

**BEFORE THE TOWN COUNCIL OF THE TOWN OF MORAGA**

**In the matter of:**

**Adding Chapter 12.06 to the Town of )  
Moraga Municipal Code Regarding )  
Street Excavation and Pavement )  
Restoration Regulations )**

**ORDINANCE NO. 240**

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THE TOWN COUNCIL OF THE TOWN OF MORAGA DOES HEREBY ORDAIN:

SECTION 1. Chapter 12.06 is hereby added to the Town of Moraga Municipal Code as follows:

**Chapter 12.06**

**STREET EXCAVATION AND PAVEMENT RESTORATION REGULATIONS**

- 12.06.010 – Purpose**
- 12.06.020 – Definitions**
- 12.06.030 – Town Exemption**
- 12.06.040 – Prohibition Period**
- 12.06.050 – Excavation Permit**
- 12.06.060 – Excavation Requirements and Conditions**
- 12.06.070 – Paving**
- 12.06.080 – Defects, Repair and Completion of Work**
- 12.06.090 – Violations – Revocation and Other Penalties**
- 12.06.100 – Appeal**

**12.06.010 - Purpose**

The public right-of-way is a unique public resource held in trust for the benefit of the public. This physically limited resource requires proper management to maximize its efficiency and minimize the costs to taxpayers, to protect against foreclosure of future economic expansion because of premature exhaustion of the public right-of-way, and to minimize the inconvenience to and negative effects on the public from use of the public right-of-way by contractors and utility companies.

To achieve the purpose of this chapter, the Town of Moraga shall endeavor to coordinate its Capital Improvement Programs with those of utility companies and franchisees with facilities in, on, under or above the public right-of-way. Information about any planned work in the right-of-way shall be shared at the earliest possible time. Utility owners and franchisees are encouraged to coordinate their street excavations so that all work is done simultaneously and the street is not excavated more than once within a twelve-month period.

**12.06.020 - Definitions**

- A. "Arterial street" means any street that collects collector streets with a traffic volume of 7,500 to 15,000 vehicles per day, including but not limited to Camino Pablo, Canyon Road, Moraga Road, Moraga Way, Rheem Boulevard, and St. Mary's Road.
  
- B. "Asphalt Concrete" or "AC" means blend of aggregate and asphalt binder meeting the specifications set forth in the Town of Moraga Standard Specifications, Contra Costa County Standard Specifications, and the Caltrans Standard Specifications Section 39, "Asphalt Concrete," whichever is more stringent or as directed by the Engineer.
  
- C. "Chip Seal" (same as the definition of "Preventative Maintenance Seal")
  
- D. "Collector street" means any street that collects local streets and feeds into arterial streets with a typical traffic volume of 2,000 to 7,500 vehicles per day, including but not limited to Bollinger Canyon, Calle La Mesa, Camino Ricardo, Campolindo Drive, Corliss Drive, Country Club Drive, De La Cruz, Donald Drive, Fernwood Drive, Larch Avenue, Natalie Drive, Paseo Del Rio, Paseo Grande, Rimer Drive, Sanders Drive, School Street, Shuey Drive, Tharp Drive, and Via Granada.
  
- E. "Engineer" means the Town Engineer or his or her designee.
  
- F. "Encroachment" means constructing or placing temporary or permanent structures, improvements, facilities or materials in, on, over, or under any public right-of-way or using any right-of-way so as to prevent, obstruct, or interfere with the normal use of that way, including but not limited to the performance of any of the following acts:
  - 1. Excavating or disturbing the public right-of-way;  
  
Erecting or maintaining any post, sign, pole, fence, guard rail, wall, pipe, conduit, cable, wire, communication service equipment, or other facility or structure on, over, or under a public right-of-way;
  
  - 3. Planting any tree, shrub, grass, or other growing thing within the public right-of-way;
  
  - 4. Placing or leaving on the public right-of-way any rubbish, brush, earth, or material;
  
  - 5. Constructing, placing, or maintaining on, over, under, or within a public right-of-way any pathway, sidewalk, driveway, or other surfacing; any culvert or other surface drainage or subsurface

drainage facility; or any pipe, conduit, wire, communication service equipment or facility, or cable; and

6. Constructing, placing, planting, or maintaining any structure, embankment, excavation, tree, or other object adjacent to the public right-of-way which causes or may cause an encroachment.
- G. "Excavation" means any trench cuts within the public street or public right-of-way, in excess of four (4) square feet or four (4) feet long, whichever is smaller, in order to access or install a utility line or any related facility or perform work within such public street or right-of-way.
- H. "Excavation permit" means a permit issued pursuant to this chapter.
- I. "Facility" means any fiber optic, coaxial, or copper cable; communication service equipment; telephone, telecommunications, electric or other wire, line or equipment; utility structure; oil, gas, or other pipeline; duct; conduit; cabinet; tunnel; vault; drain; manhole; splice box; surface location marker; pole; subsurface tiebacks; soil nails; stairs; access ramps; subsurface foundations; landscape features, including curbs around planter areas; planter boxes; clocks; bus shelters; phone booths; bike racks; fencing; retaining walls; benches; stockpiles; building materials; and other appurtenances or tangible things located in, upon, above, beneath, or across any public right-of-way.
- J. "Major Defects" means any defects greater than the deficiency tolerances specified in the Town of Moraga, Contra Costa County, Caltrans, or individual Contract Standard Plans and Details, whichever is more stringent or as directed by the Engineer.
- K. "Micro Surfacing" (same as the definition of "Preventative Maintenance Seal")
- L. "Owner" means the owner of the facility to be installed in the public right-of-way and includes, but is not limited to, the utility that owns the facility.
- M. "Permittee" means any person, contractor, utility or public agency that has been issued a permit pursuant to this chapter, including any lawful successor, transferee, or assignee of the original permittee. All obligations, responsibilities, and other requirements of the permittee shall be binding on successors in interest of the original permittee.
- N. "Person" means any natural person, firm, joint venture, joint stock company, partnership, association, club, company, corporation, business trust, organization, or the manager, lessee, agent, servant, officer, or employee of any of them or any other entity which is recognized by law as

the subject of rights or duties, not including the Town of Moraga, or the Town's officers, employees, or agents.

- O. "Preventative Maintenance Seals" means a mixture of polymer modified asphalt emulsion, mineral aggregate, mineral filler, water, and other additives, properly proportioned, mixed, and spread in accordance with the Town of Moraga, Contra Costa County, and Caltrans Standard Plans Specifications, and Details, whichever is more stringent or as directed by the Engineer; usually less than ½ inch in thickness.
- P. "Prohibition Street" means a public street that has been reconstructed or resurfaced with preventative maintenance seal including but not limited to chip seal, slurry seal coating, or micro paving with less than ½ inch of new pavement within the past three (3) years, or with a street overlay consisting of at least a ½ inch thick layer of asphalt within the past five (5) years.
- Q. "Public right-of-way" means the area in, upon, above, beneath, or across any land or interest which by deed, conveyance, agreement, easement, dedication, usage, or process of law is reserved for or dedicated to the use of the general public for travel, and includes any public street, road, highway, freeway, bridge, lane, court, alley, boulevard, sidewalk, median, parkway, or emergency vehicle easement.
- R. "Public street" means the full width of the surfaced or travel portion, including shoulders, of any road, street, path, lane, or alley dedicated to, reserved for, or used by or for the general public when those roads, streets, paths, lanes, and alleys have been accepted as and declared to be part of the town system of public streets.
- S. "Slurry Seal" (same as the definition of "Preventative Maintenance Seal")
- T. "Street Overlay" means one or more courses of asphalt construction on an existing pavement; usually greater than ½ inch in thickness; generally includes an asphalt leveling course to correct the contour of the old pavement.
- U. "Structure" means any physical alteration or improvement, including but not limited to a building, post, cabinet, fence, vault, sign, pole, guard rail, wall, facility, pedestrian walking path, sidewalk, driveway, track, surfacing, culvert, drainage facility, pipe, embankment, or excavation.
- V. "Town" means the Town of Moraga, a municipal corporation duly organized and validly existing under the laws of the State of California, and all departments, divisions, and offices thereof.

- W. "Utility" means any person or entity providing electricity, gas, telephone, telecommunications, water, sanitary sewer or other services to customers, and which pursuant to state law or local franchise is entitled to install its facilities in the public right-of-way.
- X. "Wearing Surface Defects" mean the defects in the surface of a roadway that is in direct contact with traffic and that resists the resulting abrading, crushing, or other disintegrating action.

### **12.06.030 – Town Exemption**

The provisions of this chapter shall not apply to officers or employees of the Town acting in the discharge of their official duties.

### **12.06.040 - Prohibition Period**

- A. No person shall excavate in a Prohibition Street, unless a waiver has been granted as provided herein. Utilities shall plan well enough in advance to determine alternate methods of making necessary repairs to avoid excavating in newly resurfaced streets.
- B. Exception – The prohibition set forth in this section shall not apply in the event of an emergency that endangers life or property, in which event the permittee shall notify the Town of Moraga and apply for an excavation permit for "emergency work" within four (4) hours after the Town of Moraga's office opens.
- C. Waivers from the prohibition set forth in this section may be obtained as provided herein.
  - 1. A waiver may be granted only under the following circumstances:
    - a. Interruption of essential utility service.
    - b. Work that is mandated by town, state, or federal law.
    - c. Service for buildings where no other reasonable means of providing service exists.
    - d. Situations in which no alternative course of action exists, as determined by the Engineer in writing setting forth the facts giving rise to the conclusion that no alternative exists.

To request a waiver, the applicant must submit a written request to the Engineer, which request must include:

- a. The location of the excavation.

- b. Description of the work to be performed.
  - c. The reason(s) the work was not performed before the street was paved.
  - d. The reason(s) the work cannot be deferred until after the prohibition period.
  - e. The reason(s) the work cannot be performed at another location.
  - f. The reason(s) it is justified to excavate the Prohibition Street.
3. Before issuing a waiver, the Engineer will verify that the applicant has analyzed all feasible alternatives to make the necessary repairs using a trenchless method in Prohibition Streets to avoid excavating a newly resurfaced street whenever possible. The Engineer shall grant a waiver if the applicant demonstrates that one or more of the circumstances under section 12.06.040(C)(1) exists and that the work cannot be completed using a trenchless method.
- D. Any excavation in a Prohibition Street must be repaired with full lane width paving as follows:
1. Overlaid or reconstructed streets: All lanes that are affected shall be ground down 2 inches and repaved with 2 inches of asphalt concrete, or resurfaced pursuant to section 12.06.070.  
  
Preventative Maintenance seals including but not limited to slurry sealed, chip sealed, or micro-surfaced streets: All lanes that are affected shall be resurfaced pursuant to section 12.06.070.
  3. A minimum of one (1) foot on either side of the trench shall be resurfaced if the excavation is a lateral cut. For longitudinal trenches, the entire length plus one (1) foot on either end shall be resurfaced.
  4. Exception – Full lane width restoration shall not be required if the work is being performed on behalf of a low-income household in order to bring an owner-occupied single family residence into compliance with sanitary sewer regulations at any time other than as part of the sale of the residence. Low-income is defined as 80% of area median family income. The purpose of this exception is to prevent hardship to property owners of limited means and it shall be interpreted and applied solely to achieve that purpose.

**12.06.050 – Excavation Permit**

- A. No person shall perform any excavation within the Town of Moraga public right-of-way without having obtained an excavation permit and any other required permits, including encroachment permits required for work within the public right-of-way.
  
- B. An excavation permit may be obtained from the Town of Moraga Public Works Department at the Engineering Division office. Applications shall be submitted by the contractor performing the work on a form provided by the Town and shall include the following:

- 1. The permit administration fee, which represents the value of staff time for processing the permit application and is non-refundable, which fee shall be adopted, as part of the Master Fee Schedule, by the Town Council.

An excavation permit fee, which represents the value of staff time for monitoring and inspection and is refundable if the permit is denied, which fee shall be adopted, as part of the Master Fee Schedule, by the Town Council. For projects lasting more than 15 working days, the permittee shall also be required to deposit an amount as set forth in the Master Fee Schedule to cover additional actual costs of staff time associated with monitoring and inspection.

- 3. The authorization and signature of the owner of affected structures or facilities, if different from the contractor.
  
- 4. The payment of any past due fees owed and corrections to any outstanding violations by the applicant.
  
- 5. A warranty bond as follows:
  - a. Deposit amount equal to the calculation of the excavation area multiplied by the unit price for pavement restoration and adjusted by quantity and for the Moraga region per the latest California Department of Transportation cost database plus 25% for administration as a warranty bond.
  
  - b. The deposit amount shall be borne entirely by the contractor, and shall not be passed on to the owner. The deposit amount shall be reimbursed to the contractor one (1) year after acceptance of the work if the work has not developed any wearing surface or major defects.
  
  - c. Companies working under a franchise agreement that includes a bond are not required to post the warranty bond

unless/until they have been issued a notice or citation for a violation by the Town of Moraga standards or permit requirements.

6. Current evidence of insurance and contractor's license as required on the Encroachment Permit application.
7. 24-hour phone number where the permittee can be reached in any emergency.
8. The name, telephone number, and mailing address (fax number, cell phone, and e-mail address if available) of the person who will receive all office correspondence from the Town of Moraga.
9. Plans indicating the following:
  - a. Name of the street to be excavated and the nearest cross street.
  - b. Distance of proposed excavation from the face of curb.
  - c. Distance of proposed excavation from the nearest intersection.
  - d. The size of the excavation (length and width).
  - e. The location of any above ground facilities to be installed, showing:
    - i. Distance from curb and any street facilities/furnishings.
    - ii. Purpose of the facility.
    - iii. Size of the facility.
    - iv. Location of doors and door swings.
  - f. The location of any existing underground facilities and the location of underground facilities to be installed showing:
    - i. Conduit vaults, maintenance holes, pipes, and other appurtenances.
    - ii. Structural detail and additional information for structures to be installed.
    - iii. The construction method of the facility to be installed.

- iv. Construction detail, location, size, design criteria and the purpose of the facility to be installed.
    - g. Cross section of a typical trench indicating:
      - i. The approximate depth of the facility to be installed.
      - ii. Trench backfill depth, compaction and layer depths.
      - iii. Pavement section detail (type and depths).
    - h. Plans, structural details, and trench cross sections must be signed and stamped by a licensed Civil Engineer, when legally required.
    - i. The plans may show the approximate location of the excavation provided that on an “as-built” plan, the exact location of the excavation is shown. The “as-built” plan shall be submitted prior to the permit being finalized.
  - 10. A traffic control plan according to the latest version of the California Manual on Uniform Traffic Control Devices (MUTCD).
  - 11. Evidence of an inquiry identification number issued by a regional notification center (Underground Service Alert, USA) pursuant to Section 4216, California Government Code.
- C. When the Engineer finds that the requested permit is in accordance with the requirements of this chapter, the Engineer shall issue an excavation permit, attaching such conditions as the Engineer may deem necessary for the health, safety and welfare of the public. If the Engineer, in his or her discretion, finds the requested permit is in conflict with the provisions of this chapter or may adversely affect the public health, safety or welfare, the Engineer shall deny the permit, giving in writing the reasons for such denial. No permit shall be valid unless signed by the Engineer.
- D. Permit duration shall be indicated on the excavation permit as follows:
- 1. All permits shall include estimated start and completion dates. A permit is valid from the construction start date specified on the approved permit until the specified completion date.
- Excavation permits are not valid if other required permits are not obtained or required notifications are not given.
- 3. Some permits may be valid on specific dates. They may be approved with special conditions specifying dates:

- a. When work shall be done;
  - b. When work shall be completed; or
  - c. Before which work shall not start.
4. Permits expire and become void, unless otherwise amended:
  - a. Sixty (60) days after the start date, if no work has begun.
  - b. If the work is not diligently proceeding and there are delays of more than four (4) working days after the work has started, unless the delays are caused by weather or other circumstances beyond the permittee's control.
  - c. When the excavation, including the trench restoration, is completed and accepted by the Town or on the date specified on the permit as the expiration date.
5. The work is determined to be proceeding diligently if:
  - a. After a project begins, work continues on a regular basis, except for weekends, holidays, inclement weather, labor disputes, or any emergency beyond the control of the permittee.
  - b. The permittee ensures that all necessary materials and supplies are on hand and ready for use so as not to delay the excavation and the prompt restoration of the public right-of-way.
- E. If a permittee damages other facilities during excavation work, the permittee will need an additional excavation permit if additional excavation and trenches are needed to repair the damaged facility. The original permittee shall maintain the site and restore the pavement and any affected signage or striping.
- F. Except in an emergency, excavation permits shall be obtained in advance of excavation work. An emergency is considered to exist only when life or property is endangered or when an essential utility service is or may be interrupted during weekends, holidays, or between 5:00 PM and 8:00 AM of normal working days. In the event of an emergency, the permittee shall notify the Town of Moraga and apply for an excavation permit for "emergency work" within four (4) hours after the Town of Moraga's office opens.

- G. A valid permit may be extended by requesting an extension prior to the expiration date and specifying the dates that need to be changed and explaining the reason for the extension. The Engineer reserves the right to deny a request for extension.
- H. If an application has been withdrawn or an approved permit is cancelled prior to the start of work, the applicant or permittee may request a refund of the bond funds; all other permit fees are non-refundable. To request a refund, the applicant or permittee must submit a written request to the Engineer that shall include the permit number and the reason for cancellation or withdrawal.

### **12.06.060 – Excavation Requirements and Conditions**

An excavation permit granted pursuant to this chapter shall be subject to the provisions of this chapter, the following requirements and conditions and any other conditions imposed on the excavation permit pursuant to section 12.06.050 above, except for exemptions approved by the Engineer that are required to complete emergency work:

- A. The permittee and the owner of the facility(ies) for which the permit has been issued, if applicable, agree:
  - 1. To follow all laws, rules, regulations, and permit conditions.  
  
To assure that their employees, contractors, and subcontractors comply with all laws, rules, regulations, and permit conditions.
  - 3. To indemnify the Town of Moraga against any and all claims for personal injury or property damage that may arise in connection with the work and name the Town of Moraga as an additional insured under all required insurance policies.
  - 4. To reimburse the Town's actual costs of permit monitoring, inspection and close-out as defined in the latest adopted Town Master Fee Schedule.
- B. The excavation permit shall be made available during work periods at the excavation site, until the project is completed and approved by the Engineer. The permit shall be shown to the Town of Moraga employees upon request.
- C. The permittee shall provide public notifications when excavating in the public right-of-way as follows.
  - 1. For projects lasting longer than 48 hours but less than 15 working days, the permittee shall provide 11"x17" posters with one (1) inch minimum letters at the beginning and end of the project and every

300 feet between the beginning and the end of the project, which must contain:

- a. The names, address, and telephone number of the owner and the permittee.
- b. The start and completion dates of the project.

2. For projects lasting 15 working days or longer, the permittee shall:

a. After the permit has been issued and at least five but no more than 30 calendar days before the anticipated start date of work, mail or deliver written notice to:

- i. Residents and occupants along the affected street.
- ii. Schools, churches, and other assembly uses within 300 feet of the affected street.
- iii. The Town of Moraga Public Works Department.
- iv. The Town of Moraga Police Department and the Moraga-Orinda Fire District if on arterial or collector streets.

b. At least five calendar days but not more than 15 calendar days prior to starting work, post and maintain 11"x17" notices in accordance with section 12.06.060(C)(1) above. The notices must contain:

- i. The name, address, and telephone number of the owner and the permittee.
- ii. A description of the project.
- iii. The start and completion dates of the project.
- iv. The name, address and 24-hour telephone number of a contact person.

D. A pre-construction meeting shall be held for all projects that are scheduled to take longer than 15 working days to complete. The owner, contractor, any other agency that is involved and the Town of Moraga shall attend this meeting. The traffic control plan shall be approved prior to the preconstruction meeting.

E. Pavement shall be cut to a straight, neat, vertical line prior to or after excavation.

F. Permittees shall pay close attention to the location and alignment of all USA markings while performing their work. USA Codes are:

Electric	Red
Gas-Oil	Yellow
Communication-CATV	Orange
Water	Blue
Sewer	Green
Temp. Survey Markings	Pink
Proposed Excavation	White

G. No disruption of traffic is allowed on arterial streets after 3:30 PM and before 9:00 AM and all other streets after 4:00 PM and before 8:00 AM unless specifically approved for these hours.

H. All excavated material shall be removed from the job site within twenty four (24) hours.

I. Every trench must be backfilled or covered by trench plates the same day. Backfill requirements are as follows:

1. The Town has the right to direct permittee to perform Quality Assurance on trench backfill and compaction to assure the Town that the utility repair will not adversely affect the Town's streets.

Trenches shall be backfilled with Class 2 Aggregate Base as specified in the Caltrans Standard Specifications Section 26, "Aggregate Base" or suitable material as required by the Town of Moraga and Contra Costa County Standard Plans and Specifications, whichever is more stringent or as directed by the Engineer. Compaction of backfill shall be in accordance with the Town of Moraga and Contra Costa County Standards, whichever is more stringent or as directed by the Engineer.

3. When undermining occurs, existing pavement must be removed as required to compact the backfill and then restored.
4. Compaction tests if required under the Engineer's discretion, shall be certified by an independent laboratory and submitted to the Engineer, who may require the contractor to recompact and retest until the test results show that proper compaction is being achieved.

## 12.06.070 - Paving

- A. All trenches must be paved in accordance with the Town of Moraga Standard Plans and Specifications. After the trench has been backfilled, and immediately prior to placing asphalt concrete, the existing asphalt concrete shall be saw cut, or milled according to Town of Moraga Standards and Contra Costa County, whichever is more stringent or as directed by the Engineer, to a vertical face. The cut shall be a "T-Cut" according to Town of Moraga and Contra Costa County Standards, whichever is more stringent or as directed by the Engineer and the new asphalt concrete paving shall be butt joined to the existing asphalt concrete vertical face. No feathering of new paving to existing paving is allowed. The vertical faces shall be tack coated.
- B. In Prohibition Streets, placement of the final two (2) inches of asphalt concrete wearing surface shall be done by a paving machine or spreader box. Asphalt concrete shall be delivered and compacted in accordance with the Town of Moraga and Contra Costa County Standard Plans and Specifications, whichever is more stringent or as directed by the Engineer. To allow for proper placement of the new pavement section, damaged pavement outside of the original trench cut lines shall be removed by cutting in lines perpendicular to or parallel to the original trench lines. No diagonal cuts are to be made. Undamaged pavement of three (3) feet or less between two damaged areas shall also be removed.
- C. For trenches in recently paved Prohibition Streets, the entire lane shall be key-cut two (2) inches deep, and repaved with asphalt concrete unless the Engineer gives written authorization to resurface with a polymer modified preventative maintenance seal instead. Authorization from the Engineer to use preventative maintenance seal instead of asphalt concrete shall set forth the reasons for the authorization.
- D. For trenches in recently preventative maintenance sealed Prohibition Streets, the entire lane shall be resurfaced with polymer modified preventative maintenance seal as determined by the Engineer.
- E. Trenches in concrete streets shall be repaved with concrete. The thickness of the new pavement shall be equal to the thickness of the existing pavement with the minimum thickness to be six (6) inches in the roadway.
- F. Trenches in arterial and collector streets shall be paved with not less than six (6) inches asphalt concrete or match the existing pavement thickness (whichever is greater) or at the discretion of the Engineer on a case-by-case basis.

- G. Pavement shall be restored within two (2) working days (arterial streets), fourteen (14) working days (collector streets), and twenty (20) working days (other streets) from the time the entire trench is backfilled, unless delay is excused due to circumstances beyond the contractor's control, such as inclement weather. Depending on the circumstances, the Engineer may allow for temporary repairs within 2 working days with hot mix or modified polymer cold patch so that trench plates can be removed with final repairs to be determined on a case-by-case situation.
- H. Asphalt pavement shall be compacted to obtain a minimum of ninety-five percent (95%) relative compaction. The asphalt concrete wearing surface shall have no irregularity greater than five-sixteenths of an inch (5/16") in ten feet (10') in any direction.
- I. On all public streets, steel plates shall be used to facilitate traffic flow and to protect the excavation until finish pavement is restored. Steel plates used to bridge a street opening shall be ramped to the elevation on the adjacent pavement and secured against movement in any direction. Temporary ramps shall be constructed of asphalt and shall have a gradual 30:1 slope or flatter using asphalt cutback.
- J. All painted USA markings shall be removed by the permittee after the work has been completed.
- K. All damaged pavement markings and striping shall be replaced and restored by the permittee.
- L. A permittee that performs three or more street cuts in one block within a three-year period shall grind and overlay the street for the entire length of the block. The Engineer may waive or modify this requirement depending upon the length of the block, the location of the street cuts and the condition of the street. "Street cut" means the cutting of pavement in the public right-of-way, including the associated excavations.

#### **12.06.080 – Defects, Repair and Completion of Work**

- A. Depressed trench pavement shall be repaired as follows:
  - 1. Wearing Surface Defects – remove and restore wearing surface.  
Major Defects – excavate, remove and restore surface and base.  
The permit inspector will determine the severity of the defect.
- B. Work not in compliance with the above requirements shall be rejected, removed, and redone by the permittee to the satisfaction of the Engineer.

- C. The owner of the facility/utility is responsible for any roadway defects caused by the facility/utility's work in the area over and adjacent to the trench appearing after the permittee restores the trench. The owner is responsible for maintenance, repair or reconstruction of the excavation site's affected area related to such defects until the Town of Moraga reconstructs, repaves, or resurfaces the street.
- D. If there is a trench-related failure after the Town of Moraga reconstructs, repaves, or resurfaces the street, the owner of the facility/utility company is responsible for its repair if the failure occurs within one (1) year of a trench repair.
- E. When the Town of Moraga determines that an excavation or a defect is hazardous or constitutes a public nuisance or other imminent threat to public health, safety, or welfare, the Engineer may order the responsible party to remedy the condition immediately. If the responsible party refuses or fails to make the needed repairs immediately, the Town of Moraga will make the repairs and the responsible party will be charged all the actual costs including administration, construction, consultant fees, equipment, inspection, notification, and remediation made necessary by the action or inaction of the permittee. The repair or restoration by the Town of Moraga does not relieve the responsible party from liability for future pavement failures. If the responsible party fails or refuses to pay the restoration cost, the Town may use any legal means to recover the costs, including but not limited to property liens and/or court action.

#### **12.06.090 Violations – Revocation and Other Penalties**

Any violation of this chapter may be enforced by any remedy available to the Town under this Code or under state law. Enforcement measures also include but are not limited to the following:

- A. Permit Violation. In the event of a permit violation, the Engineer shall require that the violation be corrected prior to accepting the work or releasing the warranty bond. The permittee shall also be required to reimburse the Town's actual costs, including staff time for inspection and monitoring, associated with ensuring the corrections are made. The Engineer shall require an applicant for an excavation permit to correct any outstanding violations and pay all outstanding fees and reimbursements prior to processing a new permit application.
- B. Suspension. Whenever the Engineer finds that a suspension of an excavation permit is necessary to protect the public health or safety from imminent danger, the Engineer may immediately suspend any such permit pending a hearing for remedial action or revocation. The Engineer shall, within three (3) working days of the emergency suspension, give a written notice of such suspension to the permittee, by personal service or by first

class mail, postage prepaid, to the last known address of the permittee. The permittee may, within fifteen (15) days after service of such a written notice of suspension, file with the Town Manager a request for hearing regarding the suspension. The Town Manager or his or her designee shall schedule a hearing on the suspension within five (5) working days of receipt of a request for hearing. If the Town Manager or his or her designee, after the hearing, finds that the public health or safety requires correction or alteration of any condition caused by, or existing on the site of the encroachment, he or she shall issue one or more of the following:

1. An order to correct any particular noncompliance.

An order to set a public hearing on revocation of the permit, which public hearing shall take place as set forth in section 12.06.090(B) below.

3. A continued suspension of the permit, until such time as the dangerous condition is corrected.
4. A modification or reinstatement of the permit, with conditions as necessary to prevent harm to the public.
5. The Town Manager or his or her designee shall, within ten (10) days of the hearing, render a written opinion, stating the findings upon which the decision is based, and the action taken. The decision of the Town Manager or his or her designee shall be final.

C. Revocation. The Engineer may recommend that the Town Manager revoke a permit where he or she finds that:

1. The permittee has violated any provision of this Code or conditions of the permit; or
2. The permittee has failed to pay any required fees, or to post or maintain any bond or insurance required by this chapter; or
3. The excavation for which the permit was granted adversely affects the safety, capacity, or integrity of the public right-of-way or increases the Town's liability exposure; or
4. The excavation is causing the Town to incur substantial additional maintenance costs; or
5. Material misrepresentations, omissions, or inaccuracies were made in the application for the permit.

The Engineer shall give the permittee at least ten (10) days' written notice of a hearing before the Town Manager or his or her designee on the proposed revocation of a permit issued pursuant to this chapter, setting forth the grounds for such action. If, after reviewing all evidence presented before or at the public hearing, the Town Manager or his or her designee makes any one of the five findings set forth above, he or she may revoke the permit. The Town Manager or his or her designee shall, within ten (10) days after the close of the hearing, render a written opinion, stating the findings upon which the decision is based, and the action taken. The decision of the Town Manager or his or her designee may be appealed to the Town Council if required by law. The revocation hearing before the Town Council shall take place in the same manner as the hearing before the Town Manager.

### **12.06.100 Appeal**

- A. If a permittee is aggrieved by a decision of the Engineer under this chapter, the permittee may appeal the decision in writing to the Town Manager by filing with the Town Clerk a statement addressed to the Town Manager setting forth the facts and circumstances regarding the Engineer's decision and the basis for the appeal. The appeal shall be accompanied by a fee as established by resolution of the Town Council. The Town Clerk shall provide written notification of the time and place set for hearing the appeal. The Town Manager, not less than 14 days from the date on which the appeal was filed with the Town Clerk, shall hear the appeal and all relevant evidence, and shall determine the merits of the appeal. The Town Manager may sustain, overrule or modify the action of the Engineer, and the decision of the Town Manager shall be final, except where further appeal to the Town Council is required by law.
- B. The right to appeal to the Town Manager shall terminate upon the expiration of ten (10) days following personal delivery to permittee or the deposit of a letter in the United States mail advising permittee of the action of the Engineer and of the right to appeal such action to the Town Manager.

### **SECTION 2. Severability.**

If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance. To this end, the provisions of this Ordinance are severable. This Town Council hereby declares that it would have adopted the Ordinance irrespective of the invalidity of any particular portion thereof.

### **SECTION 3. Publication.**

The Town Council may publish a summary of a proposed ordinance or proposed amendment to an existing ordinance. A summary shall be published and a certified copy of the full text of the proposed ordinance or proposed amendment shall be posted in the office of the Town Clerk at least five days prior to the Town Council meeting at which the proposed ordinance or amendment or alteration thereto is to be adopted. Within 15 days after adoption of the ordinance or amendment, the Town Council shall publish a summary of the ordinance or amendment with the names of those Town Council members voting for and against the ordinance or amendment and the Town Clerk shall post in the office of the Town Clerk a certified copy of the full text of the adopted ordinance or amendment along with the names of those Town Council members voting for and against the ordinance or amendment in accordance with Section 36933 of the California Government Code.

**SECTION 4.** Effective Date.

This ordinance becomes effective thirty (30) days after its final passage and adoption.

The foregoing ordinance was introduced at a regular meeting of the Town Council of the Town of Moraga held on June 12, 2013, and was adopted and ordered published at a regular meeting of the Town Council on June 26, 2013, by the following vote:

**AYES:** Mayor Trotter, Vice Mayor Chew, Councilmembers Arth, Metcalf and Wykle  
**NOES:** None  
**ABSTAIN:** None  
**ABSENT:** None

\_\_\_\_\_  
Dave Trotter, Mayor

ATTEST:

\_\_\_\_\_  
Marty C. McInturf, Town Clerk