

**CITY OF LOS ANGELES
INTER-DEPARTMENTAL CORRESPONDENCE**

Date: May 29, 2015

To: Honorable Joe Buscaino,
Chair of the Public Works and Gang Reduction Committee
All Council Members

From:  Digitally Signed by Ted Allen
on 05/29/2015 1:22:23 PM
for Gary Lee Moore, City Engineer
Bureau of Engineering

Subject: **Street Cut Moratorium Council Motion (Council File 14-1571-S1)**

This document is prepared in response to the Motion (Buscaino – Englander; CF [14-1571-S1](#)) relative to the City's moratorium on street excavation cuts within the first year following resurfacing. Specifically, the Motion instructed the Department of Public Works with the assistance of the City Administrative Officer (CAO) and the Chief Legislative Analyst (CLA) to investigate the feasibility of increasing the City's street cut moratorium (moratorium) from one year to three years, and report on the potential operational and financial impacts. The Council Motion also requested that the City Attorney prepare and present an ordinance that conveys to the Board of Public Works the authority to grant exemptions to the moratorium, and to require that exempted permittees pay a Street Damage Restoration Fee (SDRF) sufficient to recover the full cost of damage inflicted by the shortened lifespan of the street.

RECOMMENDATIONS:

The Bureau of Engineering (BOE), the Bureau of Street Services (BSS) and the Bureau of Contract Administration (BCA) have had extensive discussions with representatives from the Mayor's Office, Council District 15, the CLA and the CAO on this topic. After much consideration, the working group concluded that it would not recommend extending the moratorium at this time as discussed later in this report. However, in discussing and analyzing the moratorium in general, the group did produce a number of other recommended improvements to the current code section. Those discussions and thought processes are also summarized in this report. Following is the recommendation of the working group:

1. Modify the instructions to the City Attorney contained in CF 14-1571-S1 which requested the preparation of a draft ordinance to incorporate the following guidelines:
 - a) Keep the existing one year moratorium on street excavation cuts.
 - b) Formalize the term "Street Cut Moratorium" in the Los Angeles Municipal Code (LAMC) section [62.06](#).
 - c) Modify the existing moratorium to require that any work performed under an exemption to the moratorium pay a SDRF sufficient to recover the full cost of

- damage inflicted by the street cuts. The SDRF fee would apply to work performed under categorical exemptions as well as individual project exemptions.
- d) Find that the minimum amount of such damage would equal the SDRF fee amount used for street cuts from 1 year and one day to five years after resurfacing, and authorize the use of that rate until a study can provide for the amount of the damages for the zero to one-year time period.
 - e) Continue the categorical exemption from the moratorium for cases where it can be shown that the property owner was not properly notified of proposed street resurfacing.
 - f) Formally recognize a categorical exemption from the moratorium for emergency work as defined in LAMC [62.61 \(a\) 2](#) and in accordance with the requirements of LAMC [62.02 \(a\) 6](#).
 - g) Authorize the Board of Public Works to grant project specific exemptions to the moratorium where it is deemed that the proposed project need was not known at the time the street was resurfaced or that it is otherwise in the City's best interest to grant the exemption.
 - h) Authorize the creation of additional categorical exemptions by Council Resolution.
 - i) Instruct the Board of Public Works to recommend additional categorical exemption categories based on their experiences with the oversight of the exemption process in the case that such a need is determined to be beneficial to the City.
 - j) Authorize the City Engineer to maintain standard repair requirements for work performed under an exemption to the moratorium which may go beyond the normal street repair methods for non-moratorium work.
 - k) Authorize the Board of Public Works to impose additional requirements when approving project specific exemptions.
 - l) Establish a fee for an "Application for Exemption from the Street Cut Moratorium" based on recommendations from the CAO, BOE, BSS, and the Bureau of Contract Administration.
 - m) Continue the requirement that entities making street cuts without an approved exemption be required to repave the full block from curb face to curb face rather than pay a SDRF.

BACKGROUND AND DISCUSSION:

Establishment of the Street Cut Moratorium: Los Angeles Municipal Code Section [62.06](#), established by Ordinance No. [171922](#) (CF [96-0726](#)), was approved February 18, 1998. The ordinance established the SDRF and also established in subsection "D" that excavations in streets scheduled to be repaved within one year would be exempt from the SDRF. It appears that in the original form the code was exempting utility cuts from paying the SDRF if they occurred up to one year prior to resurfacing. LAMC 62.06 subsection "D" was later amended to add a requirement that entities making pavement cuts "within the one year period must repave the entire street block from curb face to curb face", thus treating the one-year period as the period after resurfacing. The code change appears to have taken place under Ordinance [174021](#) (CF [99-0412](#)) which became effective July 23, 2001, although it is possible that it happened earlier because it is not called out as a specific change in the ordinance.

LAMC 62.06 Subsection D was later revised further by Ordinance Number [175525](#), Eff. 11/16/03 (CF [03-1695](#)), to the current form which provides for exceptions to the requirement to pave the entire street block “when it can be sufficiently demonstrated to the Director, Bureau of Street Services that the City’s 30 day notice of a scheduled street resurfacing project was not mailed to the correct property owner of record at the time of notification, and the adjacent property owner made significant efforts to promptly notify the Bureau of Street Services of any planned street excavations. The adjacent property owner would be required to obtain the applicable permits and repave the excavated area.”

It is worth noting that the word “moratorium” does not exist in the current code. However the term is commonly used to describe the one-year period following resurfacing during which time an entity is required to pave the entire street block if they make pavement cuts. This report similarly uses the term “moratorium”.

Moratorium Duration: The primary objective of the working group was to analyze the feasibility of extending the current one-year moratorium to three years. Initially the discussion leaned toward such a recommendation, along with a recommendation for additional categorical exemptions from the moratorium, such as for new service connections. Additional categorical exemptions were felt to likely be necessary for a three year moratorium because in many cases private property owners may not know about future service connection needs extending three years out into the future.

After thinking about it further the group consensus was that it may be better to maintain a one-year moratorium with less exemptions because it is short enough that even private property owners should generally know of any needs for service connections that far into the future, and even in cases where they don’t they would potentially be able to wait out the moratorium. It was felt that the City may therefore get more from the one-year moratorium than it would from a three-year moratorium with increased exemptions.

The group did consider the possibility of a three-year moratorium solely for utility capital improvement projects because those are generally planned further in advance. In that scenario the one-year moratorium would have been preserved for others. The working group determined that this may be a recommended change at some point in the future, but most of the group felt that it would be best to wait to make such a change until after implementation of some of the coordination improvements that are being made on the City side to give utilities an improved long range outlook at planned resurfacing.

Existing Exemptions from the Current Street Cut Moratorium: The current one year moratorium on street cuts requires the resurfacing of the entire street block from curb face to curb face if the moratorium is violated. As previously outlined, the only provision for exceptions is for cases where it can be demonstrated that the owner was not properly notified and they made significant efforts to promptly notify the Bureau of Street Services.

Emergencies were not specifically exempted from the moratorium under LAMC 62.06, but the Bureau of Engineering has historically exempted them from the full-block repaving requirement in accordance with LAMC 62.02 (a). As outlined in Bureau of Engineering Special Order [06-0807](#), in lieu of full-block paving for emergencies the

Bureau of Engineering requires a special "T-Cut" repair and the payment of a SDRF at the rate for cuts from one year and one day to five years. Additional exemptions have been granted by the City Council on a case by case basis. Because the current SDRF fee structure assumes that cuts will not occur in the first year, there is no set fee for the first year period and therefore moratorium exemptions must require the payment of a SDRF, otherwise the SDRF cannot be collected at all during the moratorium period.

One of the recommendations of this report is that future SDRF revisions establish a rate for the moratorium period, and that in the meantime the code be revised to explicitly state that moratorium exemptions must pay the SDRF rate and that if a rate has not been established for the moratorium period that the applicant shall pay the highest established rate.

Additional Exemptions from the Current Street Cut Moratorium: The working group concluded that additional blanket categorical exemptions would not be needed if staying with a one-year moratorium. However, there have been a relatively small number of individual cases in the past where the City Council has found it appropriate to grant project specific exemptions from the moratorium. Generally these have been cases where new service connections are urgently needed but the owner did not know of the need at the time the street was resurfaced, or the owner may have changed. The current code does not explicitly provide any process for project specific exemptions.

It is recommended that the Board of Public Works be authorized to issue project specific exemptions in cases where the entity can demonstrate that they did not know of the need for the street cut at the time the street was resurfaced or where it can otherwise be demonstrated that it is in the best interest of the City to grant the exemption. It is further recommended that the City establish a "Street Moratorium Exemption Fee" to be charged to applicants requesting an exemption in order to recover the cost to the City to process the application.

Although additional categorical exemptions from the moratorium are not recommended at this time, it is recommended that the LAMC language be modified to allow for the establishment of additional categorical exemptions by Council Resolution and that the Board of Public Works be instructed to recommend additional exemptions based on their experience overseeing the exemption process in the case that such a need is determined to be beneficial to the City.

Repair Methods for Moratorium Exemptions: Currently emergency projects that are exempted from the moratorium are required by the Bureau of Engineering to utilize pavement repair methods that go beyond those required in non-moratorium circumstances in order to preserve the integrity of the newly resurfaced street to the maximum extent possible. It is recommended that the Bureau of Engineering be explicitly authorized in the code to establish standards for trench repair methods for those projects receiving exemptions to the street cut moratorium which may exceed standard trench repair requirements.

It is further recommended that the Board of Public Works be authorized to require repair methods which may exceed the Bureau of Engineering standards when granting project specific exemptions. This would enable the Board of Public Works flexibility in dealing with unusual circumstances where they may find it appropriate to essentially grant a

“partial exemption” from the full block resurfacing requirement. For example, Figure 1 depicts trench details for which the Board of Public Works might require the entire shaded area to be resurfaced if not already called for in the Bureau of Engineering Standard:

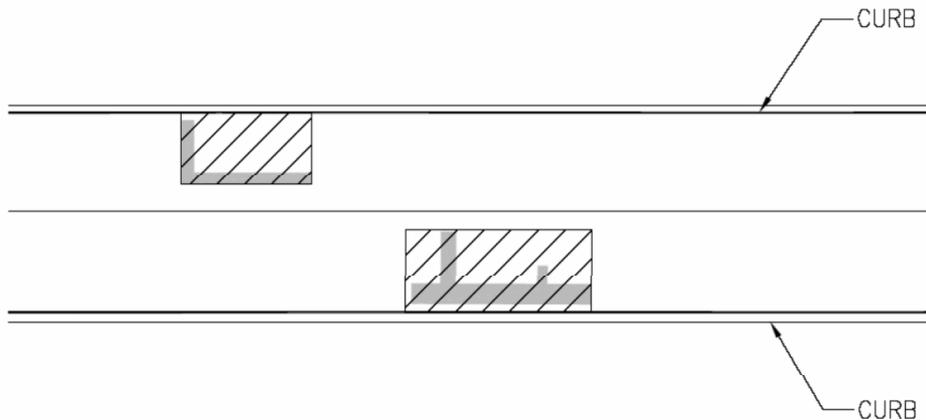


Fig. 1

Depiction of rectangular restoration pattern.
(City of San Francisco - Regulations for Excavating and Restoring Streets)

Moratorium Effectiveness: Overall the current one-year moratorium on street cuts after resurfacing has been effective in encouraging entities to coordinate their work with the BSS. The number of cuts in newly resurfaced streets is significantly less than it was prior to the moratorium, and the quality of the repairs for those cuts that are allowed is better than before. The recommendations contained in this report are expected to further improve the effectiveness of the moratorium while at the same time providing an official process to request exemptions.

CONCLUSION:

It is recommended that the current street cut moratorium be maintained at one-year and that the City Attorney be requested to draft an ordinance which would implement the other recommendations contained in this report.

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