



THOMAS L. BOLICH  
DIRECTOR OF PUBLIC WORKS

# County of Santa Cruz

## DEPARTMENT OF PUBLIC WORKS

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### AGENDA: MAY 7, 2002

April 25, 2002

#### SANTA CRUZ COUNTY BOARD OF SUPERVISORS

701 Ocean Street  
Santa Cruz, California 95060

#### SUBJECT: TRENCH CUT FEE ORDINANCE UPDATE

#### Members of the Board:

On January 15, 2002, the Public Works Department was directed to return on May 7, 2002, with a proposed trench cut cost recovery fee ordinance. Attached for your Board's consideration is a draft of the proposed ordinance.

In the development of this ordinance, we have retained the services of Dr. Shahin of Shahin and Associates, who will assist us in substantiating the utility cut impact costs. Dr. Shahin specializes in pavement engineering and has assisted many other municipalities in the development of trench cut ordinances.

Our department is also reviewing a trench cut ordinance recently adopted by the County of Sacramento and approved by its local utility companies. This ordinance included a pavement life performance warranty, which allows the utility to warranty its trench and the adjacent pavement for the life of the trench in lieu of paying trench cut fees.

Public Works will be working with County Counsel, Dr. Shahin, and local utility companies over the next several months to finalize the trench cut cost recovery fee ordinance. Our proposed schedule is as follows:

May 2002	Finalize draft ordinance
June 2002	Submit ordinance to local utility companies for review and comment
July-August 2002	Meet with the utilities to discuss comments and concerns
October 2002	Submit final trench cut cost recovery fee ordinance to your Board

It is therefore recommended that the Board of Supervisors take the following action:

1. Accept and file this report on the trench cut cost recovery fee ordinance update.
2. Direct Public Works to return to your Board in October 2002 with a final proposed trench cut cost recovery fee ordinance.

Yours truly,

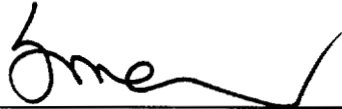


THOMAS L. BOLICH  
Director of Public Works

JES:mg

Attachment

RECOMMENDED FOR APPROVAL:



County Administrative Officer

copy to: Public Works

trenm.wpd

## ORDINANCE NO.

### AN ORDINANCE ADDING CHAPTER 9.8 TO DIVISION II ROADS OF TITLE 9 OF THE SANTA CRUZ COUNTY CODE TO ESTABLISH A TRENCH CUT COST RECOVERY FEE TO BE IMPOSED IN CONJUNCTION WITH PERMITS FOR EXCAVATION IN THE PUBLIC RIGHT-OF-WAY

The Board of Supervisors of the County of Santa Cruz ordains as follows:

#### SECTION I

**FINDINGS.** The Board of Supervisors of the County of Santa Cruz (the "County") finds, determines and declares as follows:

A. The County owns and maintains over 600 miles of streets and public right of way, which are subject pursuant to state and federal law as well as grant of franchise, to being excavated with trench cuts for the purpose of laying of utilities, such as water, sewer, gas, electric, communication, or video signal service. This Ordinance is necessary to establish the County's authority to impose certain fees which will reduce the adverse effects that street excavations have upon the economic life of streets of the County. Such regulation of excavations in County streets to help reduce disruption of and interference with public use of the streets, help prevent premature degradation, and maintain the safe condition of the streets protects the public health, safety and welfare. The public health, safety and welfare of the County requires the enactment of this Ordinance as a municipal affair, and as a valid and appropriate exercise of the County's police power.

B. Experience in other cities in California including Los Angeles, Sacramento, and San Francisco, as well as cities in other states including the cities of Austin, Kansas City, Burlington, Cincinnati, and Phoenix, Arizona have demonstrated that excavations in paved streets 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. Additionally, the Sacramento and Los Angeles studies concluded that pavement degradation occurs regardless of the quality of the workmanship in filling the excavation and restoring the pavement.

C. In order to determine the applicability of the foregoing studies to the County of Santa Cruz, the County retained Dr. M. Y. Shahin, who has previously participated in the studies for Los Angeles, San Francisco, Sacramento, and Santa Ana to prepare a report. Dr. Shahin reports that even if pavement restoration in the trench itself is structurally adequate, excavations damage the strength and life of the pavement located adjacent to the trench where the excavation occurs. The trench influence area varies upon the depth of the excavation and is defined as an area three feet adjacent to the trench where the excavation occurs for trenches with four feet or greater of cover over the utility Applicant from the paved surface, and one and one-half feet adjacent to the trench where the excavation occurs for trenches with less than four feet of cover over the utility Applicant from the paved surface. The potential for damage to the pavement is magnified when a street is subject to multiple excavations after the street is surfaced or resurfaced and before the next scheduled

resurfacing. Additional thickness of asphalt coating is needed to reconstruct a street if it has been subjected to excavations in order to return it to its original strength and quality.

D. Prior to the adoption of this Ordinance, the Board of Supervisors reviewed all of the foregoing studies, and recognizes and relies upon the experience reflected therein in support of this Ordinance. Copies of these studies are available for public review upon request. Local conditions in the County of Santa Cruz are sufficiently similar to the conditions existing in the cities subject to the above-referenced studies to permit the County to rely on such studies. The County Board of Supervisors finds that these studies are relevant to the problems addressed by the County in enacting this Ordinance, and more specifically finds that these studies provide convincing evidence of the significant adverse unavoidable effects of excavations on the County's street system.

E. Based on the studies described above, the cost to mitigate the damage and degradation that street excavations cause to the pavement located within the trench influence area is between \$0 and \$7.88 per square foot of trench excavated for excavations with less than four feet of cover over the utility Applicant, and between \$0 and \$11.82 per square foot of trench excavated with greater than four feet of cover over the utility Applicant, depending upon the condition of the pavement at the time of the trenching.

F. The fee imposed by this Ordinance to be paid to help offset the shortened life of the streets that are cut (the "Trench Cut Cost Recovery Fee"), provides an incentive that will encourage utilities to minimize excavations in County streets. The fee will also promote better coordination among utilities making excavations in County streets and between these utilities and the County (i) to minimize the number of excavations being made wherever feasible, and (ii) to ensure that excavations are performed, to the maximum extent possible, in streets scheduled for resurfacing within a year after the excavation.

G. Millions of dollars in public funds have been invested to build, maintain and repair the streets within the County's geographical boundaries, and the County holds these streets as an asset for its citizens. It is desirable to adopt regulations that will help protect the structural integrity of County streets and thereby safeguard the value of the public investments in County streets for the benefit of County residents and the traveling public by requiring a fee to help offset the shortened life of streets that are cut.

H. When an excavation is performed where the Trench Cut Cost Recovery Fee is applicable, the entity making and benefitting from the excavation should be required to pay the County a fee that reimburses to the County the value of unavoidably shortened economic life of that street caused by the excavation and the County's increased costs in reconstructing the street, in addition to any other applicable fees or charges. Because the effect of the diminished life caused by excavations decreases with time, the fee should be highest for excavations in newly surfaced streets, and should decrease as the condition of the street surface being excavated decreases.

I. This Ordinance does not conflict with provisions of State law, including, but not limited to, Sections 7901 and 12808 of the Public Utilities Code related to interstate

telecommunication franchises because the fees hereunder are not charged for the same right granted by State law, but, instead, are charged to recover the costs of mitigating the degradation that the excavation causes to the pavement over and adjacent to the trench, and the increased cost to the County in reconstructing a street that has been patched following an excavation.

J. Likewise, this Ordinance is consistent with the terms of existing utility franchises with the County of Santa Cruz, because (i) a franchise is intended solely to authorize a utility's use of County streets, ways, alleys and places, (ii) franchise fees established for franchises were not intended to recover the costs of mitigating damage to the pavement over or adjacent to the trench; nor was this damage known to the County when fees for the County's existing franchises were established, (iii) the County does not use, nor is it required to use, franchise fee revenue to pay for street surfacing, resurfacing and/or reconstruction, (iv) franchises are subject to ordinances and regulations subsequently enacted by the County in the exercise of its police power, and (v) the fee authorized by this Ordinance is not related to the quality of workmanship of the repair of the street following its excavation, but instead relates to the shortening of the effective life of a street and the increased cost in reconstruction that is inherent in any excavation.

K. 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.

## SECTION II

Chapter 9.80 is hereby added to Division II Roads of Title 9 of the Santa ~~Cruz~~ County Code to read as follows:

**9.80.010 TITLE.** This ordinance shall be known as the "Street Trench Cut Cost Recovery Fee."

### **9.80.020 DEFINITIONS.**

"Applicant" shall mean any owner or duly authorized agent of such owner, who has submitted an application for a permit to excavate.

"Chapter" shall mean this chapter of the Santa Cruz County Code.

"County" shall mean the County of Santa Cruz.

"County street" shall mean any Public right of way which has been accepted, or is hereafter accepted by the County Board of Supervisors into the County road system pursuant to Section 941 of the California Streets and Highways Code.

“Department” shall mean the Department of Public Works.

“Director” shall mean the Director of Public Works or his/her designee.

“Excavation” shall mean any opening in the surface or subsurface of the public right of way.

“Facility” or “Facilities” shall mean any and all cables, cabinets, ducts, conduits, converters, equipment, drains, handholds, manholes, pipes, pipelines, splice boxes, surface location markers, tunnels, utilities, vaults, and other appurtenances or tangible things owned, leased, operated, or licensed by an owner or person, that are located or are proposed to be located in the public right of way.

“Owner” shall mean any person, including any agency, department, or subdivision of the County, who owns any facility or facilities that are or are proposed to be installed or maintained in the public right of way.

“Permit” or “permit to excavate” shall mean a permit to perform an excavation as it has been approved or may be amended or renewed by the Department.

“Person” shall mean any natural person, corporation, partnership, or any governmental agency, including any agency, Department, or subdivision of the County, the state of California, or United States of America.

“Public right of way” shall mean the area across, along, beneath, in, on, over, under, upon, and within the dedicated public alleys, boulevards, courts, lanes, places, roads, sidewalks, streets, and ways within the County, as they now exist or hereafter will exist and which are or will be under the permitting jurisdiction of the Department of Public Works.

“Trench Influence Area” shall mean an area three feet adjacent to the trench where the excavation occurs for trenches with four feet or greater of cover over the utility facility from the paved surface, and one and one-half feet adjacent to the trench where the excavation occurs for trenches with less than four feet of cover over the utility facility from the paved surface.

#### **9.80.030. PURPOSE OF TRENCH CUT COST RECOVERY FEE.**

Excavations in paved streets owned and maintained by the County 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 County’s 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 County. In addition, establishment of a trench cut cost recovery fee will create an incentive for coordination of efforts in excavating the streets to lay

utilities. This Chapter shall not be construed to relieve those excavating into the County right of way of the obligation to fill, repair and properly maintain the location of the excavation.

#### **9.80.040 ESTABLISHMENT OF TRENCH CUT COST 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 County a "Trench Cut Cost Recovery Fee." The amount of this Trench Cut Cost Recovery Fee shall be set from time to time by resolution, and shall not exceed the reasonable cost necessary to mitigate the degradation to the public streets caused by such excavation.

#### **9.80.050 VARIANCE FROM PAYMENT OF TRENCH CUT COST RECOVERY FEE.**

Any person subject to the Trench Cut Cost Recovery Fee may request that the Director waive the requirement of payment of the Trench Cut Cost Recovery 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.

#### **9.80.060 EXCEPTIONS.**

(a) Excavations in County streets scheduled for pavement structural improvements within one (1) year of the date of excavation shall be exempt from the Trench Cut Cost Recovery Fee.

(b) No Trench Cut Cost Recovery Fee shall be charged for underground utility district projects, utility line relocations necessitated by County street work projects or by street vacations or abandonments.

(c) No Trench Cut Cost Recovery Fee shall be charged for excavations performed by or for the County Public Works Department.

(d) No Trench Cut Cost Recovery Fee shall be charged with respect to excavation in a sidewalk or a concrete street.

(e) No Trench Cut Cost 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 Director approves the resurfacing.

(f) No Trench Cut Cost Recovery Fee shall be charged for any Persons possessing a valid performance warranty agreement with the County as set forth in Section 9.80.065, except as provided in Section 9.80.085.

(g) Trenchless excavations greater than three feet in depth of cover over the utility facility not requiring a significant surface incision greater than industry bore pit standards may be excluded at the discretion of the Director.

#### **9.80.065 PAVEMENT LIFE PERFORMANCE WARRANTY**

(a) In lieu of paying a Trench Cut Cost Recovery Fee pursuant to Section 9.80.040, a Person who has a valid franchise agreement with the County or is statutorily exempt from franchise requirements shall provide a written pavement life performance warranty in a form acceptable to the County. The warranty shall provide that in the event that subsurface material or pavement over or within the Trench Influence Area becomes depressed, broken, or otherwise fails at any time after the excavation (or joint operation excavation) has been completed until such time as the street surface is completely resurfaced with a structural overlay, that Person shall repair or restore such condition pursuant to the procedure set forth in Section 9.80.095.

(b) In the event that a Person who has a valid franchise agreement with the County or who is statutorily exempt from franchise requirements fails or refuses to provide a written pavement life performance warranty, such Person shall pay the Trench Cut Cost Recovery Fee set forth in Section 9.80.040.

(c) Should a Person who has entered a written pavement life performance warranty with the County fail to repair, replace or restore a Public right of way in accordance with the terms of the warranty, County may cause the repair to be made and charge the amount of the repair costs to the Person. After three failures to make repair on any warranted trenches countywide within any twenty-four (24) month period, the Director may, at Director's discretion, terminate the Pavement Life Performance Warranty Agreement with the Person and thereafter require the Person to pay the Trench Cut Cost Recovery Fee pursuant to Section 9.80.040.

(d) Pavement life warranty agreements are not transferable or assignable.

#### **9.80.070 PROTEST OF TRENCH CUT COST RECOVERY FEE--CLAIMS FOR REFUND--APPEALS**

(a) **Any** person required to pay a Trench Cut Cost Recovery Fee pursuant to Section 9.80.040 and not granted a variance pursuant to Section 9.80.050 of this chapter who desires to protest or otherwise challenge the imposition or amount of the fee shall tender to the County payment in full of the fee when due, accompanied by a written notice containing the following information:

1. **A** statement that the required payment is tendered under protest; and
2. **A** description of the factual and legal basis for the protest. If the person contends that the fee is inconsistent with the provisions of a contract, the written notice shall include a copy of the contract along with a description of the claimed inconsistency.



(b) Any person required to pay a Trench Cut Cost Recovery Fee pursuant to Section 9.80.040 of this chapter, and who has complied with the fee protest provisions of Subsection A of this Section, may submit a claim for refund of the fee in the manner set forth in California Government Code Section 910 *et seq.* and within the time limits set forth in Government Code Section 911.2. In evaluating the claim, the Board shall consider whether the claimant has established: (i) the claimant's excavation will not degrade and shorten the life of the surface of the street(s), (ii) that the degradation of the street(s) will not increase the frequency and cost to the public of necessary resurfacing, maintenance and repair of the street(s); (iii) that the imposition or amount of the Trench Cut Cost Recovery Fee is inconsistent with a contract to which the claimant is a party; or (iv) that the imposition or amount of the Trench Cut Cost Recovery Fee required of the claimant is unlawful for another reason.

(c) The validity or amount of a Trench Cut Cost Recovery Fee shall not be contested in any action or proceeding unless the action or proceeding is commenced within ninety (90) days after a claim is filed and denied pursuant to Subsection B of this section.

#### **9.80.080 UTILITY MASTER PLANS.**

(a) Any utility owning, operating or installing in a Public right of way facilities providing water, sewer, gas, electric, communication, video or other utility services, shall prepare and submit to the Director a utility master plan, in a format specified by the Director, that shows the location of the utility's existing facilities in Public rights of way, and shows all of the utility's planned major utility work in Public rights of way for the next year. Utilities shall submit an initial utility master plan no later than one hundred eighty (180) days after the effective date of the ordinance adopting this section. Thereafter, each utility shall submit annually, on the first regular business day of July, a revised and updated utility master plan. As used in this subsection, the term "planned major utility works" refers to any and all future excavations planned by the utility when the utility master plan or update is submitted that will affect any Public right of way for more than fifteen (15) days, provided that the utility shall not be required to show future excavations planned to occur more than a year after the date that the utility master plan or update is submitted.

(b) The Director shall make all utility master plans submitted in accordance with subsection (a) of this section, available for public inspection.

(c) Prior to applying for an excavation permit, any person planning to excavate in the Public rights of way shall review the utility master plans and the County's five year repaving plan on file with the Director and shall coordinate, to the extent practicable, with the utility and street work shown on such plans to minimize damage to, and avoid undue disruption and interference with the use of Public rights of way.

### **9.80.085 MORATORIUM**

(a) Excavation in newly renovated Public right of ways is prohibited for five (5) years after filing of a notice of completion or acceptance of a new street or structural overlay of an entire street except as follows:

- (1) Emergency which endangers life or property;
- (2) Repair or modification to prevent interruption of essential utility services;
- (3) Relocation work that is mandated by County, State or Federal legislation;
- (4) Service for buildings where no other reasonable means of providing service exists, as determined by the Director;
- (5) In a Public right of way that the County has scheduled for resurfacing within one (1) year after the date of excavation;
- (6) For potholing to verify utility depth or location;
- (7) Trenchless excavations greater than three feet in depth of cover over the utility facility not requiring a significant surface incision greater than industry bore pit standards may be allowed at the discretion of the Director; or
- (8) Other situations deemed by the Director to be in the best interest of the general public.

(b) Where a permit is issued to excavate during the five (5) year period after filing of a notice of completion or acceptance of a new street or structural overlay of an entire street, payment of the Trench Cut Cost Recovery Fee will be required regardless of whether the Person has executed a pavement life performance warranty.

### **9.80.090 COORDINATION WITH COUNTY**

(a) Prior to applying for an excavation permit in the Public rights of way the County shall review on behalf of the Applicant the County's anticipated repaving plans and the utility master plans on file with the Director. The Applicant shall coordinate, to the extent practicable, with the utility and street work shown on such plans to minimize damage to, and avoid undue disruption and interference with the Public rights of way. Such coordination shall include:

- (1) Whenever two or more parties (*i.e.*, the County or any Applicant) have proposed a major excavation in the same block, they shall meet and confer with the County regarding whether it is feasible to conduct a joint operation excavation. If the Director determines that it is feasible to conduct a joint operation excavation, a single contractor shall be selected and a single application fee charged, except that no fee shall be charged if any of the Persons conducting a joint operation excavation possesses a valid performance warranty agreement with the County as set forth in Section 9.80.065.

(2) Any Applicant aggrieved by the Director's decision to require a joint operation excavation may, within fifteen (15) days of receipt of the Director's written notice, file written notice of an appeal to the Board, stating the grounds thereof. In determining such appeal, the Board shall consider the impact of the proposed excavation on the neighborhood, the Applicant's need to provide services to a property or area, facilitating the deployment of new technology as directed pursuant to official County policy, and the public health, safety, welfare, and convenience.

(b) To avoid future excavations and to reduce the number of street excavations, telecommunication companies shall be requested, when practical, to install spare conduits,

#### **9.80.095 REPAIR OF SUNKEN PAVEMENT OVER EXCAVATION,**

(a) If the subsurface materials or pavement over or within the Trench Influence Area becomes depressed or broken at any time (a) within one (1) year after the excavation has been completed and accepted and before resurfacing of the Public right of way, where the Person has paid a Trench Cut Cost Recovery Fee pursuant to 9.80.040, or (b) at any time prior to such time as the street surface is completely resurfaced with a structural overlay, where the Person has provided a pavement life Performance warranty pursuant to Section 9.80.065, the Person shall, upon written notice from the Director, immediately inspect the depressed or broken area to ascertain the cause of the failure. The Person shall make repairs to the installation or backfill and have the pavement restored in the manner and within the time period specified by the Director. A Trench Cut Cost Recovery Fee shall not be charged for work performed under this Section.

(b) If the pavement is not restored as specified by the Director, unless delayed by conditions beyond the Person's control, the Director may cause the work to be done after giving the Person twenty-four hours final notice. The cost thereof, including any inspection costs and administrative overhead incurred by the County, shall be assessed against the Person. The Person shall remain responsible for any future repairs of that portion of pavement over the excavation that was repaired by the County for a period of one (1) year, where the Person has paid a Trench Cut Cost Recovery Fee pursuant to 9.80.040, or at any time prior to such time as the street surface is completely resurfaced with a structural overlay, where the Person has provided a pavement life performance warranty pursuant to Section 9.80.065.

#### **9.80.100 CREATION OF TRENCH CUT COST RECOVERY FEE FUND.**

There is hereby created and established the "Trench Cut Cost Recovery Fee Fund."

#### **9.80.110 DEPOSIT OF MONEYS.**

All funds received pursuant to the provisions of Section 9.80.040 of this Code shall be placed in the Trench Cut Cost Recovery Fee Fund.

**9.80.120 EXPENDITURE OF FUNDS.**

Funds maintained in the Trench Cut Cost Recovery Fee Fund shall only be expended for the maintenance, rehabilitation, resurfacing administration and protection of the Public right of way where excavation has occurred after the effective date of this ordinance, and for refunds of fees approved by the Board pursuant to Section 9.80.070 of this Code.

**SECTION III.**

**SEVERABILITY.** If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors of the County of Santa Cruz hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

**SECTION IV**

This Ordinance shall take effect on the 31<sup>st</sup> day after the date of final passage.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Cruz, State of California, this \_\_\_\_\_ day of \_\_\_\_\_, 2002, by the following vote:

AYES: SUPERVISORS

NOES: SUPERVISORS

ABSENT: SUPERVISORS

DRAFT

\_\_\_\_\_  
Chairperson of said Board

ATTEST: \_\_\_\_\_  
Clerk of said Board

APPROVED AS TO FORM:

By: *David Kuehly*  
Assistant County Counsel

Distribution: County Counsel  
Public Works