

ORDINANCE NO. 840

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PATTERSON,
ADDING A CHAPTER TO THE PATTERSON MUNICIPAL CODE, TITLE 12 “STREETS AND OTHER
PUBLIC PLACES” ESTABLISHING A STREET TRENCH CUT COST RECOVERY FEE TO BE
IMPOSED IN CONJUNCTION WITH PERMITS FOR EXCAVATION IN THE PUBLIC RIGHT-OF-WAY**

The City Council of the City of Patterson does ordain as follows:

**Chapter
STREET TRENCH CUT COST RECOVERY FEE**

Sections:

Title.

Definitions.

Purpose of trench cut cost recovery fee.

Establishment of trench cut cost recovery fee.

Variance from payment of trench cut cost recovery fee.

Exceptions.

Pavement life performance warranty.

Protest of trench cut cost recovery fee—Claims for refund—Appeals.

Utility master plans.

Moratorium.

Coordination with City.

Repair of sunken pavement over excavation.

Creation of trench cut cost recovery fee fund.

Deposit of moneys.

Expenditure of funds.

Title.

This chapter shall be known as the “street trench cut cost recovery fee ordinance.”

Definitions.

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

shall mean the

“Council” shall mean the City Council of the City of Patterson

“Chapter” shall mean this chapter of the City of Patterson Municipal Code.

“City” shall mean the City of Patterson

“City street” shall mean any public right-of-way which has been accepted, or is hereafter accepted by the City Council into the City 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.

“City Engineer” shall mean Director of Engineering 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 City, 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 the 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 City, as they now exist or hereafter will exist and which are or will be under the permitting jurisdiction of the Department of Public Works.

“Seal coat” means a nonstructural road surface treatment designed to increase pavement life, such as a chip seal or a slurry seal.

“Square foot trench repair reimbursement fee” is a fee, the amount of which shall be set forth in the public works service or engineering fees schedule, as amended, determined based on similar fees charged by other public agencies.

“Structural improvements” means major road surface improvements such as road reconstruction or overlays.

“Trench influence area” shall mean an area three and one-half feet adjacent to the edge of trench where the excavation occurs.

Purpose of trench cut cost 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 trench cut cost 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.

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 City a “trench cut cost recovery fee.” The amount of this trench cut cost recovery fee shall be determined by reference to the tables attached as Exhibit A to the ordinance codified in this chapter, which tables may be modified annually (Every January 1st) by the SF-Bay Area Construction Cost Index or by resolution and shall not exceed the reasonable cost necessary to mitigate the degradation to the public streets caused by such excavation.

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.

Exceptions.

(A) Excavations in City streets scheduled for pavement structural improvements within two years 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 initiated by the City, or utility line relocations necessitated by City 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 City 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 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.

(F) No trench cut cost recovery fee shall be charged for repair work required by the City Engineer.

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 and not granted a variance pursuant to who desires to protest or otherwise challenge the imposition or amount of the fee shall tender to the City 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 complete, executed 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, 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 City Manager shall consider whether the claimant has established: (1) the claimant's excavation will not degrade and shorten the life of the surface of the street(s); (2) 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); (3) 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 (4) that the imposition or amount of the trench cut cost recovery fee required of the claimant is unlawful for another reason. If the City Manager finds that future imposition of the trench cut cost recovery fee against the claimant would also be inconsistent with a contract to which the claimant is a party or would be unlawful for another reason, the claimant shall thereafter be exempt from the trench cut cost recovery fee, unless the City Manager later finds on the basis of changed circumstances that the exemption should be revoked.

(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 90 days after a claim is filed and denied pursuant to subsection (B) of this section

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 City Engineer a utility master plan, in a format specified by the City Engineer, 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 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 August, a revised and updated utility master plan. A utility may extend its deadline to submit its utility master plan by a period not to exceed 15 days by submitting written notice to the City Engineer of the delay and identifying the reasons for the delay. As used in this subsection, the term "planned major utility works" refer 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 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 City Engineer 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 City's repaving plan on file with the City Engineer 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.

Moratorium.

(A) Excavation in newly renovated public rights-of-way is prohibited for three 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 or that is required by a City redevelopment agency project;
- (4) Service for buildings or parcels where no other reasonable means of providing service exists, as determined by the City Engineer;
- (5) In a public right-of-way that the City has scheduled for overlay or reconstruction within two years after the date of excavation due to failure of the original pavement;
- (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 City Engineer;
- (8) Excavations which are essential components of a regional project which will provide a substantial public benefit, such as extensions of water lines to enable delivery of new supplemental water supplies; or

(9) Other situations deemed by the City Engineer to be in the best interest of the general public.

(B) Where a permit is issued to excavate during the three-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 unless: (1) an emergency need to excavate arises from a natural disaster such as an earthquake; or (2) the excavation is necessary to accomplish relocation work that is mandated by City, County, State or Federal legislation or that is required by a City Redevelopment Agency project; or (3) the utility or public agency provided timely notice of intention to excavate as provided in

(C) The moratorium on excavations to a newly renovated public right-of-way shall not apply if: (1) the only renovation undertaken to the right-of-way is a seal coat; or (2) the City pavement management plan does not identify the renovation at least three months prior to initiation of the renovation work.

(D) The moratorium in subsection (A) of this section shall not apply if the structural overlay was completed prior to the effective date of the ordinance codified in this chapter.

Coordination with City

(A) Prior to applying for an excavation permit in the public rights-of-way, the City shall review, on behalf of the applicant, the City anticipated repaving plans and the utility master plans on file with the City Engineer. 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 City or any applicant) have proposed a major excavation in the same block, they shall meet and confer with the City regarding whether it is feasible to conduct a joint operation excavation. If the parties select a single contractor to do the joint work then the City Engineer may direct that only a single trench cut cost recovery fee shall be 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 City as set forth in

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

(C) In order to encourage coordination of excavation and pavement scheduling and planning

between the City and excavators, the City shall update at least annually its anticipated repaving plans. The anticipated repaving plans shall also identify the public rights-of-way which are then subject to the moratorium provisions of, and the moratorium expiration date for each such right-of-way. A copy of the anticipated repaving plans shall be available for review at the Department of Public Works by any interested person.

(D) The City Engineer shall conduct a working group meeting at least once each year at which utilities and public agencies and other interested parties may meet to coordinate excavation and repaving schedules. The City Engineer shall maintain a list of those requesting notice of the working group meeting, and, at least 30 days prior to the meeting date, shall mail notice of the time and location of the meeting to each person who has requested notice. If the initial working group meeting is not completed on the designated meeting date, the meeting may continue on a subsequent date as the Director announces at the end of the first meeting.

(E) Each year, the City Engineer shall notify the utilities of the roads selected for overlay (the “annual overlay list”). Any utility or public agency may mail written notice to the City Engineer of their intention to excavate in a public right-of-way that has been identified in the annual overlay list by identifying the location and dimensions of the planned excavation and the estimated commencement and completion dates of the work. The date of completion of the planned excavation shall be no later than three years after the date of notice of the annual overlay list. The notice of intention to excavate shall be mailed not more than 60 days after mailing of the annual overlay list. After receipt of a timely notice, the City may delay any anticipated repaving of the affected public right-of-way to a date after the planned excavation. If the City proceeds with repaving prior to the planned excavation, no trench cut cost recovery fee shall be charged to the utility or public agency for the planned excavation that is substantially consistent with excavation described in the notice of intention to excavate. Nothing in this section affects the obligations of utilities or public agencies under a written pavement life performance warranty, nor does this section permit excavations otherwise prohibited by Moratorium

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, the person shall, within 14 days of mailing of written notice from the City Engineer, 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 City Engineer, but not to exceed 30 days. In the event the City Engineer determines the pavement condition creates a road hazard, the City Engineer may require the repair to be completed within 48 hours. 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 City Engineer, unless delayed by conditions beyond the person's control, the City Engineer may cause the work to be done after giving the person 24 hours' final notice. The person shall thereafter, upon written demand by City Engineer, pay the City an amount calculated by multiplying the number of square feet of pavement restored by the square foot trench repair reimbursement fee set forth in the then most current public works service and capital improvement fees schedule. The person shall remain responsible for any future repairs of that portion of pavement over the excavation that was repaired by the City.

Creation of trench cut cost recovery fee fund.

There is created and established the "trench cut cost recovery fee fund." The fund is a restricted fund, and all funds deposited into the trench cut cost recovery fee fund shall be used solely for the purposes identified in this ordinance.

Deposit of moneys.

All funds received pursuant to the provisions of shall be placed in the trench cut cost recovery fee fund.

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 rights-of-way that have been excavated after the effective date of the ordinance codified in this chapter, and for refunds of fees approved by the Council.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Patterson held on the 7th day of April 2020, by Mayor Novelli, who moved its introduction, which motion being duly seconded by Councilmember McCord. Said Ordinance was given a second reading at a regular meeting of the City Council held on April 21, 2020, and after such reading, Mayor Novelli moved its adoption, seconded by Mayor Pro Tem Farinha, and said Ordinance was thereupon adopted by the following roll call vote:

AYES: Councilmembers Farinha, McCord, Homen and Mayor Novelli

NOES: None

EXCUSED: Councilmember Naranjo

APPROVED:



Deborah M. Novelli, Mayor of the City of Patterson

ATTEST:



Maricela L. Vela, City Clerk of the City of Patterson