

ORDINANCE NO. 882-C.S.

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFICA
ESTABLISHING A UTILITY PAVEMENT CUT RECOVERY FEE**

WHEREAS, the City of Pacifica is responsible for maintaining over 90 centerline miles of street pavement, funded by an annual street maintenance project adopted every year as part of the Capital Improvement Program; and

WHEREAS, existing pavements frequently need to be cut in order to access and service utility infrastructure and their underground equipment; and

WHEREAS, this type of excavation in paved streets degrades and shortens the life of the surface of the streets, and this degradation increases the frequency and cost to the public of necessary resurfacing, maintenance, and repair; and

WHEREAS, the City's funding sources will not be sufficient to prevent some of the City's streets from deteriorating due to the impacts of utility cuts; and

WHEREAS, the Utility Cut Fee adopted herein is considered a fee for the use of government Property pursuant to Article XIII C, section 1(e)(4), which excludes such fees from the definition of "tax;" and

WHEREAS, in the alternative, the Utility Cut Fee is also exempt from the definition of "tax" under Article XIII C, section 1(e)(1) because it is a charge imposed for a specific benefit conferred to the payor (accessing utilities in the City's streets) that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege; and

WHEREAS, in the alternative, the Utility Cut Fee is also exempt from the definition of "tax" under Article XIII C, section 1(e)(6) because it is a charge imposed as a condition of property development; and

WHEREAS, this Ordinance does not conflict with provisions of State law, including but not limited to, Public Utilities Code sections 7901 and 12808 related to interstate telecommunications franchises because the fees hereunder are not charged for the same right granted by State law, but instead are charged to recover costs of mitigating the degradation that the excavation causes to City pavement and the increased cost to the City in reconstructing a street that has been patched following an excavation; and

WHEREAS, this Ordinance is in conformance with Section 253(C) of the Federal Telecommunications Act of 1996 which expressly recognizes the authority of local governments to impose reasonable nondiscriminatory fees upon telecommunications providers using the public right-of-way, as well as California Government Code 50030

which specifically authorizes the imposition of a permit fee that do not exceed the reasonable costs of providing the service for which the fee is charged.

NOW, THEREFORE, the City Council of the City of Pacifica does ordain as follows:

Section 1. Recitals. The City Council of the City of Pacifica does hereby find that the above referenced recitals are true, correct, and material to the adoption of this Ordinance.

Section 2. Adopted. Section 7-2.214, "Utility Pavement Cut Recovery Fee," is hereby added to Article 2 of Chapter 2 of Title 7 "Public Works" of the City of Pacifica Municipal Code as follows:

Section 7-2.214 Utility Pavement Cut Recovery Fee

(a) Purpose of Utility Pavement Cut Recovery Fee.

Excavations in paved streets owned and maintained by the City degrade and shorten the life of the surface of the streets, and this degradation increases the frequency and cost to the public of necessary resurfacing, maintenance and repair. These excavations cause degradation of the streets even where the excavations are refilled and repaired in conformity with applicable standards and requirements. It is appropriate that entities responsible for excavating into the City right-of-way bear the burden of the resulting cost of this degradation and shortened life of the surface rather than the taxpayers of the City. In addition, establishment of a Utility Pavement Cut Recovery Fee will create an incentive for utilities to coordinate excavations in the streets. This chapter shall not be construed to relieve those excavating into the City right-of-way of the obligation to fill, repair and properly maintain the location of the excavation.

(b) Establishment of Utility Pavement Cut Recovery Fee.

No person shall excavate in a public right-of-way without, in addition to all other requirements of this Code, having first paid to the City a "Utility Pavement Cut Recovery Fee." The Utility Pavement Cut Recovery Fee shall be due, as a condition of the permit required by Section 7-2.101.

(c) Amount of Fee.

(1) The rate of the fee shall be established from time to time by resolution of the City Council.

(2) Beginning July 2023 and on each July 1st thereafter, the rate of the fee shall increase without further action by the city according to the following formula:

$$\text{Council-Approved Rate} * \frac{\text{Most Recent ENR}}{\text{ENR at Council-Approval}}$$

Where the “Council-Approved Rate” is the rate contained in the most recently adopted Impact Fee Schedule, “Most Recent ENR” is the most recently published Construction Cost Index for the San Francisco Bay Area in the Engineering News Record when the calculation is made and “ENR at Council-Approval” is the Construction Cost Index published for the month in which the Council adopted the Impact Fee Schedule including the “Council-Approved Rate.” The City Manager shall calculate the increased fee annually and give notice of that calculation in the manner required by law for the publication of ordinance of the City Council.

(d) Determination of Payment.

The fees due under this chapter are collected for the restoration and maintenance of City pavement caused by the impacts of utility trench cuts, and shall be determined and become due and payable to the City at the time of the issuance of permits required pursuant to this Chapter.

(e) Variance from payment of Utility Pavement Cut Recovery Fee.

Any person subject to the Utility Pavement Cut Recovery Fee may request that the Director of Public Works waive or reduce the requirement of payment of the fee due to individual circumstances that demonstrate, on a case-by-case basis, that the amount of the fee is not reasonably related to the projected impact of the proposed excavation.

The decision of the Director of Public Works may be appealed to the City Manager by letter within five (5) City business days of the date of the Director’s decision. Appeals shall state the name, address, telephone number, and if, available, the email address of the person making the appeal and the reason(s) for the appeal. The failure to appeal the Director’s decision or to file a timely appeal shall render the Director’s decision final and the right to appeal is waived. The timeliness of an appeal shall be determined from the date the City Manager received said appeal. The

decision of the City Manager is final. No fee shall be charged for an appeal. The City Manager may delegate all of the duties of this subsection to another person.

(f) Utility Pavement Cut Recovery Fee Fund.

The fees paid in accordance with the provisions of this section shall be placed in a special fund to be known as the Utility Pavement Cut Recovery Fee Fund. The revenues from the fees will be used solely for restoration and maintenance of City pavement related to the impacts of utility cuts.

(g) Exceptions.

(1) Excavations in City streets scheduled for pavement structural improvements within two years of the date of excavation shall be exempt from the Utility Pavement Cut Recovery Fee.

(2) No Utility Pavement Cut Recovery Fee shall be charged for underground utility district projects initiated by the City, or utility line relocations necessitated by City street work projects or by street vacations or abandonments.

(3) No Utility Pavement Cut Recovery Fee shall be charged for excavations performed by or for the City Public Works Field Services Department.

(4) No Utility Pavement Cut Recovery Fee shall be charged with respect to excavation in a sidewalk or a concrete street.

(5) No Utility Pavement Cut Recovery Fee shall be charged where the proposed work will include resurfacing of all or a significant portion of the public right-of-way where the excavation is made, and the City Engineer approves the resurfacing. A "significant portion of the public right-of-way" means a surface area of the public right-of-way with minimum length and width dimensions as follows: length: 25 feet from the nearest edge of the excavation area; and width: the full width of each traffic lane if any portion of the lane is within the trench influence area.

(6) No Utility Pavement Cut Recovery Fee shall be charged for repair work required by the City Engineer or any other relocations required by the City.

Section 3. Compliance with CEQA. The City Council hereby finds that the action to adopt this Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA), under Section 15061(b)(3) of the CEQA Guidelines (14 Cal. Code Regs. 15000 et seq.) because it can be seen with certainty that there is no possibility that the adoption of this Ordinance may have a significant effect on the environment.

Section 4. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it should have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Section 5. Publication. The City Clerk is hereby ordered and directed to certify the passage of this Ordinance by the City Council of the City of Pacifica, California, and cause the same to be published in accordance with State law.

Section 6. Effective Date. This Ordinance shall go into effect thirty (30) days after the date of its passage and adoption.

PASSED AND ADOPTED this 27th day of June, 2022, by the following vote:

AYES, Councilmembers: Beckmeyer, Bier, Bigstych, Vaterlaus.

NOES, Councilmembers: n/a.

ABSENT, Councilmembers: O'Neill.

ABSTAIN, Councilmembers: n/a.



Mary Bier, Mayor

ATTEST:



Sarah Coffey, City Clerk

APPROVED AS TO FORM:



Michelle Kenyon, City Attorney






For Signature: OrdinanceNo882-CS_AdoptingUtilityPavementCutRecoveryFee

Final Audit Report

2022-07-01

Created:	2022-06-30
By:	Sarah Coffey (scoffey@pacifica.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAA4JWhCjpeNktyFC_XTwi22VoytN4cxxHs

"For Signature: OrdinanceNo882-CS_AdoptingUtilityPavementCutRecoveryFee" History

-  Document created by Sarah Coffey (scoffey@pacifica.gov)
2022-06-30 - 2:31:35 AM GMT
-  Document emailed to mbier@pacifica.gov for signature
2022-06-30 - 2:32:10 AM GMT
-  Email viewed by mbier@pacifica.gov
2022-07-01 - 3:19:18 PM GMT
-  Document e-signed by Mary Bier (mbier@pacifica.gov)
Signature Date: 2022-07-01 - 3:19:51 PM GMT - Time Source: server
-  Document emailed to Sarah Coffey (scoffey@pacifica.gov) for signature
2022-07-01 - 3:19:52 PM GMT
-  Email viewed by Sarah Coffey (scoffey@pacifica.gov)
2022-07-01 - 4:02:33 PM GMT
-  Document e-signed by Sarah Coffey (scoffey@pacifica.gov)
Signature Date: 2022-07-01 - 4:02:39 PM GMT - Time Source: server
-  Agreement completed.
2022-07-01 - 4:02:39 PM GMT