

## ORDINANCE NO. 19-

AN ORDINANCE OF THE CITY OF HAYWARD, CALIFORNIA, AMENDING CHAPTER 7, ARTICLE 2 OF THE HAYWARD MUNICIPAL CODE BY AMENDING SECTIONS 7-2.00, 7-2.10, AND 7-2.15 AND ADDING SECTIONS 7-2.46 AND 7-2.47 TO ESTABLISH A "DIG ONCE" POLICY FOR INSTALLING UNDERGROUND CONDUITS

WHEREAS, To further the strategic and operational goals outlined in the City of Hayward Fiber Optic Master Plan, the City is designing and constructing City-owned communications infrastructure consisting of an underground fiber-optic network to provide broadband internet service; and

WHEREAS, The City of Hayward desires to develop a public communications network consisting of a lateral distribution network to directly connect City facilities and provide fiber-to-the-premises throughout the City; and

WHEREAS, The City of Hayward desires to comply with all mandates regarding public utilities as imposed upon it by state and federal law; and it is determined that there is a need for wireless telecommunication facilities in the City of Hayward; and the City of Hayward finds that it is a necessary and proper exercise of its police power and land use planning authority to regulate such facilities; and

WHEREAS, The proposed requirements for permits and entitlements relative to projects involving the installation of underground conduit respond to recent changes in laws concerning regulation of wireless telecommunication facilities and provide mechanisms for the City to maintain an aesthetically pleasing community environment, protect the safety and welfare of Hayward's residents, minimize degradation of the residential character of neighborhoods, streets, and roadways, and require the best available design to eliminate visual impacts while ensuring that adequate public services and facilities are constructed to accommodate the needs of Hayward's residents; and

WHEREAS, Pursuant to the California Environmental Quality Act ("CEQA"), the proposed requirements for wireless telecommunication facilities in the public right-of-way are exempt per section 15061 (b)(3), as there is no potential to cause a significant effect on the environment; and

WHEREAS, Excavations in paved, public rights-of-way degrade and shorten the life of street surfaces which increases the frequency and cost of necessary resurfacing, maintenance, and repair; and

WHEREAS, The federal Broadband Opportunity Council has recommended, and the California State Legislature is now considering, the adoption of "Dig Once" policies to encourage broadband deployment, minimize excavations, and save costs by coordinating infrastructure projects in the public rights-of-way; and

WHEREAS, The City desires to strike a balance between the public need for efficient and safe transportation routes and the use of rights-of-way for the underground location of facilities by the City and private entities; and

WHEREAS, The City desires to protect and preserve the physical integrity of streets and sidewalks; minimize excavations, traffic and other disruptions related to excavations of public rights-of-way caused by the construction of City-owned communications infrastructure; protect public safety and welfare; and lower its own costs and the costs to applicants seeking to deploy conduit in the City's public rights-of-way by coordinating construction of City-owned communications infrastructure with the deployments of underground conduit by such applicants.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN AS FOLLOWS:

SECTION 1. Chapter 7, Disturbance of Streets, of the Hayward Municipal Code, which establishes standards, procedures, and regulations for the use of the City's Right of Way, is hereby amended to add certain text and provisions (as indicated by underline) and repeal certain text (as indicated by strikethrough) as shown in the attached Exhibit "A", in order to establish a Dig Once policy.

SECTION 2. Severance. Should any part of this ordinance be declared by a final decision of a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this ordinance, which shall continue in full force and effect, provided that the remainder of the ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

SECTION 3. Effective Date. This Ordinance shall become effective thirty (30) days following its adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the \_\_<sup>th</sup> day of January 2019, by Council Member\_\_\_\_\_.

ADOPTED at a regular meeting of the City Council of the City of Hayward, held the \_\_<sup>th</sup> day of \_\_\_\_\_, 2019, by the following votes of members of said City Council:

AYES: COUNCIL MEMBERS:  
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED: \_\_\_\_\_  
Mayor of the City of Hayward

DATE:\_\_\_\_\_

ATTEST: \_\_\_\_\_  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward

**Exhibit A**

**CHAPTER 7- PUBLIC WORKS**

***ARTICLE 2- STREETS***

***DISTURBANCE OF STREETS***

**SEC. 7-2.00 - DEFINITIONS.**

For the purposes of this Article, certain words and phrases are defined and certain provisions are to be construed as herein set out, unless it shall be apparent from the context that a different meaning is intended.

CITY COMMUNICATIONS INFRASTRUCTURE. City communications infrastructure shall mean conduits, pull boxes, and other related facilities that are deployed by the City in furtherance of the strategic and operational goals outlined in the City of Hayward Fiber Optic Master Plan.

CONDUIT. Conduit shall mean a pipe or tube through which water, waste water or gas is conveyed, or which is used to protect electrical or communications cables.

EMERGENCY STREET CUT. Emergency street cut shall mean any street cut which must be made to repair a defective or broken underground facility, the condition of which facility constitutes an evident and immediate hazard to life, health, or property, and it is impractical to secure a permit before work is commenced.

EXCAVATION COSTS. Excavation costs shall mean all construction costs relating to the excavation, backfill, paving, marking, and other costs associated with restoring a City street to its pre-excavation state. This will include all associated labor and permitting costs.

INCREMENTAL COST. Incremental cost shall mean the cost associated with adding City communications infrastructure to an excavation project, including the cost of the materials needed by the City and any additional labor costs.

MAJOR PROJECT. Major project shall mean the installation or replacement of any underground facility other than a service from an existing main to a single user.

MICRO-TRENCH. Micro-Trench shall mean the fiber optic construction technique that involves cutting a narrow trench or groove of one to two inches wide and up to two feet deep, to hold conduits for fiber or direct buried fiber.

CITY COMMUNICATION INFRASTRUCTURE REQUIREMENTS. City Communication Infrastructure Requirements shall mean the Public Works Department's adopted standards for implementing the Public Works Department's participation in excavation projects involving the installation of City Communications Infrastructure. The City Communication Infrastructure Requirements are kept on file in the City Clerk's Office and available for public review on request.

STANDARD CITY COMMUNICATION INFRASTRUCTURE SPECIFICATIONS. Standard City Communications Infrastructure Specifications shall mean the type, size, and quantity of conduits, cross section, the size and frequency of pull boxes, and any other facilities that the Public Works Department determines are necessary to serve the City's Communications needs. The Standard City Communication Infrastructure Specifications are kept on file in the City Clerk's Office and available for public review on request.

STREET CUT. Street cut shall mean the action of or the result of opening, tearing up, excavating, repairing, installing, adding to, removing, or otherwise altering any portion of any public roadway, street, thoroughfare, sidewalk, curb, gutter, or driveway, or any other such facility existing within a public right-of-way area for any purpose whatsoever.

TRENCH. Trench shall mean a form of excavation to install underground infrastructure or utilities such as fiber optic cables, gas or water mains or electric lines. Such excavation is different from micro-trenching in that different equipment is used, the resulting opening in the ground is wider and deeper, and greater site preparation, clean-up and restoration activities are required. Any excavation that is not a micro-trench as defined in this Article is a Trench.

UNDERGROUND FACILITY. Underground facility shall mean any pipe, conduit, tile, or other material installed within and below the surface of any public roadway, street, sidewalk, thoroughfare, or other place.

#### **SEC. 7-2.10 - STREET CUTS. PERMIT REQUIRED.**

It shall be unlawful for any person other than officers, agents, contractors or employees of the City to make or cause to be made any street cut in the City of Hayward without having first obtained a permit therefor as herein provided. Any permit issued hereunder shall not be assignable to any other person. Excavation permitted under this Article shall not take place more than once on any particular section of City street within a 5-year period unless determined otherwise by the Director of Public Works pursuant to Sec. 7-2.46(d).

Applicants for a permit required by this section that intend to place underground conduit in, along, across, or through any street shall comply with the requirements of Section 7-2.46.

Micro-trenching is not permitted without the prior express written permission from the Public Works Director which shall be reflected in any permit issued under this section.

**SEC. 7-2.15 - DENIAL OF PERMIT.**

~~The Director of Public Works shall have the right to refuse a permit to any person who is in violation of or who has failed to comply with any provisions hereof in connection with the permit being applied for or any permit previously issued, except as provided otherwise herein.~~

The Director of Public Works shall have the right to refuse a permit to any applicant under either of the following conditions:

(a) When the applicant is in violation of or has failed to comply with any provisions herein in connection with the permit being applied for or any permit previously issued, except as provided otherwise herein; or

(b) When he or she finds that it will be detrimental to the public health, safety, or welfare.

The Director of Public Works shall deny a permit when he or she finds that the applicant has failed to comply with Section 7-2.46 of this Code.

**SEC. 7-2.46 - INSTALLATION OF INFRASTRUCTURE IN JOINT TRENCH.**(a) Notice Required to Non-Applicant Utilities.

(1) To the extent feasible, the Director of Public Works, or his/her designee shall notify (or require an applicant for such work to notify) all known utility and telecommunications service providers of an impending excavation and afford all such service providers the opportunity to utilize the excavation to install, upgrade, co-locate, repair, or improve their telecommunication facilities or other utilities during such an excavation project. Any such notice shall be provided at least thirty (30) days prior to the commencement of excavation and shall specify the response date required under Sec. 7-2.46(a)(2).

(2) All service providers utilizing the same excavation shall be responsible for their proportionate share of the Excavation Costs, including but not limited to the costs of permitting. All service providers must provide the City and applicant notice of their desire to utilize the excavation within twenty (20) days of the date of service of the notice required under Sec. 7-2.46(a)(1).

(3) Notice under Sec. 7-2.46(a)(1) is only required when the proposed underground conduit installation will be at least 300 linear feet, or such longer distance as may be established in the City Communication Infrastructure Requirements.

(b) Assessment of City Communications Infrastructure. Upon receipt of an application for a permit under this Article, the Director of Public Works or

his/her Designee shall determine whether adding City communications infrastructure to the proposed excavation project would be both financially feasible and consistent with the City's goals. The City shall promptly notify the applicant upon its determination. For any permitted project in which the City participates, the following shall apply:

- (1) All construction, reconstruction, and repaving within a City right-of-way shall be installed in accordance with City regulations, requirements and specifications, including but not limited to the Hayward Municipal Code. If directed by the Director of Public Works or his/her designee, all excavations shall include the installation of a public utility infrastructure, such as conduit, tube, duct, or other device designed for enclosing telecommunications wires, fibers, or cables, as specified by the Director of Public Works; and
  - (2) Applicant's Incremental Costs. The City shall be responsible for the applicant's Incremental Costs when the City participates in an excavation project by installing City communications infrastructure. The City will promptly provide the applicant with its determination of Incremental Costs; and
  - (3) Appeal of City's Calculation of Incremental Costs. Any applicant may appeal the City's Calculation of the amount of Incremental Costs to the City Manager or his/her designee within fourteen (14) calendar days after a determination has been made on the amount of the incremental costs. The appeal must be submitted in writing on an approved City form, along with any required fee, to the City Clerk within 14 days after service of the determination and shall state the specific reason(s) for the appeal along with any supporting evidence. In the event that a decision is appealed, the City Clerk shall schedule the appeal for a public hearing, unless waived by the applicant. The decision of the City Manager or his/her designee on such appeals shall be final and not subject to further appeal.
- (c) Cost of Permit. A permit for excavation will be charged based on staff time spent at the rate in effect as established by the duly adopted Master Fee Schedule for engineering plan review.
- (d) Project Exemption. The Director of Public Works or his/her designee may exempt projects from the requirements under this section where it is determined that it is not practical, feasible, or for any other consideration. Requests for an exemption must be made in writing with an explanation as to why the project is not feasible. Cost shall not be the determining factor whether a project is feasible or practical. A determination from the Director of Public Works is the final administrative determination of the matter and is not appealable. Any exception granted under this section may be conditioned to

ensure that the street is restored and not adversely impacted by the excavation.

- (e) Enforcement. The Director of Public Works or his/her designee shall have primary responsibility for enforcement of this Ordinance. Pursuant to the Hayward Municipal Code, excavations not in accordance with this Ordinance shall be considered noncompliant encroachments which have been declared a public nuisance and which are subject to abatement, removal, and injunction by the City of Hayward, as well as by any other remedies provided by law.
- (f) Approval of Application. The City may approve an application and issue a permit if the City finds that an applicant has complied with this chapter and all applicable provisions in the City Communication Infrastructure Requirements. The City may not issue a permit prior to the expiration of the 30-day period specified in Sec. 7-2.46(a)(1).

#### **SEC. 7-2.47 - City Communication Infrastructure Requirements.**

- (a) Adoption of Requirements. The Public Works Department shall develop and implement the City Communication Infrastructure Requirements.
- (b) Purpose of City Communication Infrastructure Requirements. The City Communication Infrastructure Requirements shall specify the manner in which the City will participate in excavation projects by installing City Communications Infrastructure that meets the City's needs at a reasonable cost.
- (c) Minimum Requirements. At a minimum, the City Communication Infrastructure Requirements shall contain the following procedural and substantive requirements for the installation of City Communications Infrastructure in excavation projects:
  - (1) The process for the Public Works Department to review planned excavation projects in a timely manner to determine if City participation is feasible and to verify its participation;
  - (2) The criteria to be used by the Public Works Department to decide whether to decline to participate in excavation projects;
  - (3) The standard technical specifications for City Communications Infrastructure;
  - (4) The standard methodology for determining the Incremental Costs associated with installing City communications infrastructure in



excavation projects;

(5) The requirements and process for excavators to seek exemptions from using the City's standard methodology for determining Incremental Costs when installing standard City communications infrastructure in excavation projects; and,

(6) Alternative methodologies for determining the City's Incremental Costs when exemptions are granted.