



# STAFF REPORT

## SAUSALITO CITY COUNCIL

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### AGENDA TITLE:

Waive further reading and adopt Ordinance No. 1201, an ordinance amending Chapter 17.08 of the Sausalito Municipal Code Addressing Excavations within Ten (10) Feet Laterally of High Priority Subsurface Installations

### RECOMMENDED MOTION:

Waive further reading and adopt Ordinance No. 1201, an ordinance amending Chapter 17.08 of the Sausalito Municipal Code Addressing Excavations within Ten (10) Feet Laterally of High Priority Subsurface Installations

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### BACKGROUND and SUMMARY

On February 2, the City Council held a public hearing on the introduction of an ordinance addressing excavations within ten feet laterally of high priority subsurface installations. Following that introduction, and subsequent to the public hearing, Staff received and responded to comments from Underground Service Alert (USA) North and AT&T which warranted revisions and a new first reading.

On February 23, the City Council again introduced and proceeded with the first reading of the ordinance amending Chapter 17.08 of the Sausalito Municipal Code Addressing Excavations within Ten (10) Feet Laterally of High Priority Subsurface Installations. Following its introduction, Council discussions and public input, no additional revisions were made.

Attached you will find a full copy of the ordinance as it was introduced on February 23. Ordinance No. 1201 will be published, in its entirety, within fifteen days after the adoption and go into effect thirty (30) days after the second reading.

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Meeting Date: 03-02-10  
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## STAFF RECOMMENDATIONS

Waive further reading and adopt Ordinance No. 1201, an ordinance amending Chapter 17.08 of the Sausalito Municipal Code addressing excavations within ten (10) feet laterally of high priority subsurface installations.

## ATTACHMENTS

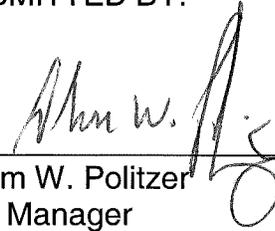
Ordinance No. 1201

PREPARED BY:



Debbie Pagliaro  
Assistant to the City Manager/City Clerk

SUBMITTED BY:



Adam W. Politzer  
City Manager

**ORDINANCE NO. 1201**

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

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THE CITY COUNCIL OF THE CITY OF SAUSALITO DOES HEREBY ORDAIN AS FOLLOWS:

**Section 1.** Chapter 17.08 of the Sausalito Municipal Code is hereby amended, in its entirety, to read as follows:

17.08.010 Permit--Required When.

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

Recognizing the significant threat to public health, property and the environment that arises when visual confirmation of the precise depth and lateral extent of certain hazardous underground utilities cannot be established by surface locating methods, a Permit shall be required of any entity desiring to install, inspect, repair or replace any underground utility, appurtenance or facility by power driven or power operated excavating or boring equipment that is within ten (10) feet laterally of any "High Priority Subsurface Installation" as defined in California Government Code, Section 4216(e). Further, in conformance with California

Government Code Section 4216.4, the Permittee shall determine the exact location of said High Priority Subsurface Installations in conflict with the excavation by excavating with hand tools within the area of the approximate location of the High Priority Subsurface Installations in the presence of a City Inspector who shall be required to approve in writing the use of any power-operated or power-driven excavating or boring equipment within the approximate location of the High Priority Subsurface Installation. As provided for in California Government Code Section 4216.4, power-operated or power-driven excavating or boring equipment may be used for the removal of any existing pavement if there are no High Priority Subsurface Installations contained in the pavement. If documented notice of the intent to use vacuum excavation devices, or power-operated or power-driven excavating or boring equipment, has been provided to the High Priority Subsurface Installation operator or operators and it is mutually agreeable with the operator or operators and the excavator, the excavator may utilize vacuum excavation devices, or power-operated or power-driven excavating or boring equipment within the approximate location of a subsurface installation and to any depth. In such a case, the City Inspector's approval shall be made in writing along with the written agreement between Permittee and High Priority Subsurface Installation operator(s). In addition the permittee is required to comply with the operator's requests to protect the subsurface installation as specified by the operator prior to start of excavation as defined in California Government Code 4216.2 (a) (2) and 4216.7 (a).

17.08.020 Permit--Application requirements and filing.

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

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

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

A. At the time of filing the application the applicant shall pay a fee of one cent per cubic yard based on estimate of subsection C of Section 17.08.020, with a minimum fee of two dollars and fifty cents. Immediately upon filing the application, the city building inspector shall investigate and either approve, modify or deny the permit.

B. Should the city building inspector modify or deny the application in whole or in part, the applicant may appeal in writing to the city council for review.

C. Where work has commenced before proper and adequate permit is issued, all fees shall be doubled. However, such double fees do not hold the applicant free of any possible penalties as provided in Section 17.08.100. (Ord. 437 §3, 1951) .

#### 17.08.040 Permit--Reasons for denial.

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

#### 17.08.050 Certificate of insurance may be required.

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

#### 17.08.060 Permit--Conditions of issuance.

A. If, in the opinion of the city building inspector or city engineer any such excavation will create or aggravate a dangerous condition if left open, such excavation shall be enclosed by a fence sufficiently high, tight and strong to eliminate such dangerous condition.

B. Any rock, earth, or other material which may be dropped or deposited on any public street or place by any means shall be immediately removed in a manner

and to an extent satisfactory to the city engineer, at the expense of the person to whom the permit was issued.

C. The applicant shall save, indemnify and keep harmless the city against all liabilities, judgments, costs and expenses which may in any wise accrue against the city in consequence of the granting of this Permit.

D. Tractors (with or without lugs), steel wheeled vehicles, or heavy equipment shall not be operated on city streets without proper protection to pavement.

E. Any damage to property, public or private, shall be repaired at expense of the permittee. (Ord. 437 §6, 1951).

#### 17.08.070 Revocation or suspension of Permit--Appeal.

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

#### 17.08.080 Expiration of Permits--Supplemental Permit issuance procedure.

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

#### 17.08.090 Effect of chapter upon other Ordinances.

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

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

17.08.100 Penalties for violation.

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

17.080.200 Emergencies – Repair of Essential Public Utilities

Notwithstanding the requirements created by this chapter for work done in due course within ten (10) feet laterally of any “High Priority Subsurface Installation” as defined in California Government Code, Section 4216(e), excavations by any public utility, for the repair of any of its facilities in the event of an emergency (where the restoration of essential service to one or more customers requires that work be done outside normal City business hours), shall be permitted insofar as the permit is applied for and sufficient evidence of compliance with the other requirements for such excavations under this chapter provided to allow the City to confirm such compliance within three (3) business days following the emergency repair.

**Section 2.** The adoption of this ordinance is exempt from the application of the California Environmental Quality Act, Public Resources Code section 21000, *et seq.*, in accordance with section 15305 (Minor Alterations in Land Use Limitations).

**Section 3.** This ordinance shall be liberally construed to achieve its purposes and preserve its validity. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance. The City Council hereby declares that it would have passed this ordinance and every section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

**Section 4.** This Ordinance shall be in full force and effect thirty (30) days after the date of its adoption.

**Section 5.** This Ordinance shall be published once within fifteen (15) days after its passage and adoption in a newspaper of general circulation in the City of Sausalito.

**THE FOREGOING ORDINANCE** was read at a regular meeting of the Sausalito City Council on the 23<sup>rd</sup> day February , 2010, and was adopted at a regular meeting of the City Council on the      day of      ,2010 by the following vote:

AYES:            COUNCILMEMBER:  
NOES:            COUNCILMEMBER:  
ABSENT:        COUNCILMEMBER:  
ABSTAIN:       COUNCILMEMBER:

\_\_\_\_\_  
MAYOR OF THE CITY OF SAUSALITO

ATTEST:

\_\_\_\_\_  
CITY CLERK

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