

ORDINANCE NO. 4162

AN ORDINANCE OF THE CITY OF HUNTINGTON BEACH ADDING CHAPTER 12.40 TO THE HUNTINGTON BEACH MUNICIPAL CODE REGARDING INSTALLING CITY-OWNED COMMUNICATIONS INFRASTRUCTURE AS PART OF RIGHT-OF-WAY PROJECTS OF ELECTRIC, GAS AND TELECOMMUNICATION PROVIDERS

WHEREAS, the City has begun, and intends to install a comprehensive broadband fiber network connecting City buildings, including City Hall, the Libraries, Police Stations, Fire Stations, the Lifeguard Headquarters, Public Works Yards, Community Centers and City infrastructure, including arterial traffic signals, sewer lift stations, water wells, reservoirs and similar facilities; and

The largest cost element for deploying a communications network is burying fiber optic cables and conduit underground; and

The City seeks to install conduit and fiber optic cable in all eligible opportunities, including pursuant to voluntary agreements with electric, gas, telephone, information services, traffic controls, transit service, video, and other similar telecommunications providers installing conduit in streets and highways where the City has identified the need to deploy broadband to serve City buildings and infrastructure; and

Coordination between the City and electric, gas, and telecommunications providers helps reduce deployment time by minimizing the need to perform duplicative reviews and permits for work done in the same vicinity; and

The City and electric, gas, and telecommunications providers intend to install, construct, own and operate underground conduit facilities in connection with each party's right-of-way projects; and

To minimize the costs of constructing separate trenches and facilities, the City and electric, gas, and telecommunications providers are willing to share the costs of such construction in accordance with the terms and conditions set forth herein; and

The City Council desires to adopt regulations to facilitate installation of City-owned high speed data communications infrastructure in conjunction with issuance of encroachment permits granted to entities installing electric, gas, and telecommunications infrastructure; and

NOW, THEREFORE, the City Council of the City of Huntington Beach does hereby ordain as follows:

SECTION 1. Recitals Made Findings

The above recitals are hereby declared to be true and correct findings of the City Council of the City of Huntington Beach.

SECTION 2. Amendment to Municipal Code

Chapter 12.40, entitled **Municipal Communications Infrastructure** is hereby added to the Huntington Beach Municipal Code to read as follows:

12.40.010 — Definitions.

For the purposes of this Chapter, the following definitions shall apply unless the context clearly indicates otherwise. If a word is not defined in this Chapter, and not otherwise defined in State law, the common and ordinary meaning of the word shall apply.

“**City**” means the City of Huntington Beach.

“**City Communications Infrastructure**” shall mean fiber optic cable, conduits, pull boxes, and other facilities that the City employs to provide communications services.

“**Department**” means the Department of Public Works of the City.

“**City Manager**” shall mean the City Manager or his or her designee(s) responsible for managing City Communications Infrastructure.

“**Incremental Cost**” shall mean the cost associated with adding City Communications Infrastructure to a Large Excavation Project, including the cost of the materials the City requires, and any additional labor costs.

“**Large Excavation Project**” shall mean any excavation by a Utility Excavator to install at least six hundred (600) linear feet of conduit for electric, gas, telephone, information services, telecommunications, traffic controls, transit service, video, and other similar services.

“**Permit**” or “**Permit to Excavate**” shall mean an encroachment permit granted under Section 12.13.040 to perform a project as it has been approved or may be amended or renewed by the Department.

“**Public Right-of-Way**” shall mean the area across, along, beneath, in, on, over, under, upon, and within the dedicated public alleys, courts, lanes, places, roads, sidewalks, streets, ways and City-owned properties within the City, as they now exist or hereafter will exist and which are or will be under the permitting jurisdiction of the Department.

“**Regulations**” means those Administrative Regulations prepared by the Directors of Public Works and Information Services and approved by the City Manager to implement and administer the installation of City Communications Infrastructure, including installation in connection with Large Excavation Projects.

“**Standard City Communications Infrastructure Specifications**” shall mean the type, size, and quantity of fiber optic cable, conduits, the size and frequency of pull boxes, and any other facilities that the City Manager determines are necessary to serve the City's communications needs.

“**Utility Excavator**” shall mean any owner whose facility or facilities in the Public Right-of-Way are used to provide electric, gas, telephone, information services, telecommunications, traffic controls, transit service, video, and other similar services to customers regardless of whether the California Public Utilities Commission deems such owner a public utility.

Section 12.40.020 – Installation of City Communications Infrastructure.

A. **Joint Trench.** To facilitate the City’s efforts to develop City Communications Infrastructure, and limit excavation in the Public Right-of-Way, a Utility Excavator applying for an encroachment permit under Section 12.13.040 for a Large Excavation Project shall comply with the requirements of this Chapter.

B. **Need for City Communications Infrastructure.** The City Manager shall consider adding City Communications Infrastructure to any Permit to Excavate for a Large Excavation Project in order for the City to create more efficient delivery of communications services to the public and for the City’s needs.

C. **Notice Required.** A Utility Excavator applying to the Department for an encroachment permit to install a Large Excavation Project in the Public Right-of-Way pursuant to Section 12.13.040 shall notify the City Manager of its application in the manner set forth in the Regulations at least fourteen (14) days before submitting the encroachment permit application to the Department.

D. **Initial Response to Notice.** Upon receipt of a Notice that a Utility Excavator intends to apply for a Permit for a Large Excavation Project, the City Manager shall perform a preliminary review of the application to determine whether it is both financially feasible and consistent with the City’s long-term goals to add City Communications Infrastructure to the proposed Large Excavation Project.

1. If the City Manager determines that City Communications Infrastructure should be included in the proposed Large Excavation Project, then the City shall seek to enter into an agreement with the Utility Excavator to install City Communications Infrastructure in the Large Excavation Project in exchange for the City paying the Utility Excavator the Incremental Costs.

2. If the City Manager determines that adding City Communications Infrastructure to the proposed Large Excavation Project is not financially feasible or consistent with the City’s long-term goals, he or she shall notify the Utility Excavator and the Department within fourteen (14) days of receipt of the Notice that the City will not participate in the Large Excavation Project. In this case, pursuant to Chapter 12.13, the Utility Excavator shall submit its Permit to Excavate to the Department.

E. **Approval of Permit for Large Excavation Project with City Communications Infrastructure.** Where the City Manager determines that City Communications Infrastructure should be added to the proposed Large Excavation Project, he or she will request that the Utility Excavator submit plans for the Large Excavation Project incorporating the Standard City Communications Infrastructure Specifications. The City Manager shall negotiate in good faith with the Utility Excavator on an agreement incorporating City Communications Infrastructure into the Large Excavation Project in exchange for the City paying the Utility Excavator the Incremental Cost. Provided that the Utility Excavator negotiates with the City in good faith, the Utility Excavator may refuse to enter into an agreement with the City to install and dedicate City Communications Infrastructure in the Large Excavation Project.

F. **Utility Excavator's Incremental Costs.** The City shall pay the Utility Excavator's incremental costs when the City participates in a Large Excavation Project by installing City Communications Infrastructure.

G. **Exception.** The requirements of this Section 12.40.010 shall not apply to an application for an Emergency Permit under Section 12.13.030.

Section 12.40.030. City Communications Infrastructure Regulations.

A. **Adoption of City Communications Infrastructure Regulations.** The Directors of Public Works and Information Services shall propose, and the City Manager may approve City Communications Infrastructure Regulations to implement and administer the installation of City Communications Infrastructure as part of Large Excavation Projects.

B. **Purpose of City Communications Infrastructure Regulations.** The Regulations shall specify the manner in which the City will participate in Large Excavation Projects by installing City Communications Infrastructure that meets the City's needs at a reasonable cost.

C. **Minimum Requirements.** At a minimum, the Regulations shall contain the following procedural and substantive requirements for the installation of City Communications Infrastructure in Large Excavation Projects:

1. The process for the City Manager to review Large Excavation Projects in a timely manner to determine if City participation is feasible and to verify its participation by informing the Utility Excavator and the Department within fourteen (14) days of receiving notice;

2. The standard technical specifications for City Communications Infrastructure;

3. The standard agreement between the City and the Utility Excavator by which the Utility Excavator will install and dedicate the City Communications Infrastructure in exchange for the City paying the Utility Excavator the Incremental Cost;

4. The standard methodology for determining the Incremental Costs associated with installing City Communications Infrastructure in Large Excavation Projects, including whether the Costs include paying prevailing wages pursuant to Labor Code Section 1720(c)(2). The Incremental Cost will be calculated by multiplying the per foot Incremental Cost by the length of the conduit run. The per foot Incremental Cost includes design, engineering, trenching, installation of conduit, placement of vaults, and all other associated items for installing the City Communications Infrastructure. Separate Incremental Cost determinations shall be made for both shared and dedicated trenches. The Incremental Cost shall be determined according to the City paying prevailing wages pursuant to Labor Code Section 1770, *et seq*, for only the Incremental Cost of installing the City Communications Infrastructure; and

5. The requirements and process for Utility Excavators to seek exemptions from using the City’s standard methodology for determining Incremental Costs when installing Standard City Communications Infrastructure in excavation projects.

SECTION 3. This Ordinance shall become effective 30 days after its adoption.

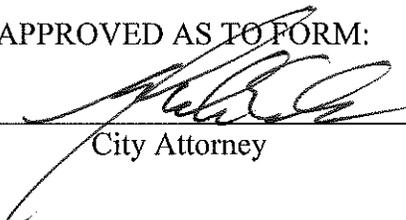
PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the _____ day of _____, 2018.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

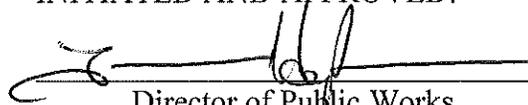


City Attorney

REVIEWED AND APPROVED:

City Manager

INITIATED AND APPROVED:



Director of Public Works

LEGISLATIVE DRAFT

Chapter 12.40

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