



## **STAFF REPORT TO THE CITY COUNCIL**

**DATE:** Regular Meeting of July 11, 2017

**TO:** Mayor de Vera and Members of the City Council

**SUBMITTED BY:** Michael Roberts, Public Works Director/City Engineer  
J. Patrick Tang, City Attorney

**SUBJECT:** Ordinance to Amend Hercules Municipal Code Title 7, Chapter 1 to Allow the City to Require the Addition of City Communications Infrastructure as a Condition to the Approval of Any Permit Issued for an Excavation Project, in Order to Facilitate Efforts to Develop Communications Infrastructure, Create a More Efficient Delivery of Communications Services to the Public, and Limit Excavations in the Public Right-of-Way

### **RECOMMENDED ACTION:**

Waive the second reading and adopt the proposed additions to existing Municipal Code Title 7, Chapter 1, with modifications as directed by Council at the regular meeting of June 27, 2017.

### **COMMISSION/SUBCOMMITTEE ACTION AND RECOMMENDATION:**

None.

### **FISCAL IMPACT OF RECOMMENDATION:**

If the City were to require the “joint trench” placement of telecommunications infrastructure such as conduit or dark fiber pursuant to an ongoing utility or telecommunications trenching project, the City would in most instances be required to pay the incremental cost of adding the additional infrastructure. The Council has previously allocated \$50,000 for placement of telecommunications infrastructure in priority locations as identified by staff (see Attachment 2), which is intended to provide the initial funding for the placement of telecommunications infrastructure in select locations within the City’s rights-of-way.

### **DISCUSSION:**

The draft ordinance came before the Council for discussion and action at the meeting of June 27, 2017. The Council approved the ordinance on first reading, with a minor modification proposed by Council Member Romero in Sec. 7-1.323(j)(1) as follows (changes in ***bold italic***):

“The Director of Public Works *with the approval of the City Manager* may exempt projects from the requirements of this Chapter where compliance is found to be not practical or feasible, either on the Director’s own initiative, or pursuant to a Request for exemption. Requests for an exemption shall be in writing, and the Director’s decision shall be final.”

The draft ordinance in your agenda materials reflects the above noted change. The ordinance would provide the regulatory authority for the City to require telecommunications companies and utilities that trench in the City’s rights-of-way to place additional telecommunications infrastructure in the form of empty conduit and/or dark fiber within their trenches for the City’s future use.

A number of cities and counties throughout the country have over the years taken the opportunity to place telecommunications infrastructure (usually empty conduit and pull boxes, and sometimes dark fiber) in open trenches in the public rights-of-way. In many cases, this has allowed the public entity to lease the empty conduit or dark fiber to telecommunications companies looking to expand their existing fiber optic capacity. Telecommunications companies needing to expand their fiber optic capacity typically prefer to lease conduit and/or dark fiber from public entity owners when it is available, because it is more economical and faster than having to pay the cost of digging up and repaving the street to put in new conduit.

The benefits to a public entity that is able to lease telecommunications infrastructure that has been put in place when open trench opportunities arise include:

1. Potential for revenue in the form of lease agreements or percentage of gross revenue generated from use of the infrastructure.
2. Avoiding additional street cuts and trenching that shortens the life of the City’s paved surfaces and inconveniences the public.
3. Allowing the City to negotiate with telecommunications entities for other benefits, such as fiber capacity to link all municipal, county, school district, public safety, library, and other public service facilities.
4. Potential for providing fiber to the premises (FTTP) for existing and future residences and businesses, which would enhance the City’s ability to compete with Emeryville, San Leandro, and other cities that provide FTTP to residences and businesses.

#### **RELATED ACTIONS:**

July 26, 2016 – City Council adopted a Resolution Authorizing the City Manager to Expend an Amount Not to Exceed \$50,000 for the Installation of Fiber Optic Broadband Infrastructure Within the City Rights-of-way as Joint Trench Opportunities Become Available.

September 27, 2016 - Final Adoption of Ordinance Amending Hercules Municipal Code Title 7, Chapter 1, to Establish a 5 Year Moratorium on Trenching in New Street Surfacing.

June 27, 2017 – Draft Open Trench Ordinance with minor amendments approved on first reading.

## ATTACHMENTS:

1. Draft Ordinance to Amend Hercules Municipal Code Title 7, Chapter 1 to Require the Addition of City Communications Infrastructure (with changes approved by Council on June 27, 2017).
2. July 26, 2016 Staff Report and Resolution - Conduit Installation for Fiber Optic Network \$50,000 Appropriation.

### *Financial Impact*

**Description:**

None.

**Funding Source:****Budget Recap:**

Total Estimated cost:	\$	New Revenue:	\$
Amount Budgeted:	\$	Lost Revenue:	\$
New funding required:	\$	New Personnel:	\$
Council Policy Change:	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		