



Memorandum

To: Terri Matthews, Director of Town+Gown

From: Hak Seop Kim, Brooklyn Law School student Class of 2022

Re: Roadway Lifecycle Management: From Chicago to New York City

I. Introduction

This memorandum analyzes the replicability of Chicago’s lifecycle management program for New York City. Section II summarizes the history of New York’s 811 “One Call” program and its provisions; Section III analyzes New York case law on the difference between a tax and fee; the third section summarizes Chicago’s program; and, Section IV applies elements of Chicago’s program to New York City rules governing the public right of way.

II. New York 811

A. National Movement

Every year, the roadway excavation process for subsurface utility repairs causes at least \$50 billion worth of damage and interruptions to underground utility lines.¹ Established in 2000, the Common Ground Alliance (CGA) is an organization committed to promoting effective damage prevention practices.² Comprised of 1800 individuals and organizations related to the underground utility industry, the CGA’s goal is to enhance the members’ ability to implement effective damage prevention programs, increase education of the public and policymakers about the importance of damage prevention process,

¹ Geoff Zeiss and Sakura Shinoaki. *Reducing Damage to Underground Utility Infrastructure During Excavation – Costs, benefits, technical advances, case studies, and recommendations*. 2020

² <https://commongroundalliance.com/811>

and provide a collaborative forum for stakeholders to identify and highlight effective damage prevention practices and programs.³

Each year, the CGA writes a Damage Information Reporting Tool, also known as Dirt Report, that analyzes damages to buried infrastructure in North America.⁴ The CGA's annual Dirt Report is created using publicly available data from the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA).⁵ According to the 2020 Dirt Report, the annual societal costs of damages to buried utilities in the U.S. is approximately \$30 billion.⁶ This annual societal cost includes direct costs such as facility repair and indirect costs resulting from property damage, medical bills, and delays in operation.⁷

To reduce damages resulting from the excavation process, Congress passed the Pipeline Safety Improvement Act of 2002, which requires government operators and excavators to participate in a state one-call notification program.⁸ The act also required these state one-call programs to document benefits of one-call notification system, costs of implementing them, and risks of implementing these programs.⁹ In 2005, the Federal Communications Commissions (FCC) established 811 as the nationwide number for each state's one-call notification program.¹⁰

B. Legislative History of New York 811

In 1994, New York State mandated the One-Call Notification System (One-Call) through the Public Service Commission and the Department of Labor.¹¹ All operators and excavators were required to be part of the one-call notification system.¹² An operator is a person who operates an underground facility

³ <https://commongroundalliance.com/Membership-Engagement/What-We-Do>

⁴ Common Ground Alliance. *Damage Information Reporting Tool 2020 Recommendations*.2021

⁵ Id.

⁶ Id.

⁷ Id.

⁸ H.R.3609 Pipeline Safety Improvement Act of 2002

⁹ Id.

¹⁰ Separate Statement of Chairman Michael K. Powell, Re:Use of N11 Codes and Other Abbreviated Dialing Arrangements, Order, CC Docket No. 92-105.

¹¹ 1994 N.Y. ALS 685, 1994 N.Y. LAWS 685, 1994 N.Y. A.N. 11493

¹² Id.

to furnish utility services such as electricity, gas, or water.¹³ An excavator is a person who is engaged in a trade or business which includes the carrying out of excavation or demolition.¹⁴

In 1995, New York amended the Public Service Law and repealed Labor Law's section 28-a, related to rules and regulations for excavators and operators, and section 28-b, related to enforcement of regulations pursuant to 28-a.¹⁵ This amendment removed all the Department of Labor's responsibilities related to excavators and operators and transferred them to the Public Service Commission.¹⁶

Additionally, New York General Business Law Article 36 was amended to vest the public service commission the duty to implement and enforce section 119-b of the public service law.¹⁷ Accordingly, under New York Public Service Law § 119-b, the Public Service Commission adopts rules and regulations to implement and carry out the requirements of Article 36 of General Business Law established for the protection of underground facilities.¹⁸

In 1997, one of the rules subsequently implemented by the Public Service Commission is Title 16 Chapter 7 Subchapter F Part 753, also known as Industrial Code Rule 753 or Code Rule 53.¹⁹ These rules establish procedures for the protection of underground facilities to assure public safety and to prevent damage to public and private property, as required by General Business Law Article 36 and Public Service Law § 119-b.²⁰

In 2018, New York amended General Business Law Article 36 to further reduce the number of excavation-related accidents by requiring any local government or operator that contracts for excavation to require the excavator to complete a training and education program.²¹ These changes include making the

¹³ Id.

¹⁴ Id.

¹⁵ 1995 N.Y. ALS 445, 1995 N.Y. LAWS 445, 1995 N.Y. S.N. 4046

¹⁶ Id.

¹⁷ N.Y. Gen. Bus. Law § 766

¹⁸ N.Y. Pub. Serv. Law § 119-b

¹⁹ N.Y. Comp. Codes R. & Regs. tit. 16, § 753

²⁰ N.Y. Comp. Codes R. & Regs. tit. 16, § 753-1.1 Purpose

²¹ N.Y. Gen. Bus. Law § 762

training available both in-person and online and also sets a cap on the fee that can be charged for the program.²²

C. Functions of New York 811

New York 811 acts as a communications link between utility companies and individuals planning digging activity in New York.²³ Code Rule 753 requires excavators, who are those engaged in the business of excavation or demolition,²⁴ and operators, who are those operating an underground facility to furnish electricity, gasses, steam, liquid petroleum products, telephone or telegraph communications, cable television, sewage removal, traffic control systems, or water,²⁵ to participate in the State's One-Call Notification System. The purpose of the One-Call system is to increase the safety for utility construction contractors and infrastructure by reducing accidental damage from excavation activities due to not knowing the location of all nearby subsurface utility infrastructure. One-Call's requirements for operators and excavators are mirror images of each other, and what follows is a description of requirements for operators; it should be noted that with respect to City agencies that are operators, they hire excavators for their projects as well.

New York's One-Call system requires the City, as a local governing body that issues excavation and demolition permits, to inform permit applicants about their responsibilities under One-Call to protect underground facilities and details about One-Call.²⁶ Every operator of an underground facility must participate in the One-Call system within the geographical jurisdiction or boundaries its underground facility is located.²⁷ Operators within the City would include DEP for its water and sewer systems; DOT for its traffic control system; FDNY for its communications systems; and the private utilities and other entities listed in DOT Rules, § 2-11 (e) (14). One-Call's requirements are intended to minimize construction delay, but an operator's ability to minimize construction delay depends on the operators'

²² Id.

²³ <https://newyork-811.com/about/>

²⁴ N.Y. Comp. Codes R. & Regs. tit. 16, § 753-1.2 Definitions

²⁵ Id.

²⁶ N.Y. Comp. Codes R. & Regs. tit. 16, § 753-2.1

²⁷ N.Y. Comp. Codes R. & Regs. tit. 16, § 753-4.1

ability to access accurate subsurface infrastructure location data in a timely manner. Each operator that responds to excavator's notices for other operators' projects has its own excavators working on their projects that request information from the other operators.

Before excavating in New York, an excavator must contact New York 811 prior to commencing or engaging in any nonemergency excavation.²⁸ The excavator is required to provide notice of location and date of planned excavation to New York 811.²⁹ In the case of an emergency, excavation may proceed without prior notification "if the situation is so serious that the excavation or demolition cannot reasonably be delayed".³⁰ However, the emergency provision requires excavators to notify New York 811 as soon as possible that work is commencing or is underway.³¹ An excavator may contact New York 811 by either dialing 811 or using the ITIC online portal at least 48 hours but no more than 10 days before the excavation.³² The ITIC is a web-based ticket entry system where excavators and contractors can input, manage, and update their tickets.³³ New York 811 then notifies owners of utilities and underground facilities in the designated or requested area.³⁴ The owners have 48 hours, excluding weekends and legal holidays, to come to the location and mark their lines or facilities.³⁵ See Appendices 1 and 2 for further detail on excavators and operators under New York's 811 program.

III. Tax or Fee

A. Tax

"Taxation" is the means whereby the government distributes the burdens of its cost among those who enjoy its benefits.³⁶ A "tax" is a charge that a government exacts from a citizen to defray the general costs of government that is unrelated to any particular benefit received by that citizen.³⁷ "Taxation" is

²⁸ N.Y. Comp. Codes R. & Regs. tit. 16, § 753-3.1(a)

²⁹ *Id.*

³⁰ N.Y. Comp. Codes R. & Regs. tit. 16, § 753-3.1(b)

³¹ *Id.*

³² <https://newyork-811.com/excavators/itic/>

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *See Welch v. Henry*, 305 U.S. 134 (1938)

³⁷ *New York Ins. Ass'n, Inc. v. State*, 145 A.D.3d 80 (N.Y. App. Div. 2016)

neither a penalty imposed on the taxpayer nor a liability which he assumes by contract, but it is a way of apportioning the cost of government among those who in some measure are privileged to enjoy its benefits and must bear its burdens.³⁸

In other words, a tax is imposed to produce revenue in support of the government without regard to particular benefits received by a specific taxpayer.³⁹ Thus, “taxes” are public burdens imposed generally for governmental purposes benefiting the entire community.⁴⁰ Accordingly, a tax is not an assessment of benefits.⁴¹

B. Fee

In contrast to taxation, the definition of “fee” has been expressed as a “visitation of the costs of special services upon the one who derives a benefit from them.”⁴² Typically, fees are paid to obtain access to a government service or benefit.⁴³ The power to set fees is implied from the power to regulate.⁴⁴ Fees do not need to be legislatively authorized as long as the fees charged are reasonably necessary to the accomplishment of the statutory command.⁴⁵ However, the fees may not be open ended or potentially unlimited.⁴⁶ Additionally, the fees should be assessed or estimated on the basis of reliable factual studies or statistics.⁴⁷

III. The Chicago Department of Transportation’s Program

³⁸ *See id.*

³⁹ *Watergate II Apartments v. Buffalo Sewer Auth.*, 46 N.Y.2d 52, 58 (1978); *City of Buffalo v. Stevenson*, 207 N.Y. 258, 262 (1913).

⁴⁰ *Stevenson v. New York State Tax Appeals Tribunal*, 106 A.D.3d 1146 (N.Y. App. Div. 2013); *Piccolo v. New York State Tax Appeals Tribunal*, 108 A.D.3d 107, 109 (N.Y. App. Div. 2013)

⁴¹ *See Carmichael v. S. Coal & Coke Co.*, 301 U.S. 495 (1937); *New York Rapid Transit Corp. v. City of New York*, 303 U.S. 573 (1938)

⁴² *Jewish Reconstructionist Synagogue of N. Shore, Inc. v. Inc. Vill. of Roslyn Harbor*, 40 N.Y.2d 158, 162 (1976); *See Matter of Hanson v. Griffiths*, 204 Misc. 736, 124 N.Y.S.2d 473; *City of Buffalo v. Stevenson*, 207 N.Y. 258, 100 N.E. 798; *People v. Malmud*, 4 A.D.2d 86, 164 N.Y.S. 204; *People v. Brooklyn Garden Apts.*, 283 N.Y. 373, 28 N.E.2d 877; *Fox v. Kern*, Sup., 12 N.Y.S.2d 561

⁴³ *Walton v. New York State Dep’t of Corr. Servs.*, 13 N.Y.3d 475, 485 (2009); *Suffolk County Builders Ass’n v. County of Suffolk*, 46 N.Y.2d 619 (1979)

⁴⁴ *Suffolk County Builders Ass’n v. County of Suffolk*, 46 N.Y.2d 613, 619 (1979); *New York Tel. Co. v. Amsterdam*, 200 A.D.2d 315, 317 (3d Dept. 1994).

⁴⁵ *Walton v. New York State Dep’t of Corr. Servs.*, 13 N.Y.3d 475, 485 (2009)

⁴⁶ *Jewish Reconstructionist Synagogue of the N. Shore v. Roslyn Harbor*, 40 N.Y.2d 158, 163 (1976)

⁴⁷ *Id.*

The goal of Chicago's Department of Transportation is to effectively manage the maintenance and capital rehabilitation of the City of Chicago's transportation infrastructure while providing for the safe and efficient movement of pedestrians, cyclists and vehicles within the public right of way in the City of Chicago.⁴⁸ The CDOT has an effective road lifecycle management largely consisting of 4 steps: 1. Plan Review, 2. Permit, 3. Locate, and 4. Enforce.⁴⁹

A. Plan Review and Project Coordination Office

The first step of Chicago's road lifecycle management is to facilitate planning and coordination of street work. The Project Coordination Office (PCO) was developed to coordinate construction design reviews, permitting and inspection for projects in the public way under one program.⁵⁰ The PCO works with stakeholders to minimize disruptions to businesses and citizens and maximize the engineering design life of public way projects through reduction of street opening and repaving.⁵¹ Specifically, the PCO provides instructions to the public and private entities to help facilitate the coordination and scheduling of future projects.⁵²

B. Permit

The second step of Chicago's road lifecycle management consists of approvals and permits required to make any opening in the public way.⁵³ Any individual or entity who proposes to use or work in the public way is required to obtain a Public Way Permit from the CDOT pursuant to Chapter 10-20 and 10-30 of the City of Chicago Municipal Code.⁵⁴

⁴⁸ Chicago Department of Transportation. Rules and Regulations for Construction in the Public Way. 1.1 CDOT Mission Statement, pg. 1-1 (2019)

⁴⁹ Chicago Department of Transportation. Rules and Regulations for Construction in the Public Way. 1.4 How to Use this Document, pg. 1-3 (2019)

⁵⁰ Chicago Department of Transportation. Rules and Regulations for Construction in the Public Way. 2.1 Introduction, pg. 2-1 (2019)

⁵¹ Id.

⁵² Chicago Department of Transportation. Rules and Regulations for Construction in the Public Way. 2.4 PCO Core Responsibilities, pg. 2-2 (2019)

⁵³ Chicago Department of Transportation. Rules and Regulations for Construction in the Public Way. 3.2 CDOT Permit Process, pg. 3-2 (2019)

⁵⁴ Id.

The Office of Underground and Coordination (OUC) members are city agencies and private entities who are required to review whether work requests have a conflict with their existing facilities.⁵⁵ The OUC is the distribution agency within the CDOT, Division of Infrastructure Management, for all requests regarding Information Retrieval and Existing Facility Protection.⁵⁶

Information Retrieval (IR) is the process of obtaining information of existing facilities of OUC members to minimize future conflicts in design and constructions.⁵⁷ Once an applicant submits an online Request Form, the OUC members are required to respond within 30 calendar days to the OUC with an existing atlas/record drawing information, or comment “Not Involved” if they are not located in the requested area.⁵⁸

Along with IR, Existing Facility Protection (EFP) is another part of the permit process notifying agencies with facilities within the adjacent infrastructure of an upcoming work.⁵⁹ First, an applicant submits a drawing of the proposed work to the OUC for EFP review.⁶⁰ Then, OUC distributes the EFP request to all OUC members for review and response.⁶¹ The EFP request will be authorized for permit when all member responses have been received as either “Permit Issuance Authorized” or “Not Involved” and all outstanding fees identified during the EFP process have been paid by the applicant.⁶² The EFP process is required for specific types of works involving new installations, vault work, adjacent to freight tunnels, geotechnical review, or harbor permits.⁶³

⁵⁵ Chicago Department of Transportation. Rules and Regulations for Construction in the Public Way. 3.3.1 OUC Members, pg. 3-4 (2019)

⁵⁶ Chicago Department of Transportation. Rules and Regulations for Construction in the Public Way. 3.3 CDOT Office of Underground Coordination (OUC), pg. 3-4 (2019)

⁵⁷ Chicago Department of Transportation. Rules and Regulations for Construction in the Public Way. 3.3.2 Information Retrieval (IR) Process, pg. 3-5 (2019)

⁵⁸ Id.

⁵⁹ Chicago Department of Transportation. Rules and Regulations for Construction in the Public Way. 3.3.3 Existing Facility Protection (EFP) Process, pg. 3-6 (2019)

⁶⁰ Id.

⁶¹ Id.

⁶² Chicago Department of Transportation. Rules and Regulations for Construction in the Public Way. 3.3.3 Existing Facility Protection (EFP) Process, pg. 3-7 (2019)

⁶³ Chicago Department of Transportation. Rules and Regulations for Construction in the Public Way. Table 3.3.3.1: Projects Requiring EFP Review, pg. 3-8 (2019)

The CDOT Permit Office is responsible for registering the permittee and verifying public way work licenses, insurance requirements, and accuracy of submitted documents prior to approving the proposed work.⁶⁴ Once issued, a typical permit length is thirty days with a maximum two-week extension.⁶⁵

C. Locate

The third step of Chicago's road lifecycle management is to locate the proposed excavation work. First, all excavation areas are required to be marked prior to beginning the work.⁶⁶ Then, the permittee is required to notify Chicago 811 at least 48 hours but no more than 14 days before beginning the excavation.⁶⁷ The excavation or pavement removal may commence only after the permittee has completed both steps above.

D. Enforce

The fourth and last step of the road lifecycle management is enforcement. The permittee and contractors are required to comply with all applicable laws including but not limited to separation requirements, curb painting requirements, and removal or disposal of contaminated materials.⁶⁸ Furthermore, the CDOT may make physical on-site inspections at any time after the issuance of the permit.⁶⁹ Finally, the city may terminate a permit for violations of the requirements set by the CDOT.⁷⁰

IV. Applying the CDOT's Program to New York City

Based on the analyses above, for New York City to implement Chicago's program would require revisions to the New York City Department of Transportation's Highway Rules. Appendix 3⁷¹ suggests

⁶⁴ Chicago Department of Transportation. Rules and Regulations for Construction in the Public Way. 3.4 Permit Office, pg. 3-13 (2019)

⁶⁵ Id.

⁶⁶ Chicago Department of Transportation. Rules and Regulations for Construction in the Public Way. 4.1 Excavation Requirements, pg. 4-1 (2019)

⁶⁷ Chicago Department of Transportation. Rules and Regulations for Construction in the Public Way. 4.1 Excavation Requirements, pg. 4-2 (2019)

⁶⁸ Chicago Department of Transportation. Rules and Regulations for Construction in the Public Way. 5.1 Environmental Compliance, pg. 5-1 (2019)

⁶⁹ Id.

⁷⁰ Id.

⁷¹ Completed with assistance from Terri Matthews, Director, Town+Gown

changes in these Rules in a way that further refines what is currently there, does not change any existing powers, and aligns with the requirements for a fee.

Appendix 1 details the duties of excavators and Appendix 2 details the duties of operators in New York to stay in compliance with N.Y. General Business Law Article 36, N.Y. Public Service Law §119-b, and N.Y. Industrial Code Rule 753 (also known as Code Rule 53).

Excavators

Word	Definition
Excavator ⁷²	A person who is engaged in a trade or business which includes the carrying out of excavation or demolition. However, an individual employed by an excavator, and has no supervisory authority, other than the routine direction of employees, over an excavation or demolition, is not considered an excavator.
Excavation ⁷³	An operation for the purpose of movement or removal of earth, rock or other materials in or on the ground by use of mechanized equipment or by blasting, and includes, but is not limited to, auguring, backfilling, drilling, grading, plowing in, pulling in, trenching and tunneling; provided, however, that the movement of earth by tools manipulated only by human or animal power and the tilling of soil for agricultural purposes is not considered an excavation.
Demolition ⁷⁴	The total or partial wrecking, razing, rending, moving or removal of any structure.
Tolerance zone ⁷⁵	If the diameter of the underground facility is known, the distance of one-half of the known diameter plus two feet, on either side of the designated center line or, if the diameter of the underground facility is not known, two feet on either side of the designated center line.
Automated Positive Response (APR) system ⁷⁶	A system established by the one-call notification system to furnish a single point of contact between member operators and excavators for the purpose of communicating the status of an excavation location request as provided by the member operators.

Requirement	Explanation
Responsibility to All Employees ⁷⁷	Every excavator subject to Code Rule 753 shall make sure that all employees directly involved in excavation or demolition are thoroughly

⁷² N.Y. Gen. Bus. Law § 760; N.Y. Pub. Serv. Law § 119-b; N.Y. Comp. Codes R. & Regs. tit. 16, § 753-1.2(j)

⁷³ N.Y. Gen. Bus. Law § 760; N.Y. Pub. Serv. Law § 119-b; N.Y. Comp. Codes R. & Regs. tit. 16, § 753-1.2(i)

⁷⁴ N.Y. Comp. Codes R. & Regs. tit. 16, § 753-1.2 (f)

⁷⁵ N.Y. Comp. Codes R. & Regs. tit. 16, § 753-1.2 (u)

⁷⁶ N.Y. Comp. Codes R. & Regs. tit. 16, § 753-1.2 (a)

⁷⁷ N.Y. Comp. Codes R. & Regs. tit. 16, § 753-3.15

	familiar with the below applicable provisions of Code Rule 753.
Before Commencement of Work: Notice and Conference	
Timing of notice⁷⁸	Before excavation or demolition, each excavator shall provide notice of the location and date of the planned excavation or demolition to the one-call notification system (New York 811). The notice shall be served at least 2 to 10 working days prior to excavation or demolition, not including the date of the call.
Notice details⁷⁹	Every notice provided by an excavator to the one-call notification system (New York 811) concerning planned excavation or demolition shall contain: (1) name of the person serving such notice; (2) name, address and telephone number of the excavator or excavator's company; (3) excavator's field telephone number, if one is available; (4) name of the field contact person, if any; (5) address and exact location as well as the approximate extent and dimensions of the planned work area; (6) means of excavation or demolition and whether or not explosives are to be used; (7) brief description of the planned excavation or demolition; (8) date and time the excavation or demolition is planned to commence.
Pre-demolition conference⁸⁰	At least 7 working days prior to demolition, the excavator shall request a pre-demolition conference, through the one-call notification system (New York 811), with all member operators who have underground facilities at or near the demolition area. A pre-demolition conference may encompass one or more demolition(s) in the project area. A request for a pre-demolition conference is not a substitute for the notice of intent to perform demolition work required by this section.
Before Commencement of Work: Stakes, Markings, and Other Requirements	
Staking, marking or other designation⁸¹	(a) Every excavator shall be familiar with the provisions of this part, especially those relating to size and depth indications, color coding, center line or offset staking or marking and the location of underground facilities by designations other than staking or marking.

⁷⁸ N.Y. Comp. Codes R. & Regs. tit. 16, § 753-3.1 (a)

⁷⁹ 3.2 (a)

⁸⁰ 3.1 (c)

⁸¹ 3.4

	(b) Whenever the excavator determines that a review of the staking, marking or other designation is necessary or that additional information is required, he or she shall so notify the operator or the one-call notification system.
Painting for Identification⁸²	When necessary for adequate identification, or as determined by mutual agreement of the operator and excavator, the excavator shall delineate the work area with white paint, white stakes or other suitable white markings.
Preservation of stakes, markings or other designations⁸³	Excavator is responsible for protecting and preserving the staking, marking or other designation until no longer required for proper and safe excavation or demolition work at or near the underground facility.
Verification of underground facilities⁸⁴	<p>Where an underground facility has been staked, marked or otherwise designated by the operator and the tolerance zone overlaps with any part of the work area, or the projected line of a bore/directional drill intersects the tolerance zone, the excavator shall verify the precise location, type, size, direction of run and depth of such underground facility or its encasement. Verification shall be completed before the excavation or demolition is commenced or shall be performed as the work progresses.</p> <p>(a) Powered or mechanized equipment may be used within the tolerance zone for removal of pavement or masonry but only to the depth of such pavement or masonry.</p> <p>(1) Below the depth of pavement or masonry, powered equipment may be used in the tolerance zone prior to the verification of the location of facilities when agreed to in writing by the affected operator(s).</p> <p>(2) Operators, or their agents and contractors working under their direction, may use powered equipment to locate their own facilities within the tolerance zone.</p> <p>(b) The verification of underground facilities furnishing gas or liquid petroleum products shall be accomplished by the excavator by exposing the underground facility or its encasement to view by means of hand dug test holes at one or more points where the work area and tolerance zone overlap, or more points as designated by the operators of such facilities.</p>

⁸² 3.2(b)

⁸³ 3.5

⁸⁴ 3.6

	<p>(c) The verification of underground facilities other than those furnishing gas or liquid petroleum products shall be performed at one or more points for each such underground facility as may be required by the operator. Verification shall be accomplished by exposing the underground facility or its encasement to view by hand dug test holes or by other means mutually agreed to by the excavator and operator.</p>
Unverifiable underground facilities⁸⁵	<p>If the precise location of an underground facility cannot be verified by the excavator after diligent search at a reasonable depth within the tolerance zone as staked, marked or otherwise designated by the operator, the excavator shall so notify such operator as soon as possible.</p>
Powered excavating equipment limitations⁸⁶	<p>After verifying the location of an underground facility, the excavator shall not employ powered or mechanical excavating equipment closer than 4 inches in any direction from the staked, marked or otherwise designated or known outside diameter or perimeter of such facility or its protective coating unless agreed to in writing by the operator of the affected underground facility. Any such written agreement shall be furnished to the excavator by the operator, upon request.</p>
Discovery of unknown underground facilities⁸⁷	<p>Where an undesignated or otherwise unknown underground facility is discovered within a work area, the excavator shall report such discovery as follows:</p> <p>(a) If the identity of the operator of the discovered underground facility is known or is obvious, the excavator shall report the discovery to such operator.</p> <p>(b)</p> <p>(1) If the identity of the operator of the discovered underground facility is not known or obvious, the excavator shall report the discovery to the one-call notification system and each operator notified by the one-call notification system shall respond immediately to determine whether or not such discovered facility is his or hers.</p> <p>(2) While awaiting a determination of ownership, the excavator may proceed with the excavation or demolition taking reasonable care to protect and prevent damage to such underground facility.</p>

⁸⁵ 3.7

⁸⁶ 3.8

⁸⁷ 3.9

Commencement of Work	
Commencement of excavation or demolition⁸⁸	<p>(a) The excavator may proceed with excavation or demolition on the stated date of commencement if he or she has received notification from each and every operator notified by the one-call notification system that:</p> <p>(1) such operator has no underground facility located in or within 15 feet of the work area; or</p> <p>(2) that any underground facility located in or within 15 feet of the work area has been staked, marked or otherwise designated in accordance with the provisions of (3.4 Staking, marking, or other designation).</p> <p>(b) The excavator shall not commence the excavation or demolition on the stated commencement date if he or she has been notified by an operator that the staking, marking or other designations of an underground facility located in or within 15 feet of the work area will not be completed on the stated commencement date. In such case, the operator is required promptly to report such fact to the excavator and to inform the excavator of a prompt and practicable completion date, which in no case shall be more than 2 working days after the excavator's stated commencement date, unless a longer period is agreed to by both parties.</p> <p>(c) The excavator may proceed with excavation or demolition prior to the stated date of commencement once he or she has received notification from each and every operator notified by the one-call notification system that each operator has no underground facilities located in or within 15 feet of the work area.</p> <p>(d) Where available through the one-call notification system, the excavator shall utilize the Automated Positive Response (APR) system in order to obtain the response(s) of the operators that were notified by the one-call notification system.</p>
Requirements concerning contact and damage to underground facilities⁸⁹	<p>(a) Excavators shall take all reasonable precautions to prevent contact or damage to underground facilities and their protective coatings, including but not limited to, compliance with any reasonable directions or accepted engineering practices given by affected underground facility operators.</p>

⁸⁸ 3.3

⁸⁹ 3.10

	<p>(b) In the event of contact with or damage to an underground facility, the excavator shall immediately notify the operator of the facility.</p> <p>(c) All excavation or demolition in the immediate vicinity of the contacted or damaged portion of the underground facility shall be suspended until such portion is repaired and the operator advises the excavator that excavation or demolition may proceed.</p> <p>(d) No backfilling shall be done by the excavator in the vicinity of the contact or damage until the operator conducts an inspection and makes any necessary repairs; and, the excavator shall undertake no repairs unless and until authorized by the operator.</p>
<p>Requirements concerning underground facilities in danger of failing⁹⁰</p>	<p>(a) An excavator who by removing the surrounding materials exposes an underground facility which in his or her judgment appears to have failed or to be in potential danger of failing from corrosion or other causes shall immediately report such condition to the operator of such underground facility.</p> <p>(b) The excavator shall delay any further work in the immediate vicinity of such underground facility which could jeopardize it but may proceed in areas not affecting the questionable facility.</p> <p>(c) The excavator may proceed in such immediate vicinity after the operator responds and takes necessary action in regard thereto and advises the excavator that he or she may proceed.</p>
<p>Required support and protection for underground facilities⁹¹</p>	<p>(a) An excavator shall provide prompt and adequate support and protection for every underground facility located in the work area as is reasonably specified by the operator of any such facility.</p> <p>(b) In the absence of any specifications by the operator, the excavator shall provide support and protection in accordance with generally accepted engineering practice, including but not limited to shoring and bracing.</p> <p>(c) Support shall be at least equivalent to the previously existing support and shall protect the underground facility against freezing and against traffic and other loads.</p> <p>(d) Support shall be maintained during excavation, during backfilling and, if necessary, after backfilling is completed.</p>

⁹⁰ 3.11

⁹¹ 3.12

<p>Backfilling requirements⁹²</p>	<p>(a) An excavator performing excavation or demolition at an underground facility shall backfill such excavation with materials and in such manner as specified by the operator or, in the absence of such specifications, with suitable materials and in such manner as will avoid damage to, and provide proper support for, such underground facility and its protective coating both during and after backfilling operations.</p> <p>(b) The excavator shall not place large rock, frozen earth, rubble, debris or other heavy or sharp materials or objects which could cause damage to or scraping against any underground facility.</p> <p>(c) The backfill beneath and around any underground facility shall be properly compacted in accordance with generally accepted engineering practice.</p> <p>(d) Heavy loads and excessive forces shall not be imposed on any exposed underground facility at any time during backfilling operations.</p>
<p>Cancellation, Postponement, and Emergency</p>	
<p>Cancellation or Postponement⁹³</p>	<p>(d) Whenever an excavator cancels an excavation or demolition, he or she shall promptly communicate the cancellation to facility operators utilizing the one-call notification system.</p> <p>(1) Whenever an excavator postpones the commencement date for 10 or less working days, no call to the one-call notification system or operators is required.</p> <p>(2) Whenever an excavator postpones an excavation or demolition more than 10 working days, the same requirements for notice shall pertain to the revised commencement date as listed in subdivision (a) of this section.</p> <p>(e) Information requested from an operator for design purposes shall not be a substitute for the notice of intent to perform excavation or demolition as required by Rule 753.</p>
<p>Emergency work⁹⁴</p>	<p>(b) Excavation or demolition which is required to be performed promptly as a result of an emergency, disaster or to correct an immediate hazard may proceed immediately without prior notification to operators, if the situation is so serious that the excavation or demolition cannot reasonably be delayed. However,</p>

⁹² 3.13

⁹³ 3.1 (d)

⁹⁴ 3.1(b)

	<p>excavators shall notify the one-call notification system as soon as possible that such excavation or demolition is commencing or is underway. Extreme caution shall be employed by the excavator to prevent damage to existing underground facilities and to avoid endangering persons and property.</p>
<p>Emergency evacuation and 911⁹⁵</p>	<p>In the event of an emergency involving danger to life, health or property as a result of damage to an underground facility containing gas or liquid petroleum products or as a result of an electrical short or escape of gas or hazardous fluids, the excavator shall:</p> <ul style="list-style-type: none"> (a) proceed to evacuate his or her employees and all other endangered persons from the immediate vicinity to the best of his or her ability; and (b) immediately notify 911 and the operator of the affected facility of the exact location, nature of the emergency and of the underground facility which is affected.

Operators

Word	Definition
Operator ⁹⁶	A person who operates an underground facility or facilities to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or telegraph communications, cable television, sewage removal, traffic control systems, or water.

Requirement	Explanation
Participation of operators ⁹⁷	(a) Every operator of an underground facility shall participate in a one-call notification system within whose geographical jurisdiction or boundaries such underground facility is located. (b) Every operator who is not a member of the one-call notification system and installs, has installed for him or her, or otherwise acquires, an underground facility, shall participate in a one-call notification system within 10 days after commencement of the installation or after the acquisition.
Information for design purposes ⁹⁸	Each operator shall provide a means by which information regarding the location of underground facilities can be obtained for design purposes. Such means may include, but are not limited to: provision of maps, meetings, or marking in accordance with section 753-4.6 (Locating underground facilities) and shall be performed within mutually agreed to timeframes.
Removal of underground facilities ⁹⁹	Any operator who removes or transfers ownership of all of his or her underground facilities from within the boundaries of any one-call notification system shall promptly notify the system.
Operator furnished information ¹⁰⁰	(a) Every operator shall provide the one-call notification system at least the following information: (1) corporate or other name and address of such operator; and (2) department, agency, office or individual designated by the operator to be notified by

⁹⁶ N.Y. Gen. Bus. Law § 760; N.Y. Pub. Serv. Law § 119-b; N.Y. Comp. Codes R. & Regs. tit. 16, § 753-1.2(q)

⁹⁷ N.Y. Gen. Bus. Law § 761; N.Y. Comp. Codes R. & Regs. tit. 16, § 753-4.1

⁹⁸ 4.14

⁹⁹ 4.2

¹⁰⁰ 4.3

	<p>the one-call notification system or excavators and the local address and telephone number of such department, agency, office or individual.</p> <p>(b) Whenever such information is revised, changed or found to be incomplete or incorrect, the operator shall provide corrected information to each one-call notification system in which he or she participates.</p>
Receiving notices¹⁰¹	<p>Each operator shall establish a means of receiving notices of planned excavation or demolition from the one-call notification system in accordance with the procedures of the system.</p>
Operator's response to notice¹⁰²	<p>(a) Prior to the stated commencement date of the excavation or demolition work as stated in the recorded notice, the operator shall make a reasonable attempt to inform the excavator, by means of an Automated Positive Response (APR) system, where available, or by means of direct communications with the excavator, where APR is not available, that either:</p> <p>(1) the operator has no underground facility in or within 15 feet of the work area; or</p> <p>(2) every underground facility belonging to him or her which is located in or within 15 feet of the work area has been staked, marked or otherwise designated in accordance with the provisions of Rule 753.</p> <p>(b) Where an operator cannot complete the staking, marking or other designation of an underground facility prior to the stated commencement date and time of the excavation or demolition, the operator shall promptly report such fact to the excavator and shall inform the excavator of a prompt and practicable completion date which in no case shall be more than two working days after the excavator's stated commencement date, unless a longer period is agreed to by both parties.</p> <p>(c) Whenever an excavator requests a review of any staking, marking or other designation, the operator shall comply with such request as soon as possible.</p>
Locating underground facilities¹⁰³	<p>(a) Whenever an operator's underground facilities are in or within 15 feet of a work area, such facility shall be located, accurately and with due care, by means of staking, marking or other designation in accordance with the provisions of Rule 753.</p>

¹⁰¹ 4.4

¹⁰² 4.5

¹⁰³ 4.6

(b) The following staking and marking requirements shall apply:

- (1) stakes or surface markings shall be provided preferably at the center line of the underground facility and at such sufficient intervals as is necessary to indicate clearly the location and direction of run of such underground facility;
- (2) all stakes and surface markings shall be color coded in accordance with the provisions of Rule 753 in order to identify the type of underground facility so staked or marked;
- (3) stakes and surface markings shall indicate in inches the size or diameter of the underground facility or its encasement, if known;
- (4) each stake and surface marking shall indicate in inches the depth of the underground facility at that point, if known;
- (5) surface markings shall consist of paint, dye or equivalent material which is color coded in accordance with the provisions of Rule 753 and which contrasts with the ground or equivalent surface; and
- (6) where conditions exist so as to render center line staking or marking impractical or confusing, the operator may indicate the location of an underground facility by means of offset staking or remote tie-in markings which will clearly indicate the location and direction of run of the facility.

(c) If staking or marking are not used to indicate the location of an underground facility, the operator shall designate such location in accordance with the following:

- (1) by exposing the underground facility or its encasement to view within the work area in a manner sufficient to allow the excavator to verify the type, size, direction of run and depth of the facility;
- (2) by providing field representation and instruction to the excavator in the work area;

or

- (3) by any other means as mutually agreed to by the operator and excavator, including but not limited to written descriptions, photographs or verbal instructions. Such agreement shall be provided in writing to the excavator upon his or her request.

(d) An operator, or its agents or contractors, performing excavation or demolition work at or near his or her own underground facility shall not be required to stake, mark or otherwise designate such underground facility.

<p>Uniform color code¹⁰⁴</p>	<p>The following uniform color code shall be utilized for staking and marking used to designate the location of underground facilities and excavation sites:</p> <p>(a) Yellow--gas, oil, petroleum products, steam, compressed air, compressed gases and all other hazardous liquid or gaseous materials except water.</p> <p>(b) Red--electric power lines or conduits.</p> <p>(c) Orange--communication lines or cables, including but not limited to telephone, telegraph, fire signals, cable television, civil defense, data systems, electronic controls and other instrumentation.</p> <p>(d) Blue--water.</p> <p>(e) Green--storm and sanitary sewers including force mains and other nonhazardous materials.</p> <p>(f) Purple--radioactive materials, reclaimed water, irrigation and slurry line.</p> <p>(g) White--excavation site.</p> <p>(h) Pink--survey markings.</p>
<p>Uniform identification letters¹⁰⁵</p>	<p>All staking and marking utilized for the location of underground facilities shall contain letter designations which will clearly identify the type of underground facility so staked or marked. Such letters shall comply with the following code:</p> <p>(a) C--communication facilities (other than telephone service).</p> <p>(b) CH--chemicals.</p> <p>(c) CTV--cable television.</p> <p>(d) E--electrical power.</p> <p>(e) FS--fire signals.</p> <p>(f) G--gas.</p> <p>(g) HPW--high-pressure water (100 psig or more).</p> <p>(h) P--petroleum.</p> <p>(i) PP--petroleum products (naphtha, Gasoline, kerosine and similar products).</p> <p>(j) S--sewer.</p> <p>(k) ST--steam.</p> <p>(l) T--telephone company services.</p> <p>(m) TC--traffic control signals.</p> <p>(n) W--water.</p> <p>(o) O--all other facilities.</p>
<p>Operator's response to notices of contact or damage, facilities in danger of failing and discovery of unknown underground facilities¹⁰⁶</p>	<p>(a) Upon receipt of a notice from an excavator or a one-call notification system reporting contact or damage to an underground facility, the operator shall immediately inspect such facility and make the necessary repairs or shall</p>

¹⁰⁴ 4.7

¹⁰⁵ 4.8

¹⁰⁶ 4.9

	<p>advise the excavator that the excavation work may proceed.</p> <p>(b) Such repairs may be performed by the operator or by others authorized by him or her, including the excavator.</p> <p>(c) Upon receipt of a notice from an excavator or a one-call notification system of the discovery of an underground facility in danger of failing, the operator shall respond immediately and take any necessary action in regard, and advise the excavator as to whether he or she may proceed in the immediate area.</p> <p>(d) When an operator has been notified by an excavator or a one-call notification system that an unknown underground facility has been discovered during the excavator's work, such operator shall immediately determine whether or not such discovered facility is his or hers by means of records, on-site inspection or otherwise, and as soon as practicable either:</p> <p>(1) advise the excavator that the unknown facility is not his or hers; or</p> <p>(2) if such facility does belong to him or her, advise the excavator on how to proceed and of any special requirements the operator deems necessary.</p>
Unverifiable underground facilities¹⁰⁷	<p>If an excavator notifies an operator that, after diligent search at a reasonable depth within the tolerance zone as staked, marked or otherwise designated by the operator, that he or she cannot verify the location of an underground facility, the operator shall verify such location as soon as possible or shall provide the excavator with prompt field assistance or use other means mutually agreed to by the excavator and operator. Such agreement shall be provided to the excavator upon his or her request.</p>
Requirements concerning demolition¹⁰⁸	<p>In addition to responding in accordance with section 753-4.6(a), the operator shall attend a pre-demolition conference with the excavator upon the excavator's request.</p>
Support and backfilling requirements¹⁰⁹	<p>Where an underground facility will be disturbed or uncovered by excavation or demolition, the operator of such facility shall indicate to the excavator any preferred means of support or protection required for such facility and any special backfilling requirements or provide any other guidance</p>

¹⁰⁷ 4.10

¹⁰⁸ 4.12

¹⁰⁹ 4.13

	for protection of an underground facility. Such information shall be furnished to the excavator before the stated date of commencement of the work, if practical.
Emergency Service Requirement¹¹⁰	Each operator of an underground facility containing gas or liquid petroleum products shall provide means for accepting emergency calls and prompt field assistance to such call on a 24 hour-per-day basis.
Consumer Education Programs¹¹¹	Each operator of an underground gas pipeline or hazardous liquid petroleum facility shall on its own initiative or through a one-call notification system conduct a program to educate the public on the possible hazards associated with damage to facilities and on the importance of reporting gas odors and leaks. The one-call notification system may develop materials suitable for use in such programs.

¹¹⁰ 4.11

¹¹¹ 4.15

New York City Department of Transportation
HIGHWAY RULES

Title 34
Chapter 2
Rules of the City of New York

CONTENTS

§ 2-01 Definitions

§ 2-01.1 Compliance with the Manual on Uniform Traffic Devices

§ 2-02 Permits

- (a) Initial permit application
- (b) General conditions for all permits
- (c) Display of permits and signs at worksite
- (d) Corrective action request
- (e) Orders
- (f) Fees
- (g) Notice of street operations
- (h) Work site safety
- (i) Waivers
- (j) Suspension of application review
- (k) Permit revocation and refusal to renew permit
- (l) Refusal to issue permit
- (m) Embargo periods
- (n) Voiding and reissuing of permits

§ 2-11 Street openings and excavations

- (a) Permit required
- (b) Permit requirements
- (c) Conditions
- (d) Application
- (e) Excavation and restoration requirements
- (f) Excavations and street openings in protected streets
- (g) Emergency street openings and excavations
- (h) Permit Review Process and Inspection of Work

Section 2-01.1

Section 2-01

DEFINITIONS

Administrative Code. The term "Administrative Code" means the Administrative Code of the City of New York.

Block Segment. The term "Block Segment" means the linear stretch of the street between the curblines of the cross streets that intersect such block.

BPMCC. The term "BPMCC" means the Bureau of Permit Management and Construction Control within PMCC.

City Electrical Equipment. The term "city electrical equipment" means city property to which electrical connections can be made, including but not limited to, electrical devices, wood poles and metal street light/lampposts.

City Property. The term "city property" means, for the purpose of this section, real property and physical structures owned by the City of New York and subject to Department of Transportation jurisdiction, including but not limited to, roadways, sidewalks, street furniture and electrical equipment.

Commissioner. The term "Commissioner" means the Commissioner of the Department of Transportation or his or her authorized designee.

Corrective action request or CAR. The term "corrective action request" or "CAR" means a formal notice by the Department that work performed and/or a condition created or maintained on a street is in violation of these rules or other applicable law with a request that action be taken by the person to whom such notice is addressed to correct the work and/or the condition so described.

Department. The term "Department" means the Department of Transportation. For purposes of Section 2-11, the Department shall mean the BPMCC, a bureau within the Department, which consists of the BPMCC, OPM, OCMC-Streets, PEU and PTSU.

Designated field headquarters. The term "designated field headquarters" means an office maintained at the work site, unless some other location is approved by the Department.

Embargo period. The term "embargo period" means a period of time designated by the OCMC during which there shall be a temporary suspension of work (except for emergency work) due to a holiday, special event or emergency.

Emergency. The term "emergency" means a situation endangering the public safety or causing or likely to cause the imminent interruption of service required by law, contract or franchise to be continuously maintained.

Emergency work. The term "emergency work" means work necessary to correct a situation endangering the public safety or causing or likely to cause the imminent interruption of service required by law, contract or franchise to be continuously maintained, for example, by a government agency, a public utility, a franchisee, etc. Such term shall not include work on new construction, regrades of existing hardware, continuation of an existing permit that has expired or will expire imminently or any other work which is not necessary to correct a condition likely to cause such imminent interruption.

Intersection. The term "Intersection" means the area contained within the grid created by extending the curblines of two or more streets at the point at which they cross each other.

Section 2-01.1

Non-city Electrical Equipment. The term "non-city electrical equipment" means property, not owned by the City, which is attached to City Property and to which electrical connections can be made, including but not limited to, electrical devices and wood poles.

NYC DDC. The term "NYC DDC" means the New York City Department of Design and Construction.

NYC DCP. The term "NYC DCP" means the New York City Department of City Planning.

NYC DEP. The term "NYC DEP" means the New York City Department of Environmental Protection.

OCMC-Streets. The term "OCMC-Streets" means the Office of Construction Mitigation and Coordination-Streets, an office within BPMCC.

Operator. The term "Operator" means Operator as defined in Rule 753.

OPM. The term "OMP" means the Office of Permit Management within BPMCC.

Overhead shunt. The term "overhead shunt" means a shunt that runs from the top of a street light or traffic control device pole to another pole and/or to a property.

Pedestrian Traffic Manager. The term "pedestrian traffic manager" means a person authorized by the Commissioner to direct bicycle and pedestrian traffic pursuant to these rules.

Permittee. An individual, corporation, business or other entity who secures permits for all work regulated by the Department, pursuant to these rules.

Person. The term "person" means a natural person, partnership, corporation, limited liability company, association or any other entity.

PMCC. The term "PMCC" means Permit Management & Construction Control, a bureau within the Department.

PROW. The term "PROW" means the public right of way within the City which the Department controls and regulates pursuant to NYS General City Law, NYS Vehicle & Traffic Law, NYS Highway Law, and NYC Charter.

PUE. The term "PUE" means Plan Examination Management, a unit within OPM.

PTSU. The term "PTSU" means Permits Technology Support Unit within PMCC.

Protected Street. The term "Protected Street" means a street (a) that has been resurfaced or reconstructed through a City capital project within five years prior to the date of application for a permit or (b) that is scheduled to be rebuilt under a City street capital reconstruction project and will become a Protected Street upon completion, as provided in Section 2-11(f).

Public Utilities. The term "public utilities" means public utility companies as defined in the Public Service Law.

Roadway. The term "roadway" means that portion of a street designed, improved or ordinarily used for vehicular travel, exclusive of the shoulder and slope.

Rule 753. The term "Rule 753" means State of New York Industrial Code Rule 753.

Shunt. The term "shunt" means a temporary electrical cable or conduit that has been installed between two points to divert current from one path, which is no longer in use, to another path.

Sidewalk. The term "sidewalk" means that portion of a street between the curb lines, or the lateral

Section 2-01.1

lines of a roadway, and the adjacent property lines, intended for the use of pedestrians.

Standard Specifications. The term "Standard Specifications" means the most recent version of the standard highway specifications available from the Department and the New York City Department of Design and Construction indicating required construction materials.

Standard Detail Drawings. The term "Standard Detail Drawings" means the most recent version of the standard details of construction, available from the Department and the New York City Department of Design and Construction, which contains drawings showing required dimensions of items to be constructed.

Street. The term "street" means a public street, avenue, road, alley, lane, highway, boulevard, concourse, parkway, driveway, culvert, sidewalk, crosswalk, boardwalk, viaduct, square or place, except marginal streets.

Street shunt. The term "street shunt" means a shunt that runs from a street light/lamppost or utility access cover along a roadway and/or sidewalk to a property or other street light/lamppost.

UCTF. The term "UCTF" means the Underground Coordination Task Force established and managed by the Department pursuant to Section 2-11(g).

Wrap-around shunt. The term "wrap-around shunt" means a shunt used on a street light/lamppost or traffic signal pole that is attached to the top of the pole, is looped or wrapped around the outside of the pole and enters the base of the pole for electrical connection.

Section 2-01.1

COMPLIANCE WITH THE MANUAL ON UNIFORM TRAFFIC DEVICES

All permittees must comply with the most recent version of the Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD), published by the Federal Highway Administration (FHWA), and the New York State Supplement.

Section 2-01.2

COMPLIANCE WITH STATE OF NEW YORK INDUSTRIAL CODE RULE 753

All permittees and owners of underground facilities must comply with Rule 753 relating to construction, excavation and demolition operations at or near underground facilities, which includes, but is not limited, to participation in New York State's One-Call program; provision of maps of underground facilities and updates of such maps after notice of unmarked, mismarked, or an incompletely marked facility; notification of hits to any Operator's infrastructure; and completion of the required training and education programs. All permittees must take the precautions necessary under to protect and prevent damage to pipes, mains, conduits, and other underground facilities at their own expense.

PERMITS

(a) Initial permit application. The following information shall be provided to the [Department](#) upon initial application for a permit under these rules and shall be updated as necessary and refiled annually:

(1) If the applicant is a corporation, limited liability corporation, limited liability partnership or other entity registered with the New York Secretary of State:

- (i) address and telephone number of applicant;
- (ii) name and telephone number of a contact person in the event of an emergency;
- (iii) affidavit acknowledging incorporation and a certified copy of the certificate of incorporation, and proof of registration with the New York State Department of State, Office of the Secretary of State. When completing the permit application, applicants must supply the Department with the identical identifying information, including but not limited to the company name, as they have provided to the New York State Department of State, Office of the Secretary of State;
- (iv) names of corporate officers;
- (v) names of two agents/employees designated to receive summonses or notices of violation or other notices required by these rules or other provisions of law;
- (vi) New York City plumber's license certificate or other license numbers, if applicable;
- (vii) name(s) of representative(s) authorized to obtain permit(s) on behalf of the applicant;
- (viii) employer identification number;
- (ix) e-mail address, if any.

(2) All other applicants:

- (i) address and telephone number of applicant;
- (ii) name(s) of representative(s) authorized to obtain permit(s) on behalf of the applicant;
- (iii) New York City plumber's license certificate or other license numbers, if applicable;
- (iv) employer identification number;
- (v) e-mail address, if any;
- (vi) names of two agents/employees designated to receive summonses or notices of violation or other notices required by these rules or other provisions of law.

(3) Insurance and indemnification requirements (for all applicants):

(i) Each applicant shall, before applying for a permit, obtain a Commercial General Liability (CGL) insurance policy or policies satisfying the requirements of this subparagraph. All CGL insurance policies, whether primary, excess or umbrella, shall:

- (A) be issued by a company or companies that may lawfully issue the required policy and has an A.M. Best rating of at least A-VII or a Standard and Poor's rating of at least AA.
- (B) provide coverage to protect the City of New York ("City") and the applicant from claims for property damage and/or bodily injury, including death, which may arise from any operations performed by or on behalf of the applicant for which the Department has issued it a permit;
- (C) provide coverage at least as broad as that provided by the most recent edition of ISO Form CG 0001;
- (D) provide coverage for completed operations;
- (E) provide coverage of at least \$1,000,000 combined single limit per occurrence, except that with respect to applications for permits to place a crane on a street, such minimum amount shall be no less than \$3,000,000 combined single limit per occurrence;

(F) provide that the City and its officials and employees are Additional Insureds with coverage at least as broad as set forth in ISO Form CG 2026 (11/85 ed.);

(G) provide that the limit of coverage applicable to the Named Insured is equally applicable to the City as Additional Insured.

(H) This policy shall not be cancelled or terminated, or modified or changed in a way that affects the City by the issuing insurance company unless thirty (30) days prior written notice is sent to the Named Insured and the Commissioner of the New York City Department of Transportation, except that notice of termination for non-payment may be made on only ten (10) days written notice.

(I) If the permit applicant has applied for more than one thousand permits in the previous calendar year, the insurance policy shall contain each of the following endorsements;

(1) If and insofar as knowledge of an "occurrence", "claim", or "suit" is relevant to the City as Additional Insured under this policy, such knowledge by an agent, servant, official or employee of the City of New York will not be considered knowledge on the part of the City of the "occurrence", "claim", or "suit" unless notice thereof is received by the: Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department; and

(2) Any notice, demand or other writing by or on behalf of the Named Insured to the insurance company shall also be deemed to be a notice, demand or other writing on behalf of the City as Additional Insured. Any response by the Insurance Company to such notice, demand or other writing shall be addressed to the Named Insured and to the City at the following address: Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007.

(ii) Each applicant shall, before applying for a permit, obtain Workers Compensation insurance in accordance with the laws of the State of New York from a licensed insurance company.

(iii) Each applicant shall, before applying for a permit, file with the Department proof that the applicant has insurance in place that provides coverage set forth in this subdivision with respect to the permit period. If the applicant chooses to meet this proof with an insurance certificate, the insurance certificate shall set forth the coverage provided, state that completed operations coverage is included and that the City is an additional insured, and shall be accompanied by a sworn statement in a form prescribed by the Department from the insurer or from a licensed insurance broker certifying that the insurance certificate is accurate in all material respects, and that the described insurance is in effect.

(iv) An applicant may obtain insurance policies applicable to more than one permit application, in which case the proof pursuant to subparagraph (iii) shall state that the policies cover all such permits in specified boroughs, or throughout the City.

(v) The applicant shall provide a copy of any required policy within thirty days of a request for such policy by the Department or the New York City Law Department.

(vi) In its sole discretion, the Department may allow applicants that frequently seek permits to self-insure, provided that the applicant:

(A) presents proof of excess or umbrella CGL coverage applicable to its operations under such permits;

(B) certifies that it has a self-insurance program in place that satisfies the requirements contained in subparagraph (i) and will continue it for the life of the permit and the Guarantee Period, as defined in subparagraph (ii) of paragraph (16) of subdivision (e) of §2-11 of these rules;

(C) agrees to provide the same defense of any suit against the City that alleges facts that bring the suit within the scope of the coverage required in subparagraph (i) as an insurer would be obligated to provide under the laws of New York;

(D) submits a statement, signed by a person authorized to bind the applicant and acknowledged by a notary public, in which the applicant agrees to assume full liability for satisfying all obligations set forth in this subparagraph (vi), and

(E) provides the Department with the name and address of the office or official of its self-insurance program who is responsible for satisfying the self-insurance obligations.

(vii) The permittee shall maintain insurance throughout the Guarantee Period, as defined in subparagraph (ii) of paragraph (16) of subdivision (e) of §2-11 of these rules, satisfying the requirements in subparagraph (i) of this paragraph and providing coverage to protect the City, the Department and the applicant from all claims for property damage and/or bodily injury, including death, which may arise from any defects discovered during such Guarantee Period.

(viii) The permittee shall notify in writing the CGL insurance carrier, and, where applicable, the worker's compensation and/or other insurance carrier, of any loss, damage, injury, or accident, and any claim or suit arising from any operations performed by or on behalf of the permittee for which the Department has issued it a permit, immediately, but not later than 20 days after such event. The permittee's notice to the CGL insurance carrier must expressly specify that "this notice is being given on behalf of the City of New York as Additional Insured as well as the Named Insured." The permittee's notice to the insurance carrier shall contain the following information: the name of the permittee, the number of the permittee, the date of the occurrence, the location (street address and borough) of the occurrence, and the identity of the persons or things injured, damaged or lost.

(ix) The permittee shall indemnify, defend and hold the City and its officials and employees harmless against any and all claims, liens, demands, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, attorneys' fees and disbursements), known or unknown, contingent or otherwise, allegedly arising out of or in any way related to the operations of the permittee and/or its failure to comply with any of the requirements set forth herein or law. Insofar as the facts and law relating to any claim would preclude the City and its officials and employees from being completely indemnified by the permittee, the City and its officials and employees shall be partially indemnified by the permittee to the fullest extent provided by law.

(x) A failure by the City of New York or the Department to enforce any of the foregoing requirements shall not constitute a waiver of such requirement or any other requirement.

(4) Permit bonds.

(i) A permit bond shall be submitted by all permittees to the permit office at the time of permit issuance to cover all costs and expenses that may be incurred by the City as a result of the activity for which the permit is issued or for the purpose of otherwise safeguarding the interests of the City. The permit bond shall be in the form prescribed by the Department. Such permit bonds described above shall cover all permitted activities described herein.

(ii) For a permit bond submitted for the purpose of performing street openings and excavations pursuant to §2-11 of these rules, such permit bond shall be submitted in the amount of \$10,000.00 for a single location within the City of New York per calendar year, \$50,000.00 for two to fifty locations within the City of New York per calendar year, and \$100,000.00 for fifty-one to one hundred locations within the City of New York per calendar year. Permittees who are issued permits for more than one hundred locations per calendar

year shall submit a permit bond in the amount of \$250,000.00.

(iii) Bonds shall be valid through the permit's guarantee period as set forth in these rules.

(iv) The issuer of the bond shall give the Department at least 30 days written notice prior to expiration or cancellation of such bond.

(v) A receipt demonstrating full payment of the bond shall be filed with the Department.

(vi) A separate bond need not be filed for each location, provided such coverage is in force for all operations in the entire borough, City or state.

(vii) A notice of continuation of certificate shall be received every calendar year for the continuation of an existing bond.

(viii) For permits with the exception of those set forth in subparagraph (ii) above and sidewalk construction permits issued pursuant to §2-09 of these rules, a permit bond shall be submitted in the amount of \$5,000 for a single location within the City of New York per calendar year or in the amount of \$25,000 for multiple locations within the City of New York per calendar year. In the event that a permittee will also secure street opening and excavation permits within the City of New York during the same calendar year, the permittee's compliance with subparagraph (ii) above shall be sufficient to demonstrate compliance with this section.

(5) Deposits.

(i) A deposit of \$5,000.00, in the form of money order or certified check, shall be required from permittees when outstanding balances for permit fees, backcharge fees, corrective action requests (CARs) or other charges exceed \$3,000.00 for a period longer than forty-five (45) calendar days.

(ii) Such permittees shall maintain a deposit balance of \$5,000.00 at all times until the deposit is refunded pursuant to subparagraph (iv), below. If the balance of such cash deposit falls below \$5,000.00, all review of permit applications and permit issuance may cease, except in cases of emergency work.

(iii) Any amounts owed by permittees for permit fees, CAR fees, backcharge fees or other charges payable pursuant to law for a period longer than forty-five (45) calendar days shall be deducted from the deposit after notice to the permittee.

(iv) Deposits shall be refunded after one year (365 consecutive calendar days) of full compliance with all applicable laws, rules and specifications.

(b) General conditions for all permits.

(1) **BPMCC, through OCMC-Streets, shall review** permit applications for the following work prior to the **Department issuing a permit for:**

(i) work to be performed for sewer and water system construction;

(ii) work to be performed in Manhattan;

(iii) work required on primary and secondary arteries;

(iv) permits to close streets;

(v) **work to be performed pursuant to Section 2-11; and**

(vi) any other activity deemed necessary by the Commissioner.

(2) Permits for emergency work. Permits for emergency work shall be issued in accordance with §2-11 of these rules.

(3) Before issuing a permit the Department may demand that permittee show proof of required approvals from other governmental entities.

(4) Street closings lasting more than 180 days. Permits that will result in a publicly mapped street being fully closed for more than 180 consecutive calendar days shall be issued in accordance with all the requirements of §2-16 of these rules.

(c) Display of permits and signs at work site.

(1) Unless otherwise authorized, permits shall be kept at the work site or designated field headquarters at all times and shall be made available for inspection upon request of any police officer or any authorized employee of the Departments of Environmental Protection, Buildings, Police and Transportation or any other City employees specifically authorized by the Commissioner to enforce these rules. Such permits cannot be posted on construction fences, sidewalk sheds, construction containers or any other construction equipment.

(2) Signage along series of excavations or street openings.

(i) Permittees must post signs at 100 foot intervals along a series of excavations or continuous cut, indicating the following:

- (A)** the name of the permittee conducting the work;
- (B)** the name of the entity for whom the work is being conducted;
- (C)** the name(s) of the subcontractor(s);
- (D)** the permittee's telephone number for complaints;
- (E)** the contractor's telephone number, if not the permittee;
- (F)** the permit number;
- (G)** the purpose of the excavation or street opening; and
- (H)** the start and scheduled completion dates of the work.

(ii) Such signs must be conspicuously displayed and face the nearest curb line. Such signs must be easily visible and readable by pedestrians, and must conform to the Department's requirements.

(3) Construction Project Informational Signs. Permittees must post Construction Project Informational Signs for any project with a projected completion time of three months or more, or as otherwise directed by the Commissioner.

(i) At least one Construction Project Informational Sign must be posted on each block segment where the project is located, and must be easily visible and readable by pedestrians, unless otherwise directed by the Commissioner. The sign(s) must be kept in good condition, and must conform with the Construction Project Information Sign requirements available at the Department's Permit Offices and on the Department's website.

(ii) Such signs must contain the following information:

- (A)** the names of the entities responsible for the project, including but not limited to the contractor, developer, and property owner;
- (B)** the telephone number, email address, and website for such entities responsible for the project;
- (C)** the name of the project and the project number (if any);
- (D)** the address of the project;
- (E)** the nature of the project;
- (F)** a brief description of the project; and
- (G)** the start and scheduled completion dates of the project.

(iii) Construction Project Informational Signs are not required for any construction or demolition project requiring a New York City Department of Buildings permit and whose site is enclosed with a fence or contains a sidewalk shed. Such signs must comply with the applicable requirements of the New York City Building Code and the rules of the New York City Department of Buildings.

(d) Corrective action request (CAR).

(1) A CAR may be served either personally, by mail and/or by e-mail on the person responsible for the work and/or the condition which requires correction at his or her last known address, e-mail address or at the address or e-mail address for such person contained in the records of the Department. Where a CAR is served for a violation of §19-147 of the Administrative Code, in the case of a utility company, the CAR may be given orally or in writing to a person or at a place designated by the utility and the utility shall respond within twenty-four (24) hours.

- (2)** Any corrective action required by the CAR shall be performed within thirty (30) days of the issuance of the CAR unless such issuance is protested as provided herein.
- (3)** Within fourteen (14) days after the date of mailing of the CAR, unless a different time is specified on the CAR or in these rules, the respondent may protest the issuance of the CAR in the manner directed on the CAR. If a protest is timely submitted and granted by the Department, the CAR fee will be waived.
- (4)** Protests shall be reviewed by the Department and a final determination regarding the protest shall be made within a reasonable period of time.
- (5)** If a protest is denied, any corrective action required by the CAR shall be performed within thirty (30) days after the date of such denial.
- (6)** In the event that the original permit has expired before the corrective action is undertaken and an additional excavation is necessary, a new permit shall be obtained in order to complete the required work. The new permit shall not affect the guarantee period, which will relate back to the original permit. If a permittee is performing restoration work that does not entail an additional excavation or re-grading of hardware, a new permit shall not be required by the Department.
- (7)** Where a CAR relates to a violation of §19-147 of the Administrative Code and no corrective action is taken within the applicable time or where an imminent danger to life or safety exists, the Department may perform the work required by a CAR or the work necessary to avert the danger and charge the cost to the person responsible for restoring, replacing or maintaining the pavement, sidewalk, curb, gutter or street hardware in accordance with such section.
- (8)** Notwithstanding the above, where a condition exists that creates an imminent danger to pedestrians or vehicles, the Department may issue a priority CAR, which shall require corrective action to be taken within three (3) hours of issuance of the CAR by telephone call. The Department may also issue a priority CAR via email requiring corrective action to be taken within three (3) hours of issuance; however, should a priority CAR be issued via email, a follow-up telephone call must also be placed to the permittee.
- (9)** In the event that a CAR is issued within the guarantee period, the corrective action shall still be taken even after the expiration of the guarantee period.

(e) Orders.

- (1)** Except as otherwise provided by these rules or other applicable law, any orders issued by the Commissioner may be served personally or by mail addressed to the last known address of the person to whom the order is directed or to the address for such person set forth in the records of the Department or by delivery or mailing to a person or a location designated by the person to whom the order is directed.
- (2)** Except as otherwise provided by these rules, a person to whom an order is directed shall have an opportunity to be heard within five business days after a timely request for such opportunity is received by the Department. A request shall be made within the time and in the manner directed on the order. If, after considering the written objections of the respondent, the Commissioner affirms the order, the work required by the order shall be completed within 30 days after notice of such determination is mailed to the respondent.
- (3)** Notwithstanding the foregoing provisions, an order to cease and desist may be given orally or in writing to the persons executing the work and shall require immediate compliance therewith.
- (4)** In accordance with §19-151 of the Administrative Code where a respondent fails to comply with an order issued by the Commissioner, including an order to cease and desist, within the applicable time, the Commissioner may execute the work required to be executed in such order. All costs and expenses of the City for such work may be recovered from the persons who are found to be liable for the violation.
- (5)** In addition, failure to comply with an order issued by the Commissioner may result in

criminal or civil penalties in accordance with §19-149 or 19-150 of the Administrative Code.

(f) Fees.

(1) The fees for permits and CARs are specified in §2-03 of these rules.

(2) Permits shall be valid for fifteen calendar days, unless otherwise specified on the permit. Permits may be extended for 14 days upon presentation of proof that circumstances beyond the permittee's control caused a delay in the work and payment of an additional fee. In the event a permittee fails to complete the work within the time period specified in the permit, another permit may be issued for a period of time to be specified by the Commissioner. There shall be a separate permit fee for each such additional permit.

(3) Payment of all fees shall be received upon application for the permit or, where applicable, no later than thirty calendar days after the billing date.

(g) Notice of street operations.

(1) Permittees and owners of underground facilities shall comply with **Rule 753 pursuant to § 2-01.2** relating to Construction, Excavation and Demolition Operations at or Near Underground Facilities.

(2) Permittees shall notify the Police Department and the communications center of the Fire Department of all construction activities requiring street closing at least twenty-four hours in advance of the commencement of non-emergency work.

(3) In the event that any non-emergency construction work results in the closing of

- (i) more than two-thirds (2/3) of the moving lanes per direction on any street for more than 15 minutes per hour between the hours of 1 a.m. and 5 a.m., or
- (ii) half (50%) or more of the moving lanes per direction on any street or limited access roadway, for a duration of more than four minutes or two traffic light cycles of the nearest traffic signal, whichever is less, during all other hours,

the permittee shall post at the site of the closing a public notification seven (7) calendar days prior to such closing in a manner directed by OCMC.

(h) Work site safety. All obstructions on the street shall be protected by barricades, fencing, railing with flags, lights, and/or signs, placed at proper intervals and at prescribed hours pursuant to §2-01.1 of these rules. During twilight hours the flags shall be replaced with amber lights. Permittees shall also comply with any additional work site safety requirements set forth in these rules or in the permit.

(i) Waivers.

(1) Except where expressly prohibited by law, the Commissioner may, in his/her discretion, waive or modify these rules, in the interests of public safety and convenience.

(2) Requests for waivers shall be submitted in writing to the Commissioner.

(j) Suspension of application review. The Commissioner may suspend review of applications for permits pending:

(1) payment by an applicant of outstanding fines, civil penalties or judgments imposed or entered against such applicant by a court or the environmental control board,

(2) payment by an applicant of outstanding fees or other charges lawfully assessed by the Commissioner against such applicant pursuant to these rules or other applicable law and/or

(3) satisfactory compliance by an applicant with a CAR or order issued by the Commissioner.

(k) Permit revocation and refusal to renew permit.

(1) The Commissioner may, after giving the permittee notice and an opportunity to be heard, revoke or refuse to renew a permit:

(i) for failure to comply with the terms or conditions of such permit, these rules or other applicable law in carrying out the activity for which the permit was issued;

(ii) whenever there has been any false statement or any misrepresentation as to a material fact in the application or accompanying papers upon which the issuance of the permit was based; or

(iii) whenever a permit has been issued in error and the conditions are such that the permit should not have been issued.

(2) Prior to taking any of the actions listed in paragraph (1) above, the Commissioner shall give the permittee an opportunity to be heard upon not less than two days notice.

(3) Notwithstanding any inconsistent provision of paragraph (2) above, if the Commissioner determines that an imminent peril to life or property exists, the Commissioner may revoke a permit without affording the permittee an opportunity to be heard prior to such revocation. Upon request of the permittee, the Commissioner shall afford the permittee an opportunity to present his or her objections to such action within five days after such request is received by the Department.

(l) Refusal to issue permit. The Commissioner may refuse to issue a permit to an applicant:

(1) who has exhibited a pattern of disregard for the rules or orders of the Department or the terms or conditions of permits issued by the Department or for other applicable law,

(2) who has been found liable by a court or in a proceeding before the environmental control board of a violation of a rule or order of the Department or the terms or conditions of a permit issued by the Department or other applicable law, which violation caused an imminent peril to life or property; or

(3) when the Permittee's history of notices of damage under Rule 753 to other Operators' facilities received pursuant to Sections 2-01.2 and 2-11(e)(iv) demonstrates a continual lack of subsurface construction safety practices.

(m) Embargo periods.

(1) All routine work shall be suspended during an embargo period unless approval for the work is granted by OCMC. Such suspension shall not apply to emergency work, for which an emergency number shall be obtained by the permittee pursuant to the provisions of §2-07 and §2-11 of these rules. Information regarding embargo periods is on file at each borough permit office and is available upon request. It is the responsibility of each permittee to obtain such information prior to the commencement of any work. It shall be a violation of these rules to do any work on the street during an embargo period without the prior approval of OCMC or an emergency number.

(2) A request for approval to work during an embargo shall be submitted on a form provided by the Commissioner, along with a fee as specified in §2-03 of these rules. Payment of the application fee shall not guarantee that approval to work during the embargo period will be granted and application fee is in addition to any required permit fees.

(n) Voiding and reissuing of permits. Permits may be voided and reissued only within three business days of issuance. See §2-03 for the fee for reissuance. Permits reissued after three business days shall be subject to the full permit fee.

Section 2-11

STREET OPENINGS AND EXCAVATIONS

(a) Permit Required.

(1) No excavations shall be made in any street unless a Street Opening Permit is obtained.

(i) For plumbing work requiring a street opening or excavation, a Street Opening Permit will only be issued to a business or businesses set forth on the plate issued to licensed master plumbers pursuant to 28-401.3 of the Administrative Code.

(A) The licensed master plumber shall be required to provide a valid New York City plate issued by the New York City Department of Buildings indicating the master plumber business or businesses under which the licensed master plumber practices his or her trade, or a valid copy of the same. The licensed master plumber shall also present a copy of any documentation issued by the New York City Department of Environmental Protection regarding the plumbing work that is to be conducted. These items must be submitted to the Department before the Department approves the Street Opening Permit.

(B) The Commissioner may suspend review of applications for permits under this subparagraph, revoke or refuse to renew a permit, or refuse to issue a permit to any applicant, pursuant to the provisions of §2-02(j), 2-02(k), or 2-02(l) of these rules.

(ii) Notwithstanding the provisions of subparagraph (i) of this paragraph, for any work performed pursuant to a valid contract with a local or state governmental entity requiring a street opening or excavation, a Street Opening Permit will only be issued to the contractor retained by the local or state governmental entity to perform the work requiring the street opening or excavation.

(2) The objectives of BPMCC's permit review and inspection process under Section 2-11(h) consist of facilitating the Department's coordination of the Existing Facility Protection Review process with the UCTF pursuant to Section 2-11(h)(1)(ii), approving requested permits, subject to all provisions in Sections 2-02 and 2-11, and performing inspection for work pursuant to this Section 2-11: (a) through OCMC-Streets, OPM and PEU to (i) promote efficiency of the Section 2-11 process, (ii) promote mobility by minimizing the disruptions Section 2-11 work poses to the public, including businesses, residents and vehicular and pedestrian traffic, (iii) maximize the engineering design life of the surface PROW through the reduction of PROW openings and restorations, and (iv) minimize the risk of accidental strikes causing damage to subsurface PROW infrastructure and (b) through PTSU, to create a repository of information generated by Section 2-11 to (i) facilitate coordination efforts in (a) above and (ii) facilitate communication and collaboration among all agencies covered by this Section 2-11 and with other public and private entities, including the UCTF, with respect to coordination efforts in (a) above.

(3) Prior to any excavation or street opening pursuant to a franchise or revocable consent, all permits required by these rules shall be obtained.

(4) Street Construction in Historic Districts. No planned street construction, reconstruction or maintenance operation shall be undertaken in a designated historic district unless preapproved in writing by the Landmarks Preservation Commission. The provisions of subdivision (g) of this section also apply.

(b) Permit requirements .

(1) All permits are subject to applicable provisions contained in §2-02 of these rules.

(2) A Permittee shall obtain a separate permit for each 300 linear feet of a block segment and for each intersection where work is to be performed.

(c) Conditions.

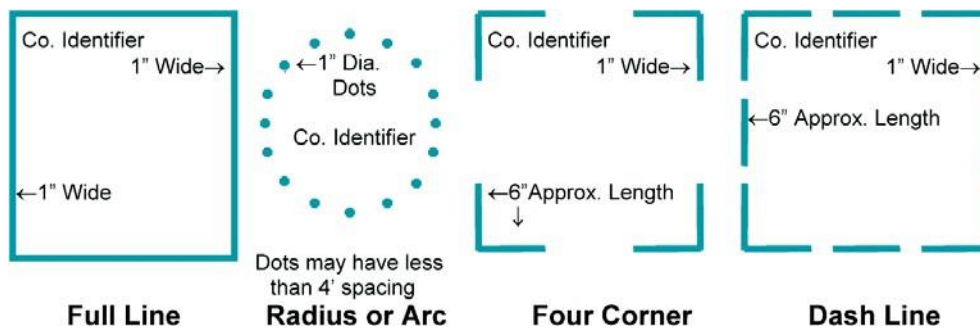
(1) Proper notification.

(i) Permittees and owners of underground facilities must comply with ~~State of New York Industrial Code~~ Rule 753 relating to construction, excavation and demolition operations at or near underground facilities **pursuant to § 2-01.2.**

(ii) Permittees must take the precautions necessary to protect and prevent damage to pipes, mains, conduits, and other underground facilities at their own expense **pursuant to § 2-01.2.**

(iii) Mark out requirements. Permittees must delineate the proposed area of excavation but must take measures to limit the geographical area to be marked out and must avoid excessive or oversized markings. Permittees must ascertain, to the extent possible, the precise area of excavation and mark the corresponding area fifteen feet to the right and fifteen feet to the left in accordance with this subparagraph. The proposed area of excavation must be marked with temporary white paint by using a continuous line, dots marking a radius or arc, or dashes outlining the excavation project. Dashes must be 6" to 12" in length and 1" in width. Dots must be 1" in diameter.

The illustration below includes suggested examples of how the proposed area of excavation should be marked by using a continuous line, dots marking a radius or arc, or dashes.



- (2) All work shall be done in accordance with the Standard Specifications, Standard Detail Drawings and the provisions of this §2-11.
- (3) All debris on the street shall be removed at the expiration of the permit, unless otherwise stipulated.
- (4) Applications shall include:
 - (i) a description of the work to be performed;
 - (ii) the reason for the work;
 - (iii) the street address including the nearest cross streets where the excavation or street opening is to be made;
 - (iv) a sketch indicating the size and location of the proposed opening(s) which shall include:
 - (A) the distance in feet from the nearest intersection and from the nearest curblines;
 - (B) the dimensions of the opening including length and width; and
 - (C) the existing parking restrictions.
 - (v) the start and estimated completion dates;
 - (vi) the type of pavement or surface to be opened;
 - (vii) whether the proposed work will be on a protected street (if so, the provisions of the subdivision (f) of this section apply);
 - (viii) the name and address of the compaction testing company or laboratory, as required;
 - (ix) the name of the contracting City agency, contract number, and OCMC reference number, if applicable; and
 - (x) whether the proposed work will be within 100 feet on, above or below or in either direction of any portion of a bridge, tunnel, underpass or overpass (if so, approval from the Division of Bridges shall be obtained). For purposes of this section "portion" shall include, but not be limited to, approach slabs, retaining walls, and column supports. The method of excavation and final restoration shall be determined by the Division of Bridges.
- (5) No trees within the sidewalk area shall be disturbed or removed without the permission of the Department of Parks and Recreation.

(6) A permittee performing curb to curb restoration on more than fifty (50) percent of a block segment on a non-protected street shall submit a protected street determination form to the Department for approval prior to obtaining any necessary permits. Such form shall be attached to the permit application. This requirement shall not apply to permittees performing work for the Department or for the Department of Design and Construction.

(d) Application.

(1) Applications shall include, in addition to the information required by Section 2-02(a) and (b),:

- (i) a description of the work to be performed;
- (ii) the reason for the work;
- (iii) the street address including the nearest cross streets where the excavation or street opening is to be made;
- (iv) design drawings ~~a sketch~~ including information indicating the size and location of the proposed opening(s) which shall include:
 - (A) the distance in feet from the nearest intersection and from the nearest curbline;
 - (B) the dimensions of the opening including length and width; and
 - (C) the existing parking restrictions.
- (v) the start and estimated completion dates;
- (vi) the type of pavement or surface to be opened;
- (vii) whether the proposed work will be on a Protected Street and subject to the provisions of Section 2-11(f);
- (viii) the name and address of the compaction testing company or laboratory, as required;
- (ix) the name of the contracting City agency, contract number, and OCMC reference number, if applicable; and
- (x) whether the proposed work will be within 100 feet on, above or below or in either direction of any portion of a bridge, tunnel, underpass or overpass (if so, approval from the Division of Bridges shall be obtained). For purposes of this section "portion" shall include, but not be limited to, approach slabs, retaining walls, and column supports. The method of excavation and final restoration shall be determined by the Division of Bridges.

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(3) A permittee performing curb to curb restoration on more than fifty (50) percent of a block segment on a non-protected street shall submit a protected street determination form to the Department for approval prior to obtaining any necessary permits. Such form shall be attached to the permit application. This requirement shall not apply to permittees performing work for the Department or for the Department of Design and Construction.

(e) Excavation and Restoration Requirements.

(1) Proper Notice.

- (i) Permittees shall notify the Police Department and the Communications Centers of the Fire Department and the Department of Transportation of construction and street operations which require street closing permits at least twenty-four hours in advance of the commencement of non-emergency work.
- (ii) All permittees shall comply with the provisions of subdivision (g) of §2-02 of these rules, if applicable.

(2) Breaking Existing Pavement.

- (i)** Precutting of pavement wearing course and base shall be required for pavement removal.
- (ii)** Only hand held tools, rockwheels, or other tools approved by the Department may be used for this purpose. This applies to all streets at all times.
- (iii)** The permittee shall be responsible for keeping the construction area as clean and neat as possible during the life of the permit.
- (iv)** No material shall restrict water flow in gutters.
- (v)** All possible arrangements for the safety of the general public shall be maintained.
- (vi)** The wearing course on non-protected streets must be cut and restored in accordance with Standard Detail Drawing #H-1042.

(3) Excavation.

- (i) Sheeting and Bracing.** The sides of every open excavation five feet or more in depth shall be securely held by adequate timber, sheeting and bracing where the earth is not sloped to the angle of repose of the material, and where unsafe conditions are created due to composition of the soil, climatic conditions, depth of excavation or construction operations.
- (ii) Tunneling or Jacking.** No person shall make any installation or repair between two or more street openings by means of tunneling or jacking, without a permit.
Tunneling or jacking may be permitted for the installation or replacement of a lateral connection provided the opening does not exceed eight inches in diameter. Full trenching shall be required for all waste line repair/connections.

(4) Traffic Maintenance.

- (i)** No more than one lane of traffic may be obstructed, except as provided by OCMC stipulations, or as otherwise authorized by the Commissioner.
- (ii)** All unattended street openings or excavations in a driving lane, including intersections, shall be plated, except as otherwise directed by the Commissioner. The Commissioner may require all street openings and excavations at any location to be plated when no work is in progress. In the case of gas or steam leaks, barricades pursuant to §2-02(h) of these rules shall be used until the leak is corrected.
- (iii)** Barricades, signs, lights and other approved safety devices shall be displayed pursuant to §2-02(h) of these rules.
- (iv)** The permit may restrict street operations and construction within critical areas to nights, weekends, or off-traffic hours. (Hours other than weekdays 7 a.m.-6 p.m. will require a noise variance granted by OCMC.)
- (v) Flagpeople.** Unless otherwise directed by the Commissioner, permittees whose work results in the closing of a moving traffic lane and requires traffic to be temporarily diverted to a travel lane in the opposite direction, shall, at all times while actively working at the site, post a flagperson or flagpersons or utilize an authorized plan for the maintenance and protection of traffic at the point where traffic is diverted to assist motorists, bicyclists, and pedestrians to proceed around the obstructed lane.

(5) Temporary Closing of Sidewalks. A minimum of five feet sidewalk width of

unobstructed pedestrian passageway shall be maintained at all times. Where openings and excavations do not allow for five feet of unobstructed pedestrian passageway, a temporary sidewalk closing permit is required.

(6) Work Site Maintenance.

(i) All excavated material shall be either removed from the site or stockpiled at a designated curb, properly barricaded pursuant to §2-02(h) of these rules and stored to keep gutters clear and unobstructed in accordance with §2-05 of these rules.

(ii) All obstructions on the street shall be protected by barricades, fencing, or railing, with flags, lights, or signs placed pursuant to §2-02(h) of these rules at proper intervals and during the hours prescribed. During twilight hours the flags shall be replaced with amber lights.

(7) Storage of Materials.

(i) A street opening permit includes permission to store construction materials in a designated area adjacent to the permitted worksite only during permitted hours. Storing materials after permitted hours shall require a separate permit.

(ii) No separate permit shall be required for the storage of equipment, excluding cranes, in a designated area in compliance with any applicable stipulations on the permit.

(iii) The designated storage area(s) are subject to review and approval by OCMC.

(8) Backfill and Compaction.

(i) Upon completion of repairs in a street, permittees shall backfill street openings and excavations in a manner in accordance with the Standard Specifications and Standard Detail Drawings. All materials used for backfill shall be free from bricks, blocks, excavated pavement materials and/or organic material or other debris. Notwithstanding the above, asphalt millings may be used as a backfill material.

(ii) Backfill material shall be deposited in horizontal layers not exceeding twelve inches in thickness prior to compaction. A minimum of ninety-five percent of Standard Proctor Maximum Density will be required after compaction.

(iii) When placing fill or backfill around pipes, layers shall be deposited to progressively bury the pipe to equal depths on both sides. Backfill immediately adjacent to pipes and conduits shall not contain particles larger than three inches in diameter.

(iv) Compaction shall be attained by the use of impact rammers, plate or small drum vibrators, or pneumatic button head compaction equipment. Hand tamping shall not be permitted except in the immediate area of the underground facility, where it shall be lightly hand tamped with as many strokes as required to achieve maximum density. The definition of the "immediate area" shall be a maximum of eighteen inches from the facility.

(v) Where sheeting has been used for the excavation it shall be pulled when the excavation has been filled or backfilled to the maximum unsupported depth allowed by the New York State Department of Labor, Industrial Code Rule 23 and Title 29, Code of Federal Regulations, Part 1926, Safety and Health Regulations for Construction. Where a difference exists between regulations, the more stringent requirements shall apply.

(vi) As a measure of maximum density achieved for restoration, the pavement surface shall not sink more than two inches from the surrounding existing surface during the life of the restoration. More than two inches of settlement shall be deemed a failure of the compaction of the backfill and cause the removal of said backfill to the subsurface facility and new fill installed and properly compacted.

(vii) The permittee shall be required to supply a tester certified by a professional engineer, or certified by other methods as authorized by the Commissioner, on all street openings to perform compaction tests. The permittee shall also be required to maintain copies of all in- process compaction reports certified by a Professional Engineer as to the compliance with the aforementioned backfill requirements set forth within this section. The certified compaction report shall be maintained for every street opening and shall be available upon request by the Commissioner for the duration of the guarantee period.

(9) Temporary Asphaltic Pavement.

(i) Immediately upon completion of the compaction of the backfill of any street opening, the permittee shall install a temporary pavement of an acceptable asphalt paving mixture not less than four inches in thickness after compaction, flush with the adjacent surfaces.

(ii) The permittee has the option of installing full depth pavement using an acceptable asphalt paving mixture immediately upon completion of the compaction of the backfill, excluding reconstructed protected streets and full-depth concrete roadways.

(iii) Upon the expiration of the permit, all equipment, construction materials and debris shall be removed from the site, unless otherwise stipulated.

(iv) When final restoration is to be done, the materials are to be removed with hand tools to a depth necessary to accomplish the final restoration.

(10) Plating and Decking.

(i) All plating and decking installed by the permittee shall be made safe for vehicles and/or pedestrians and shall be adequate to carry the load.

(ii) The size of the plate or decking must extend a minimum of 12 inches beyond the edge of the trench, be firmly placed to prevent rocking, and be sufficiently ramped, covering all edges of the steel plates to provide smooth riding and safe condition.

(iii) All plating and decking shall be fastened by splicing, spiking, pinning, countersinking or otherwise protected to prevent movement. When the plates are removed all pins and spikes must be removed and the holes must be filled with a fine asphalt concrete mix.

(iv) Where deflection is more than $\frac{3}{4}$ " , heavier sections of plates or decking or intermediate supports shall be installed.

(v) All permittees who install plating and decking during the winter moratorium, as determined by the Department, shall post signs at the site indicating "Steel Plates Ahead" or "Raise Plow" and countersink said plates flush to the level of the roadway. All signs shall comply with all applicable requirements pursuant to §2-02(h) of these rules. These signs shall be placed on the sidewalk, adjacent to the curb, facing vehicle traffic five feet

prior to the plates. On two-way streets, signs shall be placed on both sides of the street five feet prior to the plates.

(vi) All plating and decking shall have a skid-resistant surface equal to or greater than the adjacent existing street or roadway surface. The whole surface area of all plating and decking must be skid-resistant.

(vii) All plating and decking, including the ramping material, and all construction signs and supports must be removed from the roadway and/or sidewalk after completion of the final restoration and prior to the expiration of the permit.

(viii) All plating and decking must identify the name of the owner of such plating or decking. Identification must be made by welding or stamping the name of the owner onto the plating or decking. In addition to the name of the owner, the name of the permittee must be welded, stamped or painted onto plating or decking not owned by the permittee.

(11) Base.

(i) Concrete and asphalt base material and base restorations shall conform to the Standard Specifications and Standard Detail Drawings.

(ii) Concrete base shall be properly plated except where other stipulations have been granted in writing by OCMC.

(iii) Concrete for base shall be plated in a driving lane and intersections or barricaded pursuant to §2-02(h) of these rules in a parking lane for a minimum of three days to permit proper cure of concrete, unless otherwise specified by the Department.

(iv) Hot asphalt binder materials may not be used in place of concrete. All concrete-base roadways must be restored with concrete of the same depth and at least the same strength as the original base concrete.

(v) The concrete base shall be restored at the same grade as the existing base; at no time may it be brought up to the asphalt course unless authorization has been granted by the Commissioner.

(vi) At no time will asphalt other than binder be permitted as a base course, unless otherwise authorized by the Commissioner. Binder shall be installed and compacted in a maximum of four (4") inch lifts.

(vii) Conduit or pipes shall be installed at a minimum depth of 18 inches from the surface of the roadway, or below the base, whichever is greater. Where conduits and pipes cannot be installed at the required minimum depth, protective plating shall be installed over the facilities.

(viii) All hot asphalt binder based restorations or any form of temporary restoration must be flush with the surrounding pavement until the wearing course is installed. Binder based restorations must be removed to a depth of two (2") inches prior to installing the wearing course.

(12) Wearing Course.

(i) Wearing course material shall conform to the Standard Specifications and Standard Detail Drawings.

(ii) The finished grade of the wearing course shall be flush with surrounding pavement on all sides of the cut. The final wearing course shall conform to the Standard Specifications and Standard Detail Drawings. In the event a permanent

restoration pavement installed settles more than two inches (2") below the surrounding existing surface during the life of the guarantee period, this shall be deemed a failure of the backfill compaction, in which case the permittee shall remove all of the failed backfill, down to the subsurface facility, and install new, properly compacted backfill.

(iii) The minimum thickness of the wearing course on full depth asphalt restoration shall be two inches (2").

(iv) When more than one roadway opening is made against a single permit and the openings are less than ten feet apart before the required cutbacks, the existing wearing course between such openings shall be restored integrally with the opening wearing course restoration, in accordance with the applicable Standard Detail Drawing #H-1042.

(v) When a street opening is twelve inches or less from the curb, the entire pavement between the opening and the curb shall be excavated and replaced in kind, in accordance with the applicable Standard Detail Drawing #H-1042. The pavement base shall be inspected and repaired where necessary and a new wearing course shall be installed from the curb to the street opening. The areas described above shall be included in the permittee's guarantee.

(vi) Whenever any street is excavated, the permittee shall restore such street in kind as to material type, color, finish or distinctive design.

(vii) Pavements shall be restored in kind in designated historic districts and on streets constructed with cobblestones or other distinctive pavements, or as directed by the Commissioner.

(viii) The wearing course shall be properly sealed completely at the edges of the cut with liquid asphaltic cement ironed in with a heated smoothing iron or by means of infrared treatment to prevent water seepage into the pavement. The sealant applied to the wearing course must be properly maintained throughout the life of the guarantee period.

(ix) Permittees shall be required to obtain a permit for any changes to, or installation of temporary roadway pavement markings and temporary construction, parking or regulatory signs and supports, including, but not limited to, crosswalks and lane lines. Unless otherwise directed by the Commissioner, all roadway pavement markings, including but not limited to, crosswalks and lane lines, and any parking or regulatory signs or supports shall be replaced in kind in accordance with the Standard Specifications. All construction signs and supports and pavement markings shall be removed prior to the expiration of the permit.

(x) Final (permanent) restorations shall be completed prior to the expiration of the permit. During winter months, temporary asphalt and pavement markings shall be placed at the expiration of the permit and maintained until such time as the final restoration may be completed.

(xi) All trenches must have a minimum opening width of eighteen inches (18"). The trench must be restored in accordance with Standard Detail Drawing # H-1042.

(xii) Any permittee performing work on a street pursuant to paragraph (3) of subdivision (d) of this section shall notify the Department within twenty-four (24) hours of the completion of the work on the same protected street determination form as submitted with the permit application pursuant to such paragraph (3) of subdivision (d) of this section.

(xiii) The final completed wearing course surface must be smooth and without any defects including, but not limited to pitting, cracking, rutting and raveling

throughout its guarantee period.

(13) Concrete Pavements.

- (i)** When street openings are made in concrete pavements, the pavements shall be saw cut full depth for the entire perimeter of the street opening.
- (ii)** The concrete restoration shall have the same depth, strength and finish as the original pavement.
- (iii)** The restoration area shall be plated and maintained until enough strength has developed to sustain traffic without deleterious effect to the roadway.
- (iv)** Reinforcing shall be replaced in kind and spliced in compliance with the Standard Specifications and Standard Detail Drawing #H-1042.
- (v)** Asphalt restorations will not be permitted in concrete streets or concrete bus stop areas.
- (vi)** All restorations shall conform to the applicable Standard Detail Drawing # H-1042 or to a standard as determined by the Department.

(14) Color Coding.

- (i)** At each excavation, the permittee shall either paint temporary circles or install permanent colored markers as required in this paragraph, for the purpose of easily identifying the permittee's openings and restorations.
- (ii)** If the work is not complete, upon leaving the site the permittee shall paint three inch (3") circles adjacent to the cut, in the area closest to the curb line, in accordance with the placement and color requirements as specified below.
- (iii)** Upon completion of the restoration, the permittee shall install colored markers as specified below, unless another method is approved by the Department. Permittees shall be required to maintain these markers throughout the guarantee period.
- (iv)** Placement of Coding and Markers.
 - (A)** Permanent markers shall be imbedded at zero grade tolerance, or slightly below, in the new asphalt or concrete without the use of nails and shall be of one piece construction.
 - (B)** For cuts or trenches ten feet (10') or less, one temporary painted circle or permanent colored marker shall be placed in the linear center of the cut.
 - (C)** For cuts or trenches up to fifty feet (50'), one temporary painted circle or permanent colored marker shall be placed at each end of the excavation.
 - (D)** For cuts or trenches over fifty feet (50'), temporary painted circles or permanent colored markers shall be placed every twenty-five (25) linear feet maximum and one shall be placed at each end of the excavation.
- (v)** Such markers shall be in the shape of a circle measuring between one and one-half inches (1½") and three-inches (3") in diameter, color-coded as specified below, and shall include only the permittee's five-digit identification number and the two-digit year, unless other information is approved by the Department. The two-digit year shall be placed in the center of the marker, and the five-digit identification number shall be placed above the two-digit year.
- (vi)** Such markers shall also be UV-stable and designed not to fade significantly.

(vii) Color codes shall be assigned through Quality Control Procedure Q.P. 3 for permittees other than those listed below. Final pavement markers may be used as an alternative to color codes provided such use is approved by the Department.

- (A) Verizon-Cherry red marker
- (B) Empire City Subway-Chrome yellow marker
- (C) Consolidated Edison Co.-Light blue marker
- (D) Keyspan-White marker
- (E) Plumbers (water or sewer)-Green marker
- (F) Signals and Street Lights-Orange marker
- (G) Long Island Power Authority-Yellow marker
- (H) Metropolitan Transit Authority-Purple marker
- (I) Buckeye Pipe Line-Chrome yellow marker
- (J) Fire Department-Purple marker
- (K) Cable T.V.-Regal blue marker

(15) Quality Control Program Requirement for Roadways.

(i) All permittees engaged in street openings, shall complete the work so as to provide smooth riding surfaces throughout the guarantee period on their respective restorations.

(ii) A documented quality history of restoration shall be maintained by the responsible permittee. This information should show that inspections are made at some optimum intervals to assure conformance to the guarantee.

(iii) Quality Control Program information shall be made available to the Bureau upon request.

(iv) The use of experimental methods or materials may be authorized under selective conditions, upon application to the Bureau for approval prior to use on the City streets.

(v) Any permittee may file a proposed Quality Control Program with the Commissioner for approval. The Commissioner may waive any of the foregoing requirements as part of an approved program of Quality Control. Any waiver so granted shall remain in effect as long as the approved program is implemented in a manner satisfactory to the Commissioner or until the Commissioner's approval is rescinded.

(16) Other Requirements.

(i) Street Opening Location Form ("Cutforms")

(A) Permittees shall maintain a street opening location form ("cutform") at their office and shall provide this form to the department upon request.

Such cutform shall include the following information:

1. a sketch showing the exact dimensions and location of the restored area, and a description of the opening or trench defined by distance in feet from the nearest intersection and from the nearest curbline;
2. the street opening permit number;
3. the date of completion of the final restoration;
4. the name of the final pavement restoration contractor; and
5. a compaction report certified by a New York State licensed professional engineer.

(B) Failure to submit a cutform upon request may jeopardize future permit requests and may subject permittees to summonses.

(ii) **Guarantee period.** Permittees shall be responsible for permanent restoration and maintenance of street openings and excavations for a period of three years on

unprotected streets, and up to five years on protected streets commencing on the restoration completion date. This period shall be the guarantee period.

(iii) Permittees shall comply with all applicable sections of these rules, the Standard Specifications, the Standard Detail Drawings, and all other applicable laws or rules.

(iv) Permittees shall send to BMCC, through PTSU,

(A) all information and data sent to New York State's One-Call program pursuant to Rule 753, including but not limited to the map of the Permittee's underground facility; any changes to that map including changes required after receiving notice of an unmarked, mismarked or incompletely marked facility; and any notice the Permittee is required to send pursuant to Rule 753 regarding known damage to the underground facilities of other Operators

(B) "as built" drawings within 30 days of completion of the work authorized under Section 2-11.

(f) Excavations and Street Openings in Protected Streets. No street opening activity shall be allowed, except for emergency work or as authorized by the Commissioner, in a Protected Street for a period of five years from the completion of the street improvement. In addition to this subdivision (f), all provisions of §2-11 shall apply to Protected Streets.

(1) Permit Issuance. No permit to use or open any street, except for emergency work, shall be issued to any person within a five-year period after the completion of the construction of Protected Street unless such person demonstrates that the need for the work could not have reasonably been anticipated prior to or during such Protected Street construction. Notwithstanding the foregoing provision, the Commissioner may issue a permit to open a Protected Street within such five-year period upon a finding of necessity therefor.

(2) Conditions.

(i) Permittees shall be responsible for contacting the Department of Design and Construction to determine whether a street is scheduled to be rebuilt under a City street reconstruction project, which will become a Protected Street upon completion pursuant to (1) above. Notwithstanding the foregoing provision, a permittee performing emergency work need not contact such Department.

(ii) A permittee who has obtained a street opening permit on a Protected Street in (1) above or a street that will become a Protected Street in (2)(i) above must also obtain a confirmation number for each such permit, prior to the expiration of the permit. The permittee must request and obtain such confirmation number through the Department's website (www.nyc.gov/dot) or other Department-approved method. A permittee commencing restoration work on a protected street must also request and obtain such confirmation number subject to the additional requirements contained in §2-11(f)(4)(i) of these rules.

(3) Application.

(i) Permittees shall include on the application the justification for any street opening activities on protected streets.

(ii) The permittee shall attach the "Protected Street Opening Permit Application Attachment" to the Street Opening permit application prior to obtaining the permit.

(4) Restorations.

(i) No backfill of any opening or excavation on a protected street shall be performed unless the permittee who has obtained a street opening permit also obtains a confirmation number notifying the Department of such restoration work. The permittee must obtain such confirmation number at least two hours prior to the scheduled start time for the backfill except as otherwise authorized by the Commissioner. The permittee must request and obtain such confirmation number pursuant to §2-11(f)(2)(ii) of these rules. In no case shall the permittee commence the backfill prior to the scheduled start time. In addition, during the backfill and compaction phase of the work, the permittee must provide, on site, a certified compaction technician from an approved laboratory to test that the compaction of the backfill is in accordance with the Department's rules and Standard Specifications. No base or wearing course of any opening or excavation on a protected street shall be performed unless the permittee obtains a separate and additional confirmation number pursuant to §2-11(f)(2)(ii) of these rules or submits its daily paving schedule to the Department via e-mail or other Department-approved method prior to commencing work. The daily paving schedule must conform to the Department's requirements and must include but not be limited to the permittee name, location of the work (on, to and from street), permit number(s), and proposed start time.

(ii) The Department may inspect any phase of the work, including but not limited to, initial excavation, backfill and compaction, base installation, performance of required cut backs, and final restoration.

(iii) A certification issued by a New York State licensed professional engineer shall be provided to the Department within thirty days of completion of work on protected streets. The certification shall state that the type of work performed was as described in the permit application, and that all phases of the restoration were performed in accordance with Department rules, Standard Specifications and Standard Detail Drawings. Upon demand by the Department or as directed by the Commissioner, the permittee shall furnish copies of in-process compaction reports certified by a Professional Engineer as to the compliance with the backfill requirements set forth within this section. All records must be kept by the permittee and made available to the Department for the duration of the guarantee period.

(iv) Permittees shall be responsible for the proper repair of the street opening or excavation for a period of three years from the date of completion or for the duration of the protected street guarantee period, whichever is longer.

(v) All restorations shall conform to applicable Standard Detail Drawing # H-1042 or to a standard as determined by the Department.

(vi) Where street openings cannot be confined to within 8 feet of the curb line, including the required cut back, and/or within the sidewalk area and where protected street status has been in effect for 18 months or less, the permittee shall restore the street opening or excavation pursuant to the Department's protected street restoration requirements, unless otherwise directed by the Commissioner.

(vii) The permanent restoration shall be flushed with the surrounding pavement on all sides of the restoration. In the event a permanent restoration pavement installed in violation of the provisions of subparagraph (i) of this paragraph (4) settles more than two inches (2") below the surrounding existing surface during the life of the guarantee period, this shall be deemed a failure of the backfill

compaction, in which case, the permittee shall remove all of the failed backfill, down to the subsurface facility, and install new, properly compacted backfill.

(g) Emergency Street Openings and Excavations.

(1) Permit Requirements.

(i) No person shall perform emergency work without obtaining an emergency number from the Department. Permittees shall fax the Emergency Street Opening Permit request form to the Department's Emergency Authorization Unit to obtain an emergency permit number, unless otherwise directed by the Commissioner.

(ii) An emergency permit number may be requested only for emergency work performed on existing services. An emergency permit number shall not be obtained for work to be performed pursuant to a CAR.

(2) Conditions.

(i) A permittee shall begin emergency work within two hours after obtaining an emergency permit number.

A permittee shall perform emergency work on an around-the-clock basis until the emergency is eliminated, unless otherwise directed by the Commissioner. Once the emergency is eliminated on a critical roadway listed in subdivision (c) of §2-07 of these rules, the permittee shall suspend work, restore the full width of the roadway and resume work, if necessary, during the nonrestricted hours indicated in that subdivision. Such

resumption of work shall only be undertaken within the 48-hour duration of the emergency permit number. A permittee working with an emergency number on a roadway other than a critical roadway may suspend or resume work at any time within the 48-hour period covered by the emergency number.

(ii) No more than one lane of traffic may be obstructed, however, if an emergency street opening is larger than 8 feet by 10 feet, permittee may occupy up to a maximum of 12 feet on one side of the opening and a maximum of 6 feet on the other side.

(iii) All unattended street openings or excavations in a driving lane, including intersections, shall be plated, except as otherwise directed by the Commissioner. The Commissioner may require all street openings and excavations at any location to be plated when no work is in progress. In the case of gas or steam leaks, barricades shall be used pursuant to §2-02(h) of these rules until the leak is corrected.

(iv) Barricades, signs, lights and other approved safety devices shall be displayed pursuant to §2-02(h) of these rules.

(v) A minimum of five feet sidewalk width of unobstructed pedestrian passageway shall be maintained at all times. Where openings and excavations do not allow for five feet of unobstructed pedestrian passageway, pedestrians shall be directed by signs to the opposite sidewalk.

(vi) No private vehicles shall be kept within the work area.

(vii) A permittee shall submit an application for a regular permit, and for Landmarks Preservation Commission permits if applicable, within two business days of receiving an emergency permit number.

(viii) Restorations shall be made with in-kind materials.

(ix) Emergency work in the African Burial Ground and Commons Historic District areas, requires the permittee excavate with utmost caution and the permittee shall not remove any excavation or debris from the site prior to Landmarks Preservation Commission's review of the excavation.

(x) If any emergency street opening results in a width of less than 11 feet in each

direction for vehicular traffic, this shall be deemed a full roadway closure. In such case, the Police Department, the Communication Centers of the Fire Department and the Department of Transportation shall be notified simultaneously with the closing.

(xi) Emergency permit numbers shall be kept on site and shall be presented upon the request of any police officer or other City employee authorized by the Commissioner to enforce these rules. Any additional information regarding the emergency work that is requested at the site by a Department inspector shall be provided by the permittee and/or the persons performing such work.

(xii) Flagpeople. Unless otherwise directed by the Commissioner, permittees whose work results in the closing of a moving traffic lane and requires traffic to be temporarily diverted to a travel lane in the opposite direction, shall, at all times while actively working at the site, post a flagperson or flagpersons or utilize an authorized plan for the maintenance and protection of traffic at the point where traffic is diverted to assist motorists, bicyclists, and pedestrians to proceed around the obstructed lane.

(xiii) All permittees shall comply with the provisions of subdivision (g) of §2-02 of these rules, if applicable.

(3) Application. When applying for an emergency permit number by fax, a permittee shall submit all information required by the Department. This information includes, but is not limited to, the following:

- (i)** Name of permittee
- (ii)** Permittee ID #
- (iii)** Location of emergency (including borough)
- (iv)** Type of emergency (including interruption of service)

(h) Permit Review Process and Inspection of Work

(1) BMCC, through OPM, PEU and PTSU, shall coordinate all requests regarding existing utility information (Information Retrieval) and, through OCMC-Streets, shall review and approve work pursuant to Section 2-11 (Existing Facility Protection Review).

- (i)** Information Retrieval shall be completed in advance of OCMC-Streets review of a permit including but not limited to the design drawings required by Section 2-11(d)(iv), the start and completion dates required by Section 2-11(d)(v), and whether the proposed work will be on a Protected Street required by Section 2-11(d)(vii) so that review by OCMC-Streets and the UCTF pursuant to (ii) below and Section 2-11(5) below have sufficient information to recommend modification to the design to minimize conflicts with existing subsurface PROW infrastructure
- (ii)** Existing Facility Protection Review begins with BMCC's transmittal of information received in (i) above to the UCTF to enable the UCTF to notify (A) UCTF members with subsurface PROW infrastructure adjacent to or near the work included in the permit application and (B), if requested by the Department, other entities with surface PROW interests that may be impacted by the work included in the permit application. Once the UCTF has received such information, the UCTF shall distribute the information to the relevant UCFT members, receive comments and transmit them to BMCC and the relevant UCFT members pursuant to the process established in (4)(iii) below. Final resolution of issues raised during the Existing Facility Protection Review will be subject to approval by BMCC.

(2) The Department shall establish the UCTF to consist of representatives from the Department, NYC DEP, as the Operator of the City's public water and sewer utility, NYC DDC and NYC DCP; representatives from each Public Utility that chooses to participate in the UCTF; and representatives from any other City agencies and governmental entities and subsurface PROW users invited by the Department to participate in the

UCTF, with the Department representative serving as the chair of the UCTF.

- (3)** The objectives of the UCTF are to support the Department with respect to (i) promoting efficiency of the Section 2-11 process, (ii) promoting mobility by minimizing the disruptions Section 2-11 work poses to the public, including businesses, residents and vehicular and pedestrian traffic, (iii) maximizing the engineering design life of the surface PROW through the reduction of PROW openings and restorations, (iv) minimizing the risk of accidental strikes causing damage to subsurface PROW infrastructure and (v) facilitating communication and collaboration among all agencies and entities covered by this Section 2-11.
- (4)** To fulfill the objectives in (2) above, at the direction of the UTCF chair, the UTCF Utility participants shall:

 - (i)** submit their respective annual and five-year capital plans and schedules to the UTCF chair;
 - (ii)** coordinate the exchange, review and comment on the annual and five-year capital plans and schedules, identifying potential construction conflicts and overseeing resolution of these identified potential construction conflicts;
 - (iii)** review permit applications and related design and other documents submitted to it pursuant to Section 2-11(d) and Section 2-11(h) (1) (ii) in order to assess the impact of the proposed work on existing or contemplated subsurface PROW infrastructure;
 - (iv)** propose a process for UTCF's project for the Existing Facility Protection Review in (1)(ii) above to the Department;
 - (v)** propose guidelines to the Department for review and examination of plans and construction permits required by other sections of Chapter 2 for work in or adjacent to the PROW;
 - (vi)** assist and coordinate any necessary changes in plans for the work, as indicated in its review under (iii) above;
 - (vii)** advise the Commissioner on the establishment of a voluntary contribution structure to be paid by the UTCF private members to promote the efficiency of this Section 2-11(g); and
 - (viii)** establish committees for the performance of the UTCF's responsibilities herein, including an executive committee consisting of the chair and representatives of the participating utilities
- (5)** Review and evaluation of the annual and five-year capital plans submitted pursuant to (3)(i) by BPMCC and the UCTF shall be guided by the schedules provided, including completion date, a logical sequence of construction activity determined based on funding, design stage, infrastructure depth and other relevant information submitted by the UCTG member, with the intent that the date of permit filing pursuant to Section 2-11 will control the timing of the work authorized by the Department and occupation of the PROW. When, however, there is more than one permit request for the same PROW segment(s) at the same time, subject to an alternative determination by the Department or if any of the permits is for emergency work pursuant to Section 2-11(g), the hierarchy of work shall be in the following order: (1) sewer, (2) water, (3) gas, (4) electric, (5) telecommunication [and (6) the Department's PROW resurfacing projects].
- (6)** In addition to all requirements for City personnel to inspect work sites for compliance with this Chapter 2 and other provisions of state and local law, including Rule 753, the Department reserves the right to make physical on-site inspections any time after issuance of a permit. The Permittee and/or its contractor shall accommodate the Department's need for access to the site and construction documents, including all final drawings after Existing Facility Review Protection process was concluded. The Permittee shall satisfy the Department's requirements and correct all construction

deficiencies. The Permittee shall pay the cost of such inspection at the rate established for Protected Streets in Section 2-03. [Note: if separate rate is required, revise Section 2-03 to include a new inspection rate emanating from this new requirement]