

**ATTACHMENT A**

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF HAYWARD, CALIFORNIA, AMENDING TITLE 7 OF THE HAYWARD MUNICIPAL CODE BY AMENDING SECTIONS 7-2.00 AND 7-2.04 AND ADDING SECTIONS 7-4 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 within the Industrial Corridor.

**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.

**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 chooses to use its police power and land use planning authority to regulate such facilities.

**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.

**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.

**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.

**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.

**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.

**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 FOR THE CITY OF HAYWARD DOES ORDAIN AS FOLLOWS:

**SECTION 1.** The City Council hereby amends Section 7.2.00 of Chapter 7 of the Hayward Municipal Code by adding the following definitions, with all other defined terms to be re-lettered accordingly:

(a) "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;

(b) "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;

(c) "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;

(d) "Public Works Department" shall mean the Public Works Department or any successor City agency that is responsible for deploying and managing City communications infrastructure and providing network communications and applications support for the City;

(e) "Public Works Requirements" shall mean the Information Technology Department's published standards for implementing the Information Technology Department's participation in excavation projects involving the installation of City communications infrastructure; (Public Works Department can also be involved, need to flush this out)

(f) "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 Information Technology Department determines are

necessary to serve the City's communications needs.

**SECTION 2.** The City Council hereby amends Section 7-2.15 of CH 7 of the Hayward Municipal Code by replacing subsection (d) in its entirety, as follows:

(a) Denial of permits.

(1) The Engineer may deny or refuse to issue a permit under the following conditions:

(A) When he or she finds that it is not in the best interests of the general public to do so; and

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

(2) The Engineer shall deny a permit when he or she finds that the applicant has failed to comply with Section 7-2.46 CH7 of Hayward Municipal Code.

**SECTION 3.** The City Council hereby amends Section 7-2.10 of Title 7 of the Hayward Municipal Code by adding subsection (l), as follows:

(l) Dig Once. An applicant for an excavation permit under this section for the placement of underground conduit in, along, across, or through any highway shall comply with the requirements in Section 7-2.46 of this chapter.

**SECTION 4.** The City Council hereby adds a new Section 7-2.46 to Title 7 of the Hayward Municipal Code, as follows:

**Section 7-3.21. Installation of City Communications Infrastructure.**

(a) Need for City Communications Infrastructure. To further the strategic and operational goals outlined in the City of Hayward Fiber Optic Master Plan and deployment of a public communications network, the City Manager or his/her Designee shall consider adding City communications infrastructure to any excavation permit issued under this chapter for the placement of underground conduit in, along, across, or through any highway.

(b) Notice Required.

- (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 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 during such an excavation project. Any such notice shall be provided at least thirty (30) days prior to the commencement of excavation. 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. Such excavation shall not take place more than once on a particular City street within a 5-year period.
- (2) Notice is only required when the proposed underground conduit installation will be at least 300 linear feet, or such longer distance as the IT Department may establish in the IT Requirements.
- (3) In recognition of the need to provide broadband connectivity to the historically underserved areas of the City, and in further recognition of the need to minimize public inconvenience and traffic, and to preserve the integrity and service-life of City streets, all construction, reconstruction, and repaving within a City right-of-way shall include a provision for the installation of a public utility infrastructure, such as conduit, tube, duct, or other device designed for enclosing telecommunications wires, fibers, or cables, wherever practical and feasible. Such infrastructure shall be installed in accordance with City regulations, requirements and specifications, including but not limited to the Hayward Municipal Code, as directed by the Director of Public Works or his/her designee. Such excavation shall not take place more than once on a particular City street within a 5-year period.
- (4) A permit for excavation shall be required and will be charged based on staff time spent at the rate in effect as established by the duly adopted fee schedule for engineering plan review.
- (5). The Director of Public Works or his/her designee may exempt projects from these requirements where it is determined that it is not practical or feasible. 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.
- (6). The Director of Public Works or his/her designee shall have primary responsibility for enforcement of this policy. Pursuant to the Hayward Municipal Code, excavations not in accordance with this policy shall be

considered noncompliant encroachments which have been declared a public nuisance and which are subject to abatement, removal, and enjoinder by the City of Hayward, as well as by any other remedies provided by law.

- (c) Response to Notice. Upon receipt of a notice issued pursuant to subsection (b) of this section, the Public Works Department shall review the notice to determine whether adding City communications infrastructure to the proposed excavation project would be both financially feasible and consistent with the City's goals.
- (d) 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 Public Works Requirements.
- (e) Applicant's Incremental Costs. The Public Works Department shall be responsible for the applicant's incremental costs when the Public Works Department participates in an excavation project by installing City communications infrastructure.

**SECTION 5.** The City Council hereby adds a new Section 7-2.47 to Title 7 of the Hayward Municipal Code, as follows:

**Section 7-3.22. Public Works Department Requirements.**

- (a) Adoption of Requirements. The Public Works Department, in consultation with the Engineering Department, shall develop and implement the Public Works Requirements.
- (b) Purpose of Public Works Requirements. The Public Works Requirements shall specify the manner in which the Public Works Department 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 Public Works 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.

**SECTION 6. 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 7. Custodian of Records.** The documents and materials that constitute the record of proceedings on which these findings and this Ordinance are based are located at the City Clerk's office located at 777 B Street, Hayward, CA 94541. The custodian of these records is the City Clerk.

**SECTION 8. Effective Date.** This Ordinance shall become effective thirty (30) days following its adoption.

**SECTION 9. Publication.** The City Clerk shall certify to the adoption of this Ordinance. Not later than fifteen (15) days following the passage of this Ordinance, the Ordinance, or a summary of thereof, along with the names of the City Council members voting for and against the Ordinance, shall be published in a newspaper of general circulation in the City of Hayward.

**IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 2018**

**ADOPTED BY THE FOLLOWING VOTE:**

**AYES: COUNCIL MEMBERS:  
MAYOR**

**NOES: COUNCIL MEMBERS:  
ABSTAIN: COUNCIL MEMBERS:  
ABSENT: COUNCIL MEMBERS:**

