AVOIDING THE DANGER ZONE

MINIMIZING RISK AND DEFENDING CLAIMS FOR DANGEROUS CONDITIONS OF PUBLIC PROPERTY, INVERSE CONDEMNATION AND VIOLATION OF MANDATORY DUTIES

Speakers: Greg Fox, Rich Osman, Mike Wenzel, Sheila Crawford and Amy Leifur-Halby

Bertrand, Fox, Elliot, Osman & Wenzel

Presentation Outline

- Dangerous Conditions – Ownership, Maintenance Responsibilities
- A Major Problem Made Worse – TREES!
- Inverse Condemnation – What is it and How is it Different From a Tort Claim?
- Early Investigation of Claims
- Inverse Condemnation – Early Intervention Strategies
- Training Public Works and Other Departments
  - How to investigate “dangerous conditions”
  - Set up design immunity defense
  - What not to put in an investigative report
- Strategic Use of Demurrers
- The CCP Section 1038/Motion for Summary Judgment Threat

Presentation Outline Continued

- Subrogation Issues
- Cutting Edge Immunities
  - Trail Immunity – Government Code Section 831.4
  - Reasonable Inspection Immunity – Government Code Section 835.4
  - Hazardous Recreational Activity Immunity – Government Code Section 831.7
  - Inspection Immunity – Government Code Section 818.6
- Adjacent Property Owner Liability to Third Parties
  - Necessary ordinance
  - What if no ordinance?
- Insurance Issues - Duty to Defend and Indemnity Provisions

Ownership/Maintenance Responsibilities

- Who owns/maintains that tree? Who owns/maintains those tree roots? Who owns/maintains those sewers?
- Who owns/maintains what and who is liable if a claim and then a lawsuit is filed because of personal injuries and property damages caused by trees and tree roots causing defective sidewalk or sewer lines or other related causes of action.

Ownership/Maintenance

Ownership/Maintenance

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Ownership/Maintenance

A Major Problem Made Worse – TREES!

Public entities for years have assumed maintenance responsibility for streets, trees, sidewalks and lateral sewers that run from private residences to the main sewer located in the middle of the street.

Entities have paid claims for personal injuries and property damages caused by dangerous conditions of public property and other causes of action.

Liability claims are increasing and costs are going up, including exposure for attorney's fees.

Carriers increasingly file suits for reimbursement of monies paid to insured under inverse condemnation theories.

Inverse Condemnation – What is it and how is it different from tort claims?

- Article I, section 19, of California Constitution provides that *"*[*p*]*rivate property may be taken or damaged for public use only when just compensation… has first been paid…"*
- "[A] public entity may be liable in an inverse condemnation action for any physical injury to real property proximately caused by a public improvement as deliberately designed and constructed, whether or not that injury was foreseeable, and in the absence of fault by the public entity." (*Souza v. Silver Development Co.* (1985) 164 Cal.App.3d 165.
- So What is a Public Improvement?
  - Water pipes, sewer laterals, flood control channels, road construction projects, publicly owned utilities .
- What is the typical case?
  - Landslide, flood, electrical surge, damages caused by road and other construction projects
- Three year statute of limitations/no Government Claim required

- Under inverse condemnation, only damages to real and personal property are recoverable. No recovery for pain and suffering, emotional distress, wage loss typically.
- No showing of negligence or fault required with very limited exceptions.
- Tort-based defenses like comparative fault do not apply to ordinary inverse claims (but can be used to apportion fault amongst multiple defendants).
- Must show public improvement was a substantial concurring cause (other forces alone did not cause harm).
- High stakes because of fee exposure, no fault, expert intensive.
- Exceptions/Possible Defenses
  - Reasonableness standard applies to flood control
  - Reasonableness standard applies to construction of public works that intangibly interfere (business interruption, etc.)
  - No inverse condemnation liability for negligent acts of maintenance

- So what about trees?

Mercury Casualty v. City of Pasadena – Decided August 24, 2017

- Tree on parkway abutting home fell in a freakish storm event. Mercury paid $800,000 to homeowner in damages and filed a subrogation action against the City.
- Court held bench trial and found that tree was a public improvement, awarded $800,000 plus $329,000 in fees and costs. City appealed.
- Court of appeal noted that: 1) there was no evidence as to who planted the tree, only that it was planted on public property in the 1940's; 2) City had ordinance promoting public interest in maintaining trees; 3) City had twice pruned tree, in 1993 and 2007; 4) City had a "five year or less" inspection protocol for City trees.

Mercury Casualty v. City of Pasadena

- Court of Appeal ruled that a tree is a work of public improvement *only if deliberately planted by, or at, direction of entity as part of planned project or design serving public purpose*.
- Court also found that there was no evidence the City's maintenance plan (five year inspection cycle) was deficient.
- Takeaways:
  - Determine which trees would fall under Court's ruling (deliberately planted)
  - Create an inspection/maintenance plan for trees considered City trees (five year inspection cycle de facto adequate)
  - Consider contradicting authority: Existing case law allows City to pass tree maintenance responsibility to abutting homeowner under Streets and Highways Code section 5600.

Early Investigation of Claims

- Recommended to complete pre-tort claim or immediately after tort claim is presented.
- Consider implementation of early settlement program – provide designated person limited authority to settle claims even before a tort claim is presented.
- Document incident through photographs, witness statements and diagrams.

Early Investigation of Claims

- Collect press reports, TV reports, police/fire audio recordings and CAD incident reports.

- Obtain pertinent city records, including any past claims/incidents.

- Meet with relevant entity employees.
  - Get facts straight, have a plan regarding comments to the press and meet with entity personnel to discuss current practices and how these practices comply with existing rules and ordinances.

Inverse Condemnation Considerations

- Inverse condemnation claims not subject to claim presentation requirements.
  - But entity often aware immediately, particularly if significant issue (landslide, sewer lateral, etc.)
  - Conduct immediate investigation to determine causation.

- Be careful what you write!
  - Route any investigative reports to counsel.
  - Public works/maintenance not thinking liability when writing initial reports.

Inverse Condemnation Considerations (cont)

- Retain experts if necessary
  - But don’t misrepresent status or experts could be excluded.
- Seek early resolution if liability clear
  - But have the right people communicate with claimant.
- If counsel retained, research counsel
  - Inverse claims often fee driven, counsel may obstruct settlement.
  - If difficult counsel identified, consider early mediation/CCP 998 offer.

Training Public Works and Other Departments

- How to investigate “dangerous conditions”
  - Photographs
  - Measure
  - Interview witnesses
  - Write a clear report/route through City Attorney’s office
- Monitor problem areas
  - If there have been prior problems reported, it is hard to defend against new claims
    - Example: if City knows it has lights that are frequently vandalized, good to re-inspect often and document reasonable actions taken to ensure lights are functioning

Training Public Works and Other Departments

- Set up Design Immunity defense
  - When projects are constructed, make sure all plans are maintained and easily accessible.
  - Make sure all necessary approvals are obtained from certified engineers.
  - Make sure any deviations from the plans are approved in writing before construction.
  - Design Immunity is very powerful, but can be lost if sufficient documentation cannot be provided.
  - Inform city engineers of the importance of assisting defense counsel.
- Create and maintain adequate record – keeping system
  - Stored in manner to ensure easy/reliable access.
  - Lost Records are a constant and crippling defense problem.

Training Public Works and Other Departments

- What not to put in an investigative report
  - Teach public works personnel that anything they put in a report may be used against the entity in litigation.

Training Public Works and Other Departments: Problematic information in reports

SIDEWALK COMPLAINT FORM

PROPERTY ADDRESS:	520 Buck Ave.	NAME OF RESIDENT OR OWNER:	
GRID:		PHONE NUMBER OF RESIDENT OR OWNER:	
DATE REPORTED:	10-3-06	REPORTED BY:	Same
		PHONE:	
DATE INSPECTED:	10/4/06	INSPECTED BY:	DOUG
DATE TO ADMIN:			
DATE LETTER #1 SIGNED:			
DATE LETTER #2 SIGNED:			
DATE OF REPAIR:		REPAIR BY:	

DESCRIPTION OF DEFECT OR HAZARD: Sidewalk cracked and raised approx 1". Homeowner feels sidewalk is damaged due to a previous sewer dig

CALCULATIONS AND/OR SKETCH: VERTICAL LIFTS OF 3/4" AND 1" DUE TO SUNKEN UTILITY TRENCH, TRIP HAZARD

TYPE OF REPLACEMENT	RESPONSIBILITY		QUANTITY
	PROPERTY OWNER	CITY	
Sidewalk Replacement Program		YES	56 S.F.
Concrete Sidewalk Maintenance			
Curb and Gutter		YES	14 L.F.
Driveway Cut			
Utility Trench (W) S P G T			

PHOTOS AVAILABLE? (Y) N

TEMPORARY PATCH? (Y) N INITIALS DCS

Work Order

WorkOrderID	162560	TakenBy	[redacted]	DateSubmitted	10/5/2006
Priority	Within 10 Days	RequestedByName	[redacted]	Date Closed	10/12/2006
ParcelNbr		Phone		Status	COMPLETE
AddressNbr	520	StreetName	Buck Av	WO Type	CORRECTIVE
AccountNbr	67202	WorkOrderCode	Utility Repair Program	Crew	Street Maintenance
Category	Street Names	Location	Buck Av		

Tasks

☐ CustomerServiceSurvey

TaskCode	TaskDesc	TaskUnits	TaskHours	CompleteDate	TaskReferredTo
PS-110	Temporary Repairs	2	1.8	10/11/2006	

Comments

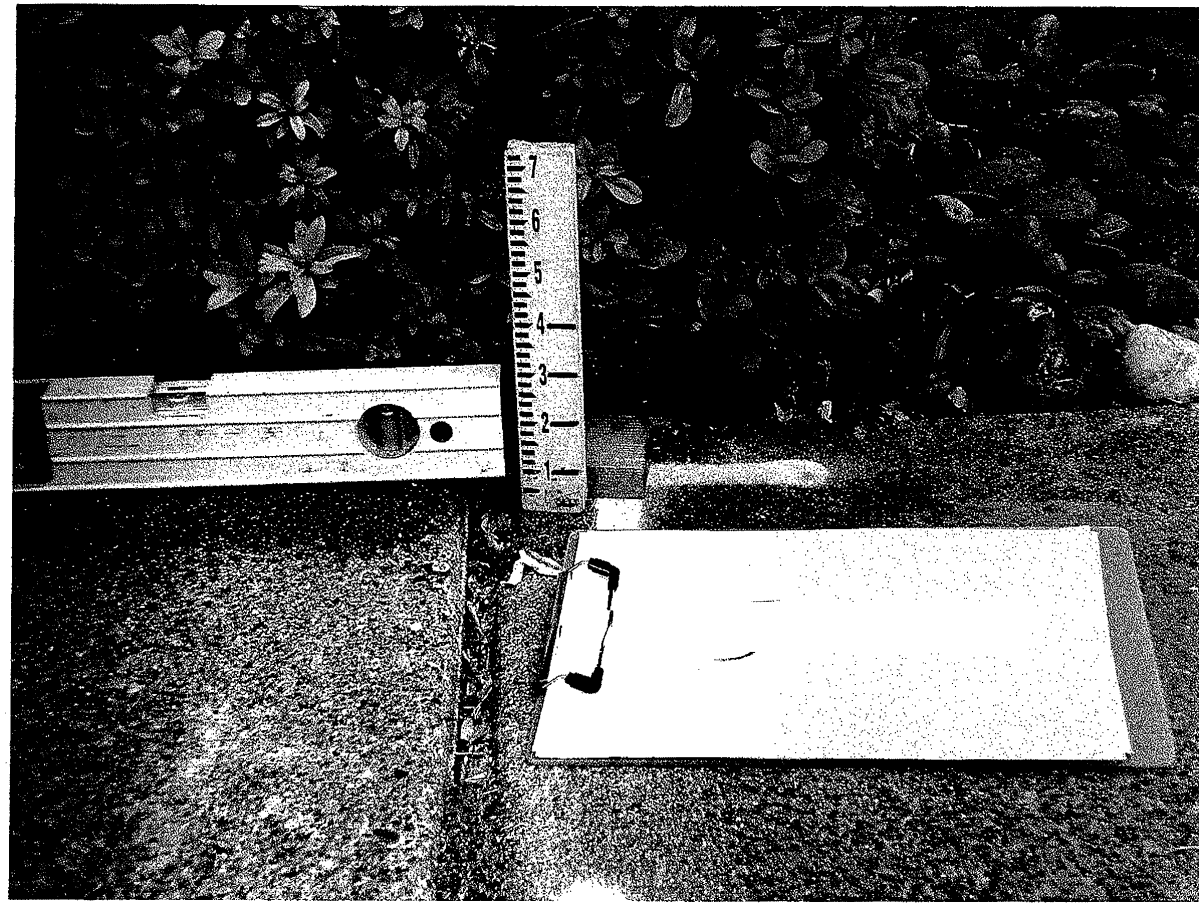
Install asphalt ramp at trip hazard

Vertical lifts of 3/4" and 1" due to sunken utility trench

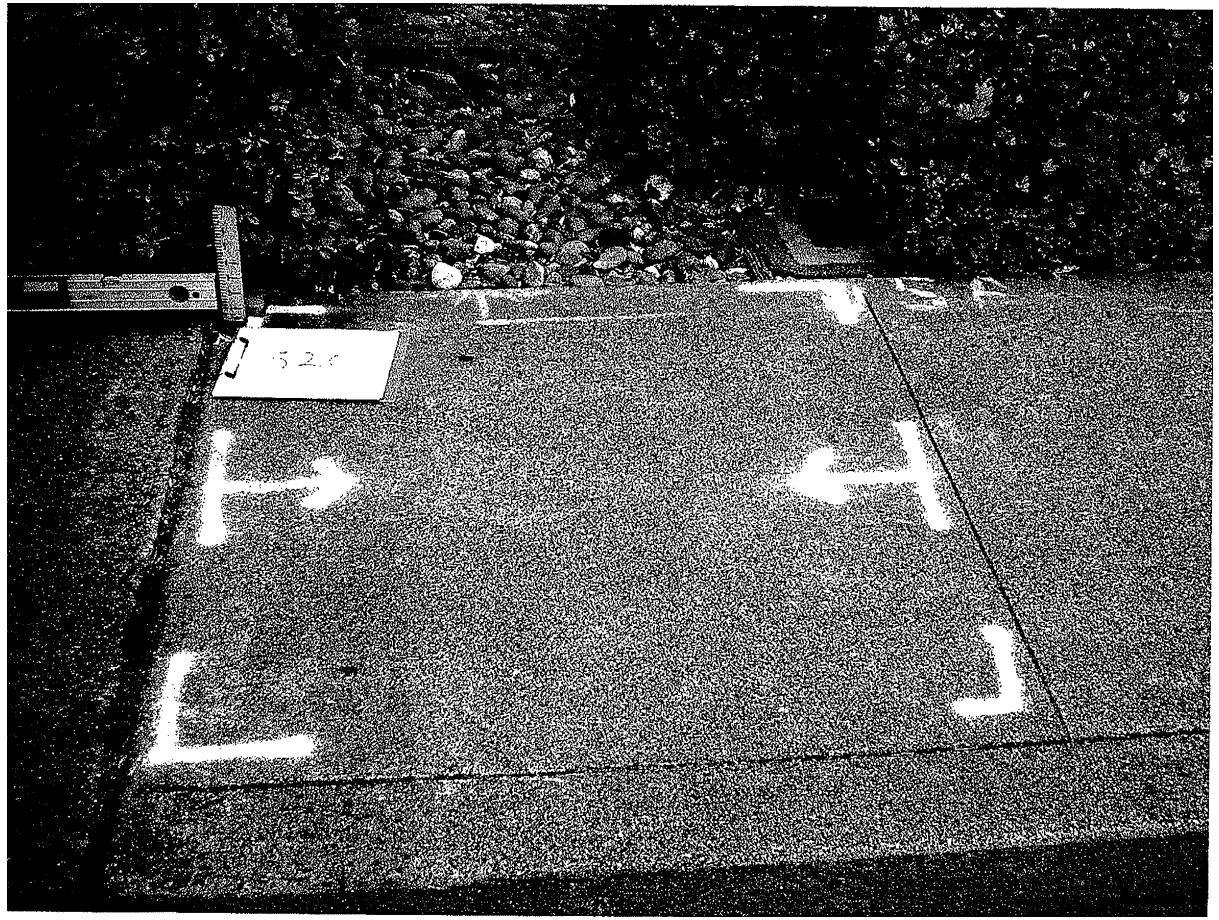
Employees

TaskCode	EmployeeID	TaskDate	Hours	Rate	LaborCost
PS-110	[redacted]	10/11/2006	0.3	$37.00	$11.10
PS-110	[redacted]	10/11/2006	0.3	$37.00	$11.10
PS-110	[redacted]	10/11/2006	0.3	$37.00	$11.10
PS-110	Express	10/11/2006	0.6	$14.93	$8.96
PS-110	Seasonal Laborers	10/11/2006	0.3	$13.08	$3.92

Training Public Works and Other Departments: Ineffective Measurements



Training Public Works and Other Departments: Poor Photographs



Training Public Works and Other Departments: Good Measurements and Photographs

Strategic Use of Demurrers

- Under the California Tort Claims Act, the City's liability must be based on statute and cannot rest on common law theories of liability, including common law negligence. (Gov. Code §815; *Forbes v. County of San Bernardino*, 101 Cal.App. 4th 48, 53 (2002).) Therefore, the City may not be sued for "negligent hiring" or "negligent supervision" which is a direct negligence claim.

- Cases can be dismissed at the demurrer stage based on immunities or that there is not a dangerous condition.
  - Example: Young boy riding scooter at skate park injured when hit by BMX bike. Case dismissed because no dangerous condition contributed to incident.
  - Example: Rope swing accident – dismissed on hazardous recreational activity immunity.

- Demurrers can reduce the number of claims and reduce the scope of discovery.

Strategic Use of Demurrers

- Demurrers can be bad in that they educate plaintiff's counsel – if a complaint is poorly pled, consider answering so you do not educate plaintiff's counsel.
- Be aware of meet and confer requirements under C.C.P. §430.41.
  - Must be in person or by phone.
  - Must be done 5 days in advance of responsive pleading deadline.
  - If can't meet and confer, do declaration (30 day automatic extension).
- Inverse Condemnation Considerations
  - Liability based on Article I, Section 19 of California Constitution
  - Demurrer vs. Answer
    - If claim not plead as inverse condemnation when it could be, leave it alone.
  - Cross-Complaints
    - Identify potential at outset, consider tolling agreements.

The CCP Section 1038/Motion for Summary Judgment Threat

- Code of Civil Procedure Section 1038 is a potent fee-shifting statute allowing public entities to recover the costs, including attorney's fees in defending against unmeritorious and frivolous litigation. (*Kobzoff v. Los Angeles County Harbor/UCLA Medical Center*, 19 Cal.4th 851, 857 (1998).)
- The trial court shall, upon motion of the defendant public entity, determine at the time of granting a summary judgment whether or not the plaintiff brought the proceeding with **reasonable cause and in the good faith** belief that there was a justifiable controversy under the facts and law which warranted the filing of the complaint. If not, then the lower court decides the reasonable defense costs (in additional to routine costs) that should be awarded to the prevailing public entity.
- We frequently use this statute to force dismissal of lawsuits that appear frivolous.

Subrogation Considerations

- Uptick in subrogation lawsuits by aggressive insurance companies
  - Typically brought under dangerous condition of public property, inverse condemnation, nuisance and or trespass theories
  - Insurer steps into the shoes of insured and may assert legal theories on behalf of insured
  - Insurer can only seek damages for payments made to insured plus interest (no emotional distress, typically no wage loss)
- Both insurer and insured may seek recovery against entity
  - Insured will sue to recover deductible, out of pocket expenses, uninsured losses, emotional distress and wage loss
  - Insurer will sue to recover payments made to or on behalf of insured

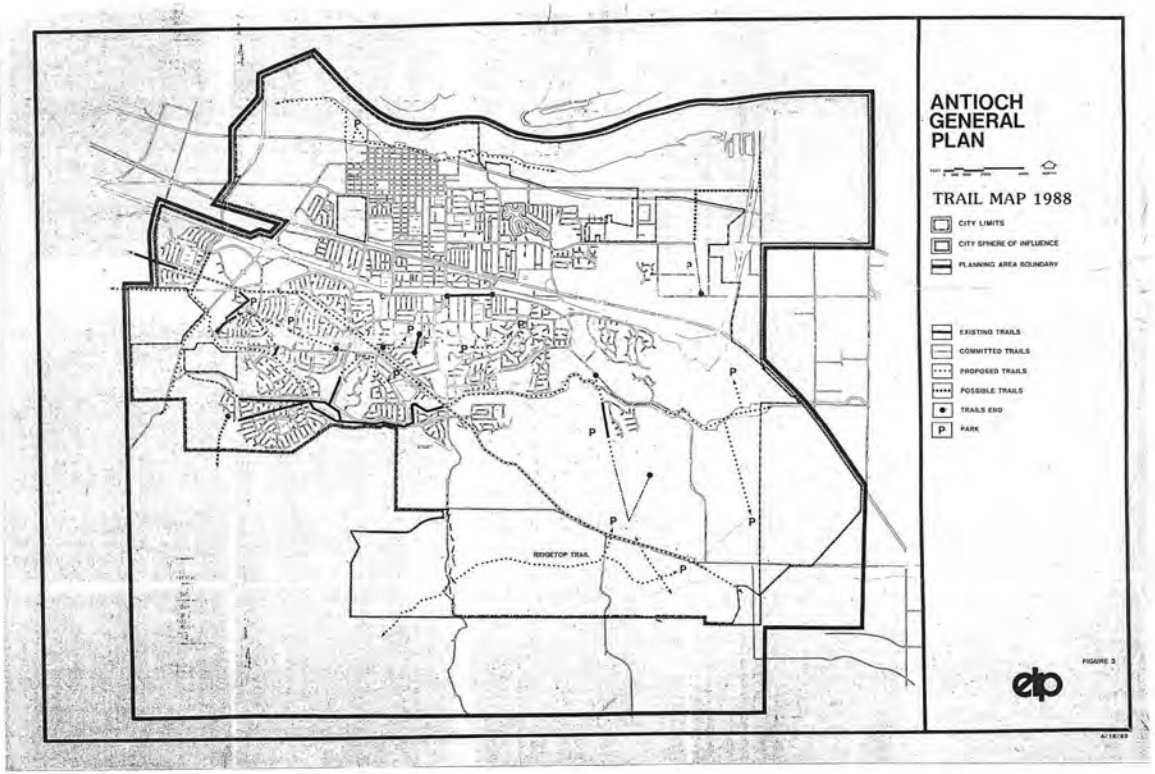
Tips for Defending Subrogation Claims

- No double recovery!
  - Insured and subrogating insurer cannot recover for same damages
- But double exposure to attorney's fees!
  - Both insured and subrogating insurers can simultaneously sue for inverse condemnation and potentially recover double attorney's fees
- Subrogating insurers will often overpay on claims for which they know they have an easy subrogation target!
  - Depose claim adjusters to establish lack of reasonableness of payments to insureds
  - Depose insured to establish insurance proceeds were pocketed
    - Use as leverage to negotiate with insurer

Cutting Edge Immunities:
Trail Immunity – Government Code Section 831.4

- A public entity, public employee, or a grantor of a public easement to a public entity for any of the following purposes, is not liable for an injury caused by a condition of:
  - (a)Any unpaved road which provides access to fishing, hunting, camping, hiking, riding, including animal and all types of vehicular riding, water sports, recreational **or scenic areas** and which is not a (1) city street or highway or (2) county, state or federal highway or (3) public street or highway of a joint highway district, boulevard district, bridge and highway district or similar district formed for the improvement or building of public streets or highways.
  - (b)**Any trail used for the above purposes.**
  - (c)Any paved trail, walkway, path, or sidewalk **on an easement of way** which has been granted to a public entity, which easement provides access to any unimproved property, so long as such public entity shall reasonably attempt to provide adequate warnings of the existence of any condition of the paved trail, walkway, path, or sidewalk which constitutes a hazard to health or safety. Warnings required by this subdivision shall only be required where pathways are paved, and such requirement shall not be construed to be a standard of care for any unpaved pathways or roads.

Cutting Edge Immunities:
Trail Immunity – Government Code Section 831.4



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Cutting Edge Immunities: Trail Immunity & Bike Lanes

- Class 1 - **Bike paths** or **shared-use paths** – facilities with exclusive right of way for bicyclists and pedestrians, away from the roadway and with cross flows by motor traffic minimized. Some systems provide separate pedestrian facilities.
    - Support both recreational and commuting opportunities. Common applications include along rivers, shorelines, canals, utility rights-of-way, railroad rights-of-way, within school campuses, or within and between parks.

Cutting Edge Immunities: Trail Immunity & Bike Lanes

- Class 2 - **Bike lane** - restricted right-of-way designated for the exclusive or semi-exclusive use of bicycles with through travel by motor vehicles or pedestrians prohibited, but with vehicle parking and crossflows by pedestrians and motorists permitted.
    - Established along streets and are defined by pavement striping and signage to delineate a portion of a roadway for bicycle travel. Bike lanes are one-way facilities, typically striped adjacent to motor traffic travelling in the same direction. Contraflow bike lanes can be provided on one-way streets for bicyclists travelling in the opposite direction.

Cutting Edge Immunities: Trail Immunity & Bike Lanes

- Class 3 - **Bike route** - provide a right-of-way designated by signs or permanent markings and shared with pedestrians or motorists. Not served by dedicated bikeways.

Cutting Edge Immunities: Trail Immunity & Bike Lanes

- Class 4 - **Cycle tracks or protected bike lane** - right-of-way designated exclusively for bicycle travel adjacent to a roadway and which are separated from vehicular traffic. Types of separation include, but are not limited to, grade separation, flexible posts, inflexible physical barriers, or on-street parking.

Cutting Edge Immunities:
Trail Immunity & Bike Lanes – Case Law

- Application of immunity to bike lanes is fact specific, case-by-case inquiry
- Caselaw holds that immunity expressly applies to Class 1 Bike Lanes
  - Are not “street or highway”, rather a “trail”
- Applies to paved trials on which recreational activity takes place
- Applies to trials that provide access to recreational activities

- Applicability to Class 2, 4 Bike Lanes – possible; circumstance dependent
- Applicability to Class 3 Bike Lanes – highly unlikely
- Factors taken into consideration:
  - Accepted Definitions of the property
  - Purpose for which Property is designed and used
    - Automobiles Allowed
  - Location of path
    - Commercial businesses/activity surrounding the bike lane
    - Scenic area

Cutting Edge Immunities:
Trail Immunity – Government Code Section 831.4

- *Burgueno v. U.C. Regents* (Cal. Ct. App., Jan. 13, 2016) 16 Cal. Daily Op. Serv. 410.
  - Sixth Appellate District ruled in January that dual use of trail for both recreational purposes and non-recreational purposes (e.g. transportation) does not preclude the trail immunity provided by Govt. Code § 831.4. Significance: Burgueno should preclude liability of public entities for development of trails as part of a transportation plan but are also used for recreational purposes.
  - Student Burgueno was killed in an accident when bicycling home from class on a paved bikeway that runs through the UC Santa Cruz campus and that is used for transportation and to access nearby mountain bike paths.
  - Under Govt. Code 835, plaintiffs alleged a dangerous condition of public property due to an unsafe downhill curve, sight limitations, lack of runoff areas, lack of adequate signage, lack of adequate roadway markings and lack of physical barriers to prevent nighttime use.
  - The trial court granted the UC Regents motion for summary judgment, holding that UC was absolutely immune for injuries from condition of the bikeway under Govt. Code § 831.4. The decision was affirmed on appeal.
- Recent success – Bicycle accident/Take judicial notice of a tort claim/demurrer sustained without leave to amend.

Cutting Edge Immunities: Reasonable Inspection Immunity – Government Code Section 835.4

- Government Code §835.4 provides that a public entity is not liable for a dangerous condition of public property if the public entity establishes that the action it took to protect against the risk of injury created by the condition or its failure to take such action was reasonable.
  - In assessing reasonableness, weigh probability and gravity of potential injury against practicability and cost of protecting against such injury.

Cutting Edge Immunities: Reasonable Inspection Immunity – Government Code Section 835.4

- Even if plaintiff successfully establishes the existence of a dangerous condition of public property, the public entity may not be liable for any injury suffered by plaintiff caused by the condition if the public entity can establish that its system for addressing such conditions is reasonable.

Cutting Edge Immunities: Reasonable Inspection Immunity – Government Code Section 835.4

- Reasonable Inspection Immunity Applied
  - *Bonanno v. Central Contra Costa Transit Authority* (2003) 30 Cal.4th 139, 352-54
    - The California Supreme Court affirmed that under Section 835.4, a public entity's creation or maintenance of a dangerous condition does not render the entity liable if the measures taken to protect against a particular dangerous condition were reasonable.
  - *Metcalf v. County of San Joaquin* (2008) 42 Cal. 4th 1121
    - The Supreme Court noted the legislative comment that a public entity may avoid liability if it shows that it acted reasonably in the light of the practicability and cost of pursuing alternative courses of action available to it.

Cutting Edge Immunities: Reasonable Inspection Immunity – Government Code Section 835.4

- Recent application of the immunity at Bertrand, Fox, Elliot, Osman & Wenzel
  - Plaintiff sued City for negligence and dangerous condition of public property after she fell off of her bicycle due to an uneven sidewalk. The City filed a motion for summary judgment and successfully applied the Reasonable Inspection Immunity under Government Code Section 835.4.
    - The City provided evidence that it had developed and implemented a reasonable system for addressing asphalt maintenance and hazard repairs given its limited resources.
      - The Street Maintenance Division used a Work Order system to efficiently prioritize maintenance tasks in light of available resources based on prompt in-person response to all reports of asphalt defects, assessment of risk and scheduling needed repair.
      - The City reasonably weighed the probability of potential injury against the practicability and cost of taking alternative action, as required by the Government Code's immunity statute.

Cutting Edge Immunities: Reasonable Inspection Immunity – Government Code Section 835.4

- Tips in Using Reasonable Inspection Immunity
  - Assert the Reasonable Inspection Immunity under Government Code Section 835.4 as an affirmative defense in an answer to a complaint.
  - Investigate the public entity's policies and procedures to fully understand its course of action regarding the alleged dangerous condition.
  - In preparing a dispositive motion or at trial, present evidence regarding why the public entity's action or inaction regarding the alleged dangerous condition was reasonable:
    - Limited budget
    - Alternative courses of action were not available and/or optimal

Cutting Edge Immunities: Hazardous Recreational Activity Immunity– Government Code Section 831.7

- Government Code Section 831.7 provides that, unless a specific exception applies, public entities are immune from liability to persons who suffer injury while engaging in “hazardous recreational activities.”

- A “hazardous recreational activity” is defined by a nonexclusive list of activities that qualify, including tree rope swinging, water contact activities, animal riding, mountain biking, skydiving, etc. (Section 831.7(b).)

- The goal of the immunity is to keep public property open to the public without imposing a duty on entities to maintain or remove all items on their property that could potentially pose hazards to individuals not using due care.

Cutting Edge Immunities: Hazardous Recreational Activity Immunity– Government Code Section 831.7

- In *County of San Diego v. Superior Court* (2015) 242 Cal.App.4th 460, plaintiff swung from a rope tied to a tree that was located above a ravine. The rope broke and caused plaintiff to fall onto debris located in the ravine, which included tree limbs and other brush left by the County's maintenance crews. The County owned the property, had no policy requiring maintenance personnel to remove rope swings in the park and there were no signs posted in the park forbidding rope swinging.

- Plaintiff sued the County of San Diego asserting the following causes of action: (1) dangerous condition of public property under Government Code section 835 arising from the County's actual and constructive notice of the defective condition of the rope swing, failure to properly maintain the rope swing, failure to protect against the dangerous condition and failure to provide a warning; (2) dangerous condition of public property under Government Code section 835 arising from tree debris left in the ravine by the County's personnel; and (3) general negligence, including failing to remove the rope swing.

Section 831.7 continued

- The Court of Appeal issued a detailed opinion about the application of the hazardous recreational activity immunity and how it specifically precludes the imposition of liability on a public entity **unless a statutory exception applies**. (*County of San Diego,* 242 Cal.App.4th at 468.) The Court of Appeal determined NONE of the exceptions applied and the County of San Diego was absolutely immune from liability.
- The following are the statutory exceptions to the immunity:
  - **Failure to warn** of a condition or another hazardous activity known to the public entity/employee that is not reasonably assumed by the participant as an inherent part of the activity. (subd. (c)(1)(A));
  - Damage or injury suffered where participation in a hazardous recreational activity was granted pursuant to a **fee** (subd. (c)(1)(B)) ;
  - **Failure to maintain** in good repair recreational equipment utilized in the hazardous recreational activity (subd. (c)(1)(C));
  - Damage or injury suffered where the public entity or employee recklessly or with gross negligence **promoted the participation** in the hazardous recreational activity (subd. (c)(1)(D)); and
  - **Gross negligence** by a public entity proximately causing injury. (subd. (c)(1)(E)).

Successful Use of the Hazardous Recreational Activity Immunity on Demurrer

- In July 2016, we successfully demurred to a complaint using the hazardous recreational activity immunity. In a case involving a local water district, plaintiff swung from a rope tied to a tree on the district's property. The rope snapped, plaintiff landed on his back and became paralyzed from the waist down. We asserted the hazardous recreational activity immunity and explained why the applicable statutory exceptions to the immunity did not apply using the holding and rationale in the *County of San Diego* case*:*
  - Failure to warn: No duty to warn of inherent risks in the activity and falling from a rope swing is an inherent risk of the activity.
  - Failure to maintain: Entities are under no duty to maintain or remove all items on their property that could potentially pose hazards to individuals not using due care. Further, individuals engaging in hazardous recreational activities utilizing recreational equipment abandoned by unknown third parties on public property are not exercising due care.
  - Gross Negligence: Entities are under no duty to maintain or remove items and therefore the existence of the rope on the District's property did not constitute gross negligence by the District.

Cutting Edge Immunities: Inspection Immunity – Government Code Section 818.6

- Section 818.6 provides "A public entity is not liable for injury caused by its failure to make an inspection, or by reason of making an inadequate or negligent inspection, of any property, other than its property (as defined in subdivision (c) of Section 830), for the purpose of determining whether the property complies with or violates any enactment or contains or constitutes a hazard to health or safety."
- Even if a public entity is under a mandatory duty to take a certain action, section 818.6 broadly immunizes public entities from liability.

Cutting Edge Immunities: Inspection Immunity– Government Code Section 818.6

- In *Cochran v. Herzog Engraving Co.* (1984) 155 Cal.App.3d 405, 411, a fire occurred at a company plant, resulting in the death of one of its employees. The family of the employee sued the City of San Mateo, alleging the City was liable for its failure to discharge mandatory duties contained in the San Mateo Municipal Code, which provided for building inspections by the fire department, and abatement of dangerous or hazardous conditions, and alleged that the fire department did not report dangerous conditions discovered during an inspection, and failed to recommend safeguards to correct unsafe conditions.
- The Court did not decide whether the alleged failure violated mandatory duties, but applied inspection immunity broadly and upheld the trial court's granting of summary judgment.
- The Court noted that if inspection immunity were not applicable in situations such as that presented by the facts in this case, municipalities would be exposed to unwarranted and unsupportable risk of liability.

Government Code Section 818.6 Continued

- In *Haggis v. City of Los Angeles* (2000) 22 Cal.4th 490, a property owner sued a city alleging breach of mandatory duties arising out of the city's failure to follow directives in its own municipal code regarding development by a previous owner of property in landslide zones. The plaintiff contended that the municipal code required that if property in landslide zones was determined to be unstable, the City had a duty to record a certificate of substandard condition. (Id. at 500.) The trial court sustained the city's demurrer without leave to amend and dismissed the action, and the Court of Appeal affirmed the ruling, finding that the City was immune under § 818.6.
- Following appeal, the California Supreme Court affirmed the Court of Appeal's ruling, finding that the City was immune under 818.6 for failure to discharge a mandatory duty under the ordinance cited by the plaintiff. The Court noted that "[t]he mandatory duty to record a certificate … arises only if instability is discovered by inspection," and that "[t]o impose liability for failing to record the result of the inspection would frustrate the purpose of the immunity statute…" (Id. at 504.) In particular, the Court noted that allowing liability for failure to fully report, by recordation, the results of an inspection, while immunizing the failure to make an inspection at all, would have the effect, contrary to the evident legislative intent, of discouraging municipal safety and health inspections. (Id.)

Government Code Section 818.6 – Recent Application – Fire Cases

- Ghost Ship –fatal warehouse fire in Oakland, California with 36 decedents. Plaintiffs alleged that the City of Oakland's police and fire personnel were present at the Ghost Ship warehouse on multiple occasions prior to the fire, and knew of its open and obvious dangerous conditions, and knew of the warehouse's history of having public events and parties inside.
- The City of Oakland demurred to the complaint, arguing that the City was not under any mandatory duty to enforce state or local building codes with respect to the Ghost Ship, and even if the City was under a mandatory duty, any liability would be barred by statutory inspection immunity.

Government Code Section 818.6 Continued

- Alameda County Superior Court overruled the City's demurrer
- The Court ruled that plaintiffs had sufficiently alleged violation of several mandatory duties, and that Section 818.6 immunity did not apply, as the City's "actual knowledge" of the hazardous condition arose without any connection to a formal inspection.
- The Court distinguished *Cochran*, as the plaintiffs in *Cochran* had alleged that the City had a duty to inspect, and the inspections made were negligent and careless.
- The Court distinguished *Haggis*, as it involved a failure to act after an inspection.
- City filed a writ challenging decision, but was denied on November 14, 2018.

Government Code Section 818.6 – Takeaways

- The Alameda County Superior Court's ruling is not binding, but provides an example of where the immunity may not apply
- Discovery of unsafe conditions outside the context of a formal inspection could create obligations to remedy fire hazards or other nuisances. The failure to do so may not be immunized
- A visit to a property does not necessarily render it an "inspection" for purposes of section 818.6
- Be sure to review internal policies regarding abatement of hazardous conditions

Adjacent Property Owner Liability to Third Parties

- Typically, the owner of land bounded by a road is presumed to own to the center of the way. (Civil Code §831.)
- Streets & Highways Code §5610 provides that owners of such land must maintain the sidewalk in a non-dangerous condition.
- This statute has been interpreted as only providing a means for entities to seek reimbursement for the cost of repairs to the sidewalks and not as imposing liability on adjacent property owners for injuries to third parties.
- Adjacent property owner still can be liable if they cause the condition (e.g. tree roots from their tree.)
  - What if roots are from tree in planting strip?

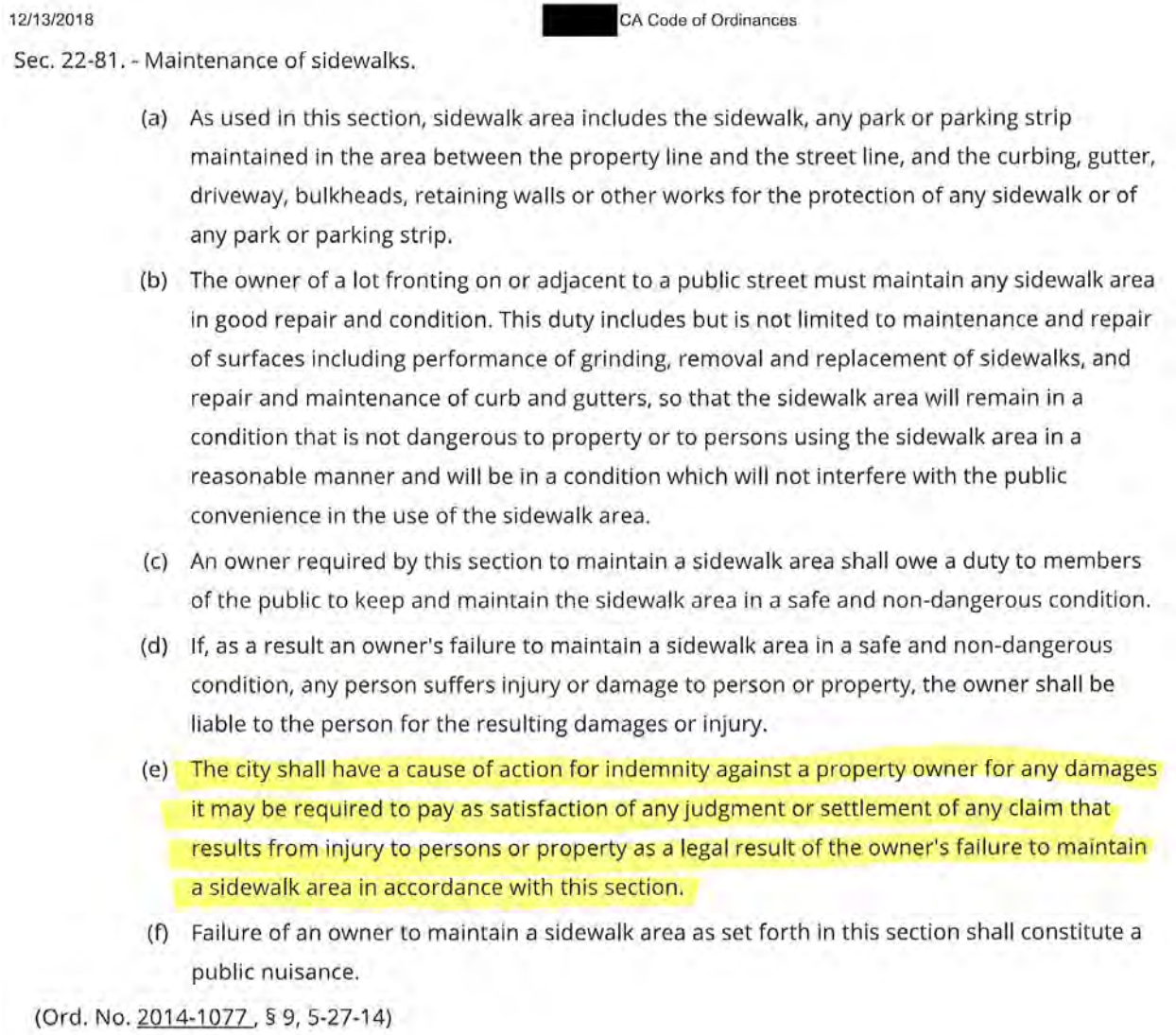
Adjacent Property Owner Liability to Third Parties

Adjacent Property Owner Liability to Third Parties

- City Ordinances
  - City can shift duty of maintenance/landscaping to adjacent property owner through its ordinances – this can reduce City's liability by 50%.
- Liability to third party only if city ordinance explicitly states the adjacent property owner has a duty to third parties to maintain sidewalk in non-dangerous condition and that the property owner is liable to any person who suffers injury due to adjacent property owner's failure to maintain sidewalk in non-dangerous condition. (See *Gonzales v. City of San Jose* (2004) 125 Cal. App. 4th 1127.)
  - Why adopt such an ordinance/why Cities do not?

Insurance Issues – Duty to Defend, Indemnify and Hold Harmless

- If your City has an ordinance shifting liability to adjacent property owners- be sure to review the language of the ordinance to make sure it says "duty to defend, indemnify and hold harmless".
- Example: Sidewalk trip and fall case – City's municipal code only provides for an indemnity action against the property owner regarding personal injury claims by third parties. Thus, the City would be entitled to its defense fees and would have to wait until a judgment is ordered against the City before the City could pursue a claim for indemnity against the property owner.



12/13/2018 [redacted] CA Code of Ordinances

Sec. 22-81. - Maintenance of sidewalks.

(a) As used in this section, sidewalk area includes the sidewalk, any park or parking strip maintained in the area between the property line and the street line, and the curbing, gutter, driveway, bulkheads, retaining walls or other works for the protection of any sidewalk or of any park or parking strip.

(b) The owner of a lot fronting on or adjacent to a public street must maintain any sidewalk area in good repair and condition. This duty includes but is not limited to maintenance and repair of surfaces including performance of grinding, removal and replacement of sidewalks, and repair and maintenance of curb and gutters, so that the sidewalk area will remain in a condition that is not dangerous to property or to persons using the sidewalk area in a reasonable manner and will be in a condition which will not interfere with the public convenience in the use of the sidewalk area.

(c) An owner required by this section to maintain a sidewalk area shall owe a duty to members of the public to keep and maintain the sidewalk area in a safe and non-dangerous condition.

(d) If, as a result an owner's failure to maintain a sidewalk area in a safe and non-dangerous condition, any person suffers injury or damage to person or property, the owner shall be liable to the person for the resulting damages or injury.

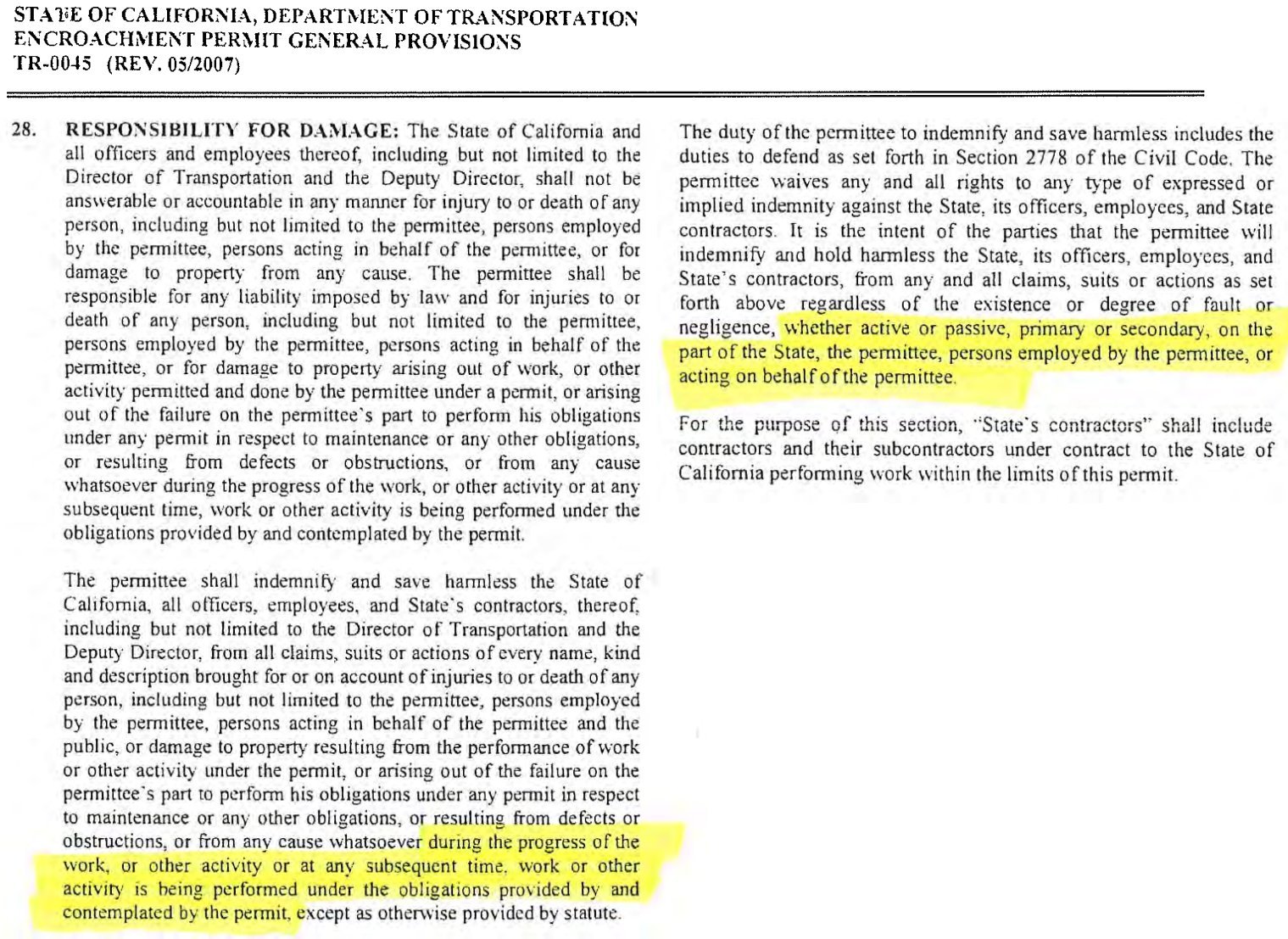
(e) The city shall have a cause of action for indemnity against a property owner for any damages it may be required to pay as satisfaction of any judgment or settlement of any claim that results from injury to persons or property as a legal result of the owner's failure to maintain a sidewalk area in accordance with this section.

(f) Failure of an owner to maintain a sidewalk area as set forth in this section shall constitute a public nuisance.

(Ord. No. 2014-1077 , § 9, 5-27-14)

Insurance Issues – Duty to Defend, Indemnify and Hold Harmless

- If your City needs to take out an Encroachment Permit with another entity, review the indemnity language to make sure you are not agreeing to indemnify for the other entity's active and passive negligence.
- Example: CalTrans has extremely broad indemnity language. The superior court has ordered a City to defend and indemnify the State based on the State's Encroachment Permit.



STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION
ENCROACHMENT PERMIT GENERAL PROVISIONS
TR-0045 (REV. 05/2007)

28. **RESPONSIBILITY FOR DAMAGE:** The State of California and all officers and employees thereof, including but not limited to the Director of Transportation and the Deputy Director, shall not be answerable or accountable in any manner for injury to or death of any person, including but not limited to the permittee, persons employed by the permittee, persons acting in behalf of the permittee, or for damage to property from any cause. The permittee shall be responsible for any liability imposed by law and for injuries to or death of any person, including but not limited to the permittee, persons employed by the permittee, persons acting in behalf of the permittee, or for damage to property arising out of work, or other activity permitted and done by the permittee under a permit, or arising out of the failure on the permittee's part to perform his obligations under any permit in respect to maintenance or any other obligations, or resulting from defects or obstructions, or from any cause whatsoever during the progress of the work, or other activity or at any subsequent time, work or other activity is being performed under the obligations provided by and contemplated by the permit.

The permittee shall indemnify and save harmless the State of California, all officers, employees, and State's contractors, thereof, including but not limited to the Director of Transportation and the Deputy Director, from all claims, suits or actions of every name, kind and description brought for or on account of injuries to or death of any person, including but not limited to the permittee, persons employed by the permittee, persons acting in behalf of the permittee and the public, or damage to property resulting from the performance of work or other activity under the permit, or arising out of the failure on the permittee's part to perform his obligations under any permit in respect to maintenance or any other obligations, or resulting from defects or obstructions, or from any cause whatsoever during the progress of the work, or other activity or at any subsequent time, work or other activity is being performed under the obligations provided by and contemplated by the permit, except as otherwise provided by statute.

The duty of the permittee to indemnify and save harmless includes the duties to defend as set forth in Section 2778 of the Civil Code. The permittee waives any and all rights to any type of expressed or implied indemnity against the State, its officers, employees, and State contractors. It is the intent of the parties that the permittee will indemnify and hold harmless the State, its officers, employees, and State's contractors, from any and all claims, suits or actions as set forth above regardless of the existence or degree of fault or negligence, whether active or passive, primary or secondary, on the part of the State, the permittee, persons employed by the permittee, or acting on behalf of the permittee.

For the purpose of this section, "State's contractors" shall include contractors and their subcontractors under contract to the State of California performing work within the limits of this permit.

Insurance Issues – Duty to Defend, Indemnify and Hold Harmless

STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION
ENCROACHMENT PERMIT GENERAL PROVISIONS
TR-0045 (REV. 11/2018)

28. LIABILITY, DEFENSE, AND INDEMNITY: The Permittee agrees to indemnify and save harmless the State, the Department, and the Directors, officers, employees, agents and/or contractors of the State and/or of the Department, including but not limited to the Director of Transportation and the Deputy Directors, from any and all claims, demands, damages, costs, liability, suits, or actions of every name, kind, and description, including but not limited to those brought for or on account of property damage, invasion of privacy, violation or deprivation of a right under a state or federal law, environmental damage or penalty, or injury to or death of any person including but not limited to members of the public, the Permittee, persons employed by the Permittee, and/or persons acting on behalf of the Permittee, arising out of or in connection with: (a) the issuance and/or use of this encroachment permit; and/or (b) the encroachment, work, and/or activity conducted pursuant to this encroachment permit, or under color of authority of this encroachment permit but not in full compliance with the Permit Conditions as defined in General Provision Number 5 ("Unauthorized Work or Activity"); and/or (c) the installation, placement, design, existence, operation, and/or maintenance of the encroachment, work, and/or activity; and/or (d) the failure by the Permittee or anyone acting on behalf of the Permittee to perform the Permittee's obligations under any part of the Permit Conditions as defined in General Provision Number 5, in respect to maintenance or any other obligation; and/or (e) any change to the Department's property or adjacent property, including but not limited to the features or conditions of either of them, made by the Permittee or anyone acting on behalf of the Permittee; and/or (f) a defect or obstruction related to or caused by the encroachment, work, and/or activity whether conducted in compliance with the Permit Conditions as defined in General Provision Number 5 or constituting Unauthorized Work or Activity, or from any cause whatsoever. The duty of the Permittee to indemnify and save harmless includes the duties to defend as set forth in Section 2778 of the Civil Code.

It is the intent of the parties that except as prohibited by law, the Permittee will defend, indemnify, and hold harmless as set forth in this General Provision Number 28 regardless of the existence or degree of fault or negligence, whether active or passive, primary or secondary, on the part of: the State; the Department; the Directors, officers, employees, agents and/or contractors of the State and/or of the Department, including but not limited to the Director of Transportation and the Deputy Directors; the Permittee; persons employed by the Permittee; and/or persons acting on behalf of the Permittee.

The Permittee waives any and all rights to any type of expressed or implied indemnity from or against the State, the Department, and the Directors, officers, employees, agents, and/or contractors of the State and/or of the Department, including but not limited to the Director of Transportation and the Deputy Directors.

The Permittee understands and agrees to comply with the obligations of Titles II and III of the Americans with Disabilities Act in the conduct of the encroachment, work, and/or activity whether conducted pursuant to this encroachment permit or constituting Unauthorized Work or Activity, and further agrees to defend, indemnify, and save harmless the State, the Department, and the Directors, officers, employees, agents, and/or contractors of the State and/or of the Department, including but not limited to the Director of Transportation and the Deputy Directors, from any and all claims, demands, damages, costs, penalties, liability, suits, or actions of every name, kind, and description arising out of or by virtue of the Americans with Disabilities Act.

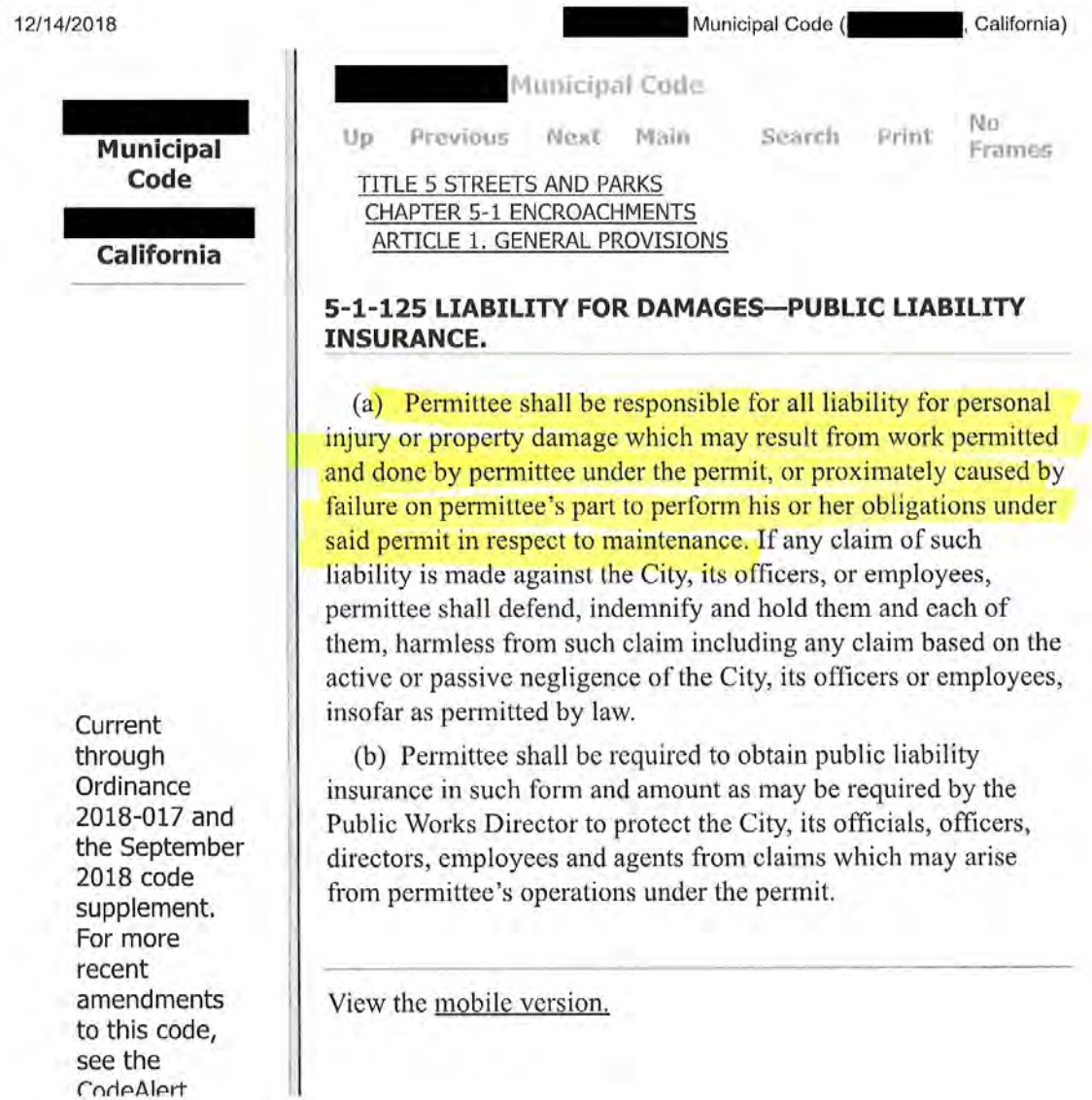
The Permittee understands and agrees the Directors, officers, employees, agents, and/or contractors of the State and/or of the Department, including but not limited to the Director of Transportation and the Deputy Directors, are not personally responsible for any liability arising from or by virtue of this encroachment permit.

For the purpose of this General Provision Number 28 and all paragraphs herein, "contractors of the State and/or of the Department" includes contractors under contract to the State and/or the Department, and the subcontractors of such contractors.

This General Provision Number 28 and all paragraphs herein take effect immediately upon issuance of this encroachment permit, and apply before, during, and after the encroachment, work, and/or activity contemplated under this encroachment permit, whether such work is in compliance with the Permit Conditions as defined in General Provision Number 5 or constitutes Unauthorized Work or Activity, except as otherwise provided by California law. The Permittee's obligations to defend, indemnify, and save harmless under this General Provision Number 28 take effect immediately upon issuance of this encroachment permit and have no expiration date, including but not limited to situations in which this encroachment permit expires or is revoked, the work or activity performed under this encroachment permit is accepted or not accepted by the Department, the encroachment, work, and/or activity is conducted in compliance with the Permit Conditions as defined in General Provision Number 5 or constitutes Unauthorized Work or Activity, and/or no work or activity is undertaken by the Permittee or by others on the Permittee's behalf.

Insurance Issues – Duty to Defend, Indemnify and Hold Harmless

- Review your City's indemnity language in its Encroachment Permits to make sure it is not overly specific.
- Example: Do not limit the indemnity for work arising only out of maintenance.



12/14/2018 [redacted] Municipal Code ([redacted], California)

[redacted] Municipal Code

Up Previous Next Main Search Print No Frames

[redacted] Municipal Code

[redacted] California

TITLE 5 STREETS AND PARKS
CHAPTER 5-1 ENCROACHMENTS
ARTICLE 1. GENERAL PROVISIONS

5-1-125 LIABILITY FOR DAMAGES—PUBLIC LIABILITY INSURANCE.

(a) Permittee shall be responsible for all liability for personal injury or property damage which may result from work permitted and done by permittee under the permit, or proximately caused by failure on permittee's part to perform his or her obligations under said permit in respect to maintenance. If any claim of such liability is made against the City, its officers, or employees, permittee shall defend, indemnify and hold them and each of them, harmless from such claim including any claim based on the active or passive negligence of the City, its officers or employees, insofar as permitted by law.

(b) Permittee shall be required to obtain public liability insurance in such form and amount as may be required by the Public Works Director to protect the City, its officials, officers, directors, employees and agents from claims which may arise from permittee's operations under the permit.

Current through Ordinance 2018-017 and the September 2018 code supplement. For more recent amendments to this code, see the CodeAlert

View the mobile version.

Insurance Issues – Duty to Defend, Indemnify and Hold Harmless

GENERAL PROVISIONS

(a) All work must be performed in accordance with City of [redacted] Standard Plans, Specifications, and Title V Chapter 1 of the Municipal Code.
(b) Twenty-four hours notice required prior to start and/or requests for inspection. Work hours are limited to between 8am and 4pm. No work is permitted on Saturday, Sunday, or City Holidays. The City website has a schedule of City holidays:
[redacted]
(c) City to be notified next working day (by permit application) of all emergency work performed.
(d) Permittee shall be responsible for all liability imposed by law for personal injury or property damage proximately caused by failure on permittee's part to perform his obligations under said permit with respect to maintenance. If any claim of such liability is made against the City of [redacted] or its officers or employees, permittee shall defend, indemnify and hold each of them harmless from such claim.
(e) No utility contractor or subcontractor shall park their construction equipment, including personal vehicles, entirely or partially in the sidewalk area. Per Section 5610 of the Streets and Highways Code, the permittee shall be responsible for the repair of any damaged sidewalk where utility contractor's or subcontractor's vehicles or equipment are parked whether or not the damage was preexisting.
(f) Cost of emergency work required to restore unsatisfactory construction that becomes hazardous will be charged to permittee.
(g) Permit void **90 days** from issue date unless noted otherwise. Extension of time may be granted when requested in writing.
(h) Permit must be readily available at work site. Permit is not assignable.
(i) Section 6500 of the Labor Code requires a permit from the State Division of Industrial Safety (CAL OSHA) prior to an excavation five feet or deeper.
(j) Prior to digging or drilling, permittee shall request Underground Service Alert (USA) markings, phone #800-642-2444.
(k) Trenches to be inspected prior to backfilling. Backfill compaction tests may be required.
(l) All tunneling prohibited. Pipe must be bored or jacked or open trenched - including under curb, gutter and/or sidewalk.
(m) Forms for concrete work must be inspected prior to placing concrete.
(n) All concrete, including concrete pavement (overlayed with A.C. or not), must be sawcut prior to breakout. Concrete sections to be replaced shall be no smaller than 30 inches in either length or width. All sawcuts must be along scorelines, 1.5" minimum depth (special conditions for concrete pavements). If a sawcut falls within 30 inches of a construction joint, expansion joint, or edge, the concrete shall be removed to the joint or edge. Forms for concrete work must be inspected prior to placing concrete.
(o) Temporary paving is required in all street and sidewalk areas and is to be placed the same day work is performed. From **October 15** through **April 15**, only A.C. paving is to be used. Temporary paving is to be maintained by applicant.
(p) Permanent paving or sidewalk is to be replaced within **30 days**. Permittee shall notify City before placing surfacing.
(q) Permittee shall provide, erect, and/or maintain such lights, barriers, warning signs, patrols, watchmen and other safeguards as are necessary to protect the traveling public in accordance with the current State "Manual of Warning Signs, Lights, and Devices for Use in Performance of Work Upon Highways".
(r) Before any work is begun that will interrupt the normal flow of public traffic, proposed lane closures or advanced warning light, sign, and barricade with flashing light details and layout plans shall be submitted to the City. If flagmen are required copies of certifications must be provided prior to issuance of a permit.
(s) Open trench one lane at a time, with necessary traffic control, to keep traffic moving in both directions during working hours. If at the end of the work day backfilling operations have not been completed, steel bridging shall be required to make the entire traveled way available to the public traffic.
(t) Pedestrian safety shall be maintained at all times.
(u) Permittee shall contact City for final inspection and approval of completed work.

ART – Arterial Col – Collector Res - Residential

INSPECTION RECORD

Date Inspected	Comments	Inspector	Hours Charged	Date Charged
/ /				
/ /				
		Subtotal		

INSPECTIONS: Email or Call

24 Hours in Advance

[redacted]@[redacted].org | [redacted]

Application: This form should be completed when applying for an encroachment permit from the City of [redacted] Engineering and Transportation Department for work in the public right-of-way or public easement area.
Application Fee: The application fee for an encroachment permit is $65.00. Plan review and inspection fees for non-utility permits are based on an approved itemized cost estimate for the scope of work proposed, as assessed by City Staff, in accordance with the City's adopted fee schedule.

GENERAL PROVISIONS

(a) All work must be performed in accordance with City of San Leandro Standard Plans, Specifications, and Title V Chapter 1 of the [redacted] Municipal Code.
(b) Twenty-four hour notice is required prior to start and/or requests for inspection. Work hours are limited to hours specified on traffic control plans. No work is allowed on Saturdays, Sundays, or City Holidays unless authorized in writing. The City website has a schedule of City holidays:
[redacted]
(c) City to be notified next working day (by permit application submittal) of all emergency work performed.
(d) To the furthest extent permitted by law, Applicant shall indemnify, defend with counsel acceptable to City, and hold harmless City and its officers, elected officials, employees, agents, and volunteers from and against any and all liabilities, losses, damages, claims, expenses, and costs of every nature arising out of or in connection with Applicant's work under this Permit, or its failure to comply with any of the obligations contained in this Permit. This indemnity may not apply, or liability may be proportionately apportioned if a court of competent jurisdiction finds that the City engaged in willful misconduct, or active negligence.
(e) Applicant shall not allow its duly approved or authorized agents or contractors, or any subcontractors of its duly approved or authorized agents or contractors, to commence work under this Permit until Applicant has obtained, at its own cost and expense, and provided to City in advance of commencing work the requisite evidence or proof of insurance or copies of insurance policies of the types and in the coverage amounts required of Applicant by the City for this Permit. Such insurance and all required endorsements must be in full effect prior to commencing work. Applicant shall furnish separate certificates and certified endorsements naming City as an additional insured, and Applicant shall either include its duly approved or authorized agents or contractors and all subcontractors as insureds under Applicant's insurance policies or Applicant shall furnish separate evidence or proof of insurance coverage or copies of insurance policies and separate certified endorsements naming City as an additional insured from each of Applicant's duly approved and authorized agents or contractors and all subcontractors of each duly approved and authorized agent or contractor.
(f) No contractor or subcontractor shall park their construction equipment, including personal vehicles, entirely or partially in the sidewalk area. Per Section 5610 of the Streets and Highways Code, the permittee shall be responsible for the repair of any damaged sidewalk where contractor's or subcontractor's vehicles caused said damage.
(g) If the work or use authorized by a permit is unsafe, in violation of the Municipal Code, or is unduly delayed by the permittee, the City may revoke this permit and complete the work or any portion thereof, or make the site safe or return it to the same condition existing prior thereto. The actual cost of performing such work by the City plus overhead shall be charged to and paid for by the permittee.
(h) Permit is valid for **90 days** from issue date unless noted otherwise. Extension of time may be granted when requested in writing.
(i) Permit must be readily available at work site and presented when requested by a City employee. Permit is not assignable.
(j) Section 6500 of the Labor Code requires a permit from the State Division of Industrial Safety (**CAL OSHA**) prior to any excavation five feet or deeper.
(k) Prior to digging or drilling, permittee shall request Underground Service Alert (**USA**) markings. Contact **811, 800-640-2444, or usanorth811.org** *(48 hours in advance)*
(l) Trenches must be inspected prior to backfilling. Backfill compaction tests must be submitted for review and approval prior to closing permit.
(m) All tunneling is prohibited. Pipe must be bored, jacked, or open trenched including under curb, gutter and/or sidewalk.
(n) Forms for concrete work must be inspected prior to placing concrete.
(o) All concrete must be saw cut prior to breakout. Concrete sections to be replaced shall be no smaller than 30 inches in either length or width. All saw cuts must be along score lines, 1.5" minimum depth (special conditions for concrete pavements). If a saw cut falls within 30 inches of a construction joint, expansion joint, or edge, the concrete shall be removed to the joint or edge. Forms for concrete work must be inspected prior to placing concrete.
(p) Temporary paving is required in all street and sidewalk areas and is to be placed the same day work is performed. From **October 15** through **April 15**, only Hot Mix Asphalt Concrete paving or hydrophobic, polymer-modified, cold asphalt is to be used for temporary paving. Temporary paving is to be maintained by applicant until permanent paving is placed.
(q) Paving or sidewalk is to be replaced within **30 days**. Permittee shall notify City before placing surfacing.
(r) A Traffic Control Plan must be submitted to the City. If flaggers are required, copies of certifications must be provided.
(s) Permittee shall provide, erect, and/or maintain such lights, barriers, warning signs, patrols, watchmen, and other safeguards as are necessary to safeguard the traveling public in accordance with the current California "Manual of Uniform Traffic Control Devices Part 6: Temporary Traffic Control" and the submitted Traffic Control Plan.
(t) Open trench one lane at a time, with necessary traffic control, to keep traffic moving in both directions during working hours. If at the end of the work day backfilling operations have not been completed, steel bridging shall be required to make the entire traveled way available to public traffic.
(u) Tree trimming and/or root pruning requires approval from the City's Public Works Department prior to performing said work. Call [redacted]
(v) A safe and accessible pedestrian path of travel shall be maintained at all times.
(w) Permittee is responsible for contacting the City for final inspection and approval of completed work.
(x) Permittee shall notify Union Pacific Railroad for any work to be performed or traffic control within the proximity of a railroad crossing.
(y) Any changes to the scope of work or the traffic control plans requires a permit revision. Work cannot proceed until the City of [redacted] has approved all changes.
(z) Any City survey monument encountered within the work area shall be preserved in accordance with California Business and Professions Code §8771. If a City survey monument is disturbed, Permittee is responsible for filing a Corner Record or Record of Survey with the [redacted] County Surveyor, with a copy provided to the City. Failure to perpetuate City monuments is a misdemeanor according to California Penal Code §605.

Insurance Issues – Duty to Defend, Indemnify and Hold Harmless

Old Code Section

(c) City to be notified next working day (by permit application) of all emergency work performed.

(d) Permittee shall be responsible for all liability imposed by law for personal injury or property damage proximately caused by failure on permittee's part to perform his obligations under said permit with respect to maintenance. If any claim of such liability is made against the City of [redacted] or its officers or employees, permittee shall defend, indemnify and hold each of them harmless from such claim.

Revised Code Section

(c) City to be notified next working day (by permit application submittal) of all emergency work performed.

(d) To the furthest extent permitted by law, Applicant shall indemnify, defend with counsel acceptable to City, and hold harmless City and its officers, elected officials, employees, agents, and volunteers from and against any and all liabilities, losses, damages, claims, expenses, and costs of every nature arising out of or in connection with Applicant's work under this Permit, or its failure to comply with any of the obligations contained in this Permit. This indemnity may not apply, or liability may be proportionately apportioned if a court of competent jurisdiction finds that the City engaged in willful misconduct, or active negligence.