Tree Inventory and Documentation. The Department shall use its best efforts to maintain an inventory of all trees under its jurisdiction; such information shall be made available to the public upon request. (Sec. 2 (part), Ord. 03-015, eff. Nov. 20, 2003)

7-10.05. Planting and Removal of Street Trees.

(a) Encroachment Permit Required. It shall be unlawful for any person to plant or to remove any street tree without a valid encroachment permit for such work issued by the Department.

(b) Planting. An abutting property owner who desires a permit to plant a street tree shall apply to the Department as part of the encroachment permit process. The details of the planting, such as the species of street tree, soil testing, soil amending, staking, location and other details shall be approved by the Department. If approved, a permit to plant the specified species of tree(s) shall be issued to the applicant. The Department may elect to plant the street tree or permit the applicant to do so and condition any permits on the abutting property owner's agreement to water or otherwise maintain the street tree or upon such other conditions as may be appropriate. In order to encourage the planting of street trees, the Department may, in its discretion, waive the permit fee for the planting of a street tree.

(c) Removal. An abutting property owner who desires to remove a street tree shall apply to the Department for an encroachment permit. Such application must be accompanied by payment for the encroachment permit fee in accordance with the Master Fee Schedule adopted by the City. An applicant may be required to submit a tree report prepared by a certified arborist if determined necessary by the Department.

(d) Decision to Grant Permit. The Department may grant or deny the encroachment permit for removal of a street tree. If the Department grants a permit for tree removal, the Department normally shall require the planting of replacement trees of equal or cumulative diameter to the trees approved for removal. When replacement of a tree of equal diameter is not feasible, for reasons related to site-specific conditions, replacement at the largest practicable diameter, as determined by the Director shall be required. When the replacement tree cannot match the diameter of the tree to be removed, due to site-specific conditions, the Department shall require replacement planting of several trees of equal cumulative diameter to the tree being removed or payment of a replacement value fee, or any combination thereof which would equal the value of the tree to be removed

as determined by a certified arborist. In cases where the need for street tree removal is without fault of the property owner and the property owner is not otherwise responsible for maintenance of the street tree, or for other good cause shown, the Department may waive the requirement to plant a replacement tree of equal or cumulative value or payment of a replacement value fee.

(e) Referral to Planning Commission. The Director may refer any application under this section to the Planning Commission for review or action. The decision of the Planning Commission is final and may not be appealed to the City Council.

(f) Notice Required. Upon receipt of an application for an encroachment permit for street tree removal, the Department shall post notice of such application on the affected street tree, in a manner not injurious to the tree; and at the locations designated in Section 2-8.01 of the Emeryville Municipal Code. If, after fourteen (14) days from the date of the giving of such notice, any person files with the Department written objections to the removal, the Director shall hold an informal hearing prior to removal of the street tree. Promptly after any such hearing, the Director shall issue a written decision and order regarding removal and serve such decision on the applicant and the party who filed the objections by placing a copy thereof in the regular mail. If removal is permitted under the Director's decision, no work to remove a street tree shall begin until fifteen (15) days have elapsed after the decision of the Department. These timelines may be waived by the Department in instances of an emergency.

(g) Appeal. Any person aggrieved by the decision of the Director may appeal to the Planning Commission within fifteen (15) days after final action by the Department. The appeal procedures set forth in the Zoning Ordinance, Sections 9-4.88.2 and 9-4.88.3 shall govern. The decision of the Planning Commission is final and may not be appealed to the City Council.

(h) Exceptions. The removal of street trees for projects that require Planning Commission review or approval shall be considered by the Planning Commission in conjunction with other required project approvals and may be subject to any conditions imposed by the Planning Commission. The project applicant shall still be required to obtain an encroachment permit from the Department prior to performing work on street trees.

(i) Compliance with Landscaping Provisions of Zoning Ordinance. In all cases, tree planting and landscaping undertaken pursuant to this Chapter shall comply with the requirements of Article 54 of the City of Emeryville Zoning Ordinance, except when in the discretion of the Public Works Department or the Planning Department, site conditions are such that modification is warranted.

(Sec. 2 (part), Ord. 03-015, eff. Nov. 20, 2003)

7.10.06. Protection of Trees and Landscape Material.

(a) Injury to or Destruction of Trees Prohibited. It shall be unlawful for any person to intentionally, maliciously or through gross negligence injure or destroy a street tree or any other trees on City property.

(b) Injury to or Destruction of Landscape Materials Prohibited. It shall be unlawful for any person to intentionally, maliciously or through gross negligence injure or destroy any landscape material in any street median, center strip, or other landscaped portion of a public right-of-way under the City's jurisdiction, except as authorized by the Department.

(c) Construction Work: Protection of Trees Required. It shall be unlawful for any person to engage in any construction work on private or public property without first taking steps to protect all street trees from damage, including damage caused by soil compaction or contamination.

(Sec. 2 (part), Ord. 03-015, eff. Nov. 20, 2003)

7.10.07. Nuisance Trees; Abatement.

(a) Notice to Property Owner(s). Upon a finding by the Department that any tree on private property or a street tree for which a property owner is responsible is a “nuisance tree” as defined herein, the Department shall send notice to the property owner(s) which describes the condition creating the nuisance, the actions required to be taken to abate the nuisance, and the date by which compliance must be completed. Required action may include replacement or removal of the tree. In cases of extreme danger, as determined by the Department, the Department may require immediate compliance.

(b) Department of Public Works to Abate Nuisance if Owner Fails to do So. If the responsible property owner does not undertake in a timely manner the abatement action, as required by said notice, the Department may perform necessary work to abate the nuisance. The cost of such abatement, including labor, equipment, materials, inspection services, and administrative costs, shall be an obligation owing by the responsible property owner(s) to the City.

(c) Method of Enforcement and Collection of Lien. The City Manager or his or her designee shall calculate all costs of abatement. The property owner shall be billed by the City Manager or his or her designee for the total costs and payment shall be due and payable within fifteen (15) days of the billing date. If the property owner fails timely to remit payment, the costs for abating such nuisance shall constitute a special assessment against the property to which it relates, and upon recordation in the office of the County Recorder of a Notice of Lien, as so made and confirmed, shall constitute a lien on said property for the amount of such assessment. (Sec. 2 (part), Ord. 03-015, eff. Nov. 20, 2003)

7.10.08. Materials Deleterious to Plant Growth Prohibited.

Except where approved by the Department, it shall be unlawful for any person to place or allow to be placed in or upon any parking strip, parking area or public plat any salt, oil, herbi-

cide, or any other material deleterious to the growth of plants, or in such close proximity to such public squares, parking areas, or public plats, that such deleterious material will permeate the soil thereof.

(Sec. 2 (part), Ord. 03-015, eff. Nov. 20, 2003)

7.10.09. Paving Prohibited on Parkway.

It is unlawful for any person to pave any parking strip or parkway in any manner or with any material whatsoever without first securing the written permission of the Department. Such permission shall be given in accordance with rules and regulations adopted by the Department.

(Sec. 2 (part), Ord. 03-015, eff. Nov. 20, 2003)

7.10.10. Exemptions.

The City of Emeryville is not subject to the requirements of this Chapter.

(Sec. 2 (part), Ord. 03-015, eff. Nov. 20, 2003)

7.10.11. Urban Forestry Account.

All replacement value fees and penalties collected under this ordinance shall be deposited in an “Urban Forestry” account for use by the Department in tree planting and landscape maintenance.

(Sec. 2 (part), Ord. 03-015, eff. Nov. 20, 2003)

7.10.12. Penalties for Violation of Ordinance.

It shall be unlawful for any person to violate any provisions or to fail to comply with any requirement of this Chapter.

(a) Criminal Penalties. Any person violating any provisions of this Chapter shall be punishable as set forth in Chapter 2 of Title 1 of this Code.

(b) Civil Penalties. Any person, including but not limited to the property owner, the person performing the work, and/or any other responsible person who violates any provision of this Chapter or any condition established as part of any permit issued hereunder may be required to

replace any removed or damaged tree or landscaping and shall become liable to the City for a civil penalty three (3) times the value of the tree or landscaping plus the City's incurred appraisal costs. Value shall be determined by a City-selected certified arborist qualified to perform plant and tree appraisals.

(c) Cumulative. The remedies set forth in this section are not exclusive, but cumulative, and may be used in addition to those set forth elsewhere in this Municipal Code or by law.

(d) The imposition of any fine or civil penalty for violation of this ordinance shall be determined by the City Manager or his designee and may be appealed to the City Council in accordance with the appeal procedures set forth in Chapter 4 of Title 1 of the City of Emeryville Municipal Code.

(Sec. 2 (part), Ord. 03-015, eff. Nov. 20, 2003)

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