

Ordinance No. 502

Ordinance of the City of Hercules Granting the Public Works Director the Authority 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 City Communications Infrastructure, Create a More Efficient Delivery of Communications Services to the Public, and Limit Excavations in the Public Right-of-Way

WHEREAS, it is the intent of the City of Hercules, in enacting Chapter 7-1.323, to encourage improvement and modernization of telecommunications infrastructure; and

WHEREAS, access to modern telecommunications infrastructure is vital for communication and economic development; and

WHEREAS, the City recognizes the need to provide local residents and businesses within the community with the infrastructure required to meet their telecommunications needs; and

WHEREAS, the City of Hercules seeks to promote widespread access to the most technologically advanced telecommunications services for all City residents and businesses in a nondiscriminatory manner; and

WHEREAS, it is the responsibility of the City to protect and control access to public rights-of-way; and

WHEREAS, all subsurface construction activities in the City right-of-way should be considered for the installation of telecommunications conduit and other related equipment wherever practical and feasible to meet present and future needs; and

WHEREAS, it is consistent with the City's goals and values to encourage investment in and improvement of telecommunications infrastructure.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Hercules, that the Hercules Municipal Code Title 7, is amended to include a new section 7-1.323 to read as follows:

Section 7-1.323 Installation of City Communications Infrastructure.

(a) In recognition of the need to provide local residents and businesses within the community with the infrastructure required to meet current and future telecommunications needs, all subsurface construction activities in the City right-of-way will include provisions for the installation of telecommunications cable, conduit, and other related equipment wherever practical and feasible. Where appropriate, telecommunications infrastructure shall be installed in or adjacent to City rights-of-way in conformance with current city standards. City staff will

work with contractors to identify the most cost-effective approach consistent with City requirements. All installations shall conform to the size, shape, location, and other specifications as determined by the Director of Public Works.

(b) **Need for City Communications Infrastructure.** The Public Works Director shall consider adding City communications infrastructure to any permit issued for an excavation project under this chapter to create more efficient delivery of communications services to the public and for the City's needs.

(c) **Response to Notice.** Upon receipt of a notice issued pursuant to the Public Works Director's Communications Infrastructure Requirements that a utility or municipal excavator intends to apply for an excavation permit, the Public Works Director shall determine whether it is both financially feasible and consistent with the City's long-term goals to add City communications infrastructure to the proposed excavation project.

(1) If the determination is affirmative, the presumption will be that the Public Works Director will cause the City to participate in the excavation project by requiring the excavator to install City communications infrastructure, or in the alternative, requiring the excavator to allow the City's own contractor to install City communications infrastructure.

(2) If the determination is negative, the Public Works Director shall notify the applicant within the time provided by the Director's Communications Infrastructure Requirements that the Public Works Director does not intend to participate in the excavation project.

(d) **Denial of Application.** The Public Works Director shall deny an application for a permit if the Director determines that the applicant has failed to comply with the City's Communications Infrastructure Requirements.

(e) **Applicant's Incremental Costs.** The City of Hercules shall be responsible for the applicant's incremental costs when the Department participates in an excavation project by causing the installation of City communications infrastructure.

(f) **Exception.** The requirements of this Section 7-1.323 shall not apply to an application for an emergency permit under Section 7-1.106.

(g) **Adoption of Communications Infrastructure Requirements.** The Public Works Director shall develop and implement the Director's Communications Infrastructure Requirements within 60 days of final adoption of this Ordinance, which shall be updated from time to time as necessary.

(h) **Purpose of Requirements.** The Director's Communications Infrastructure Requirements shall specify the manner in which the Director will authorize City participation in excavation projects by causing the installation of communications infrastructure that meets the City's needs at a reasonable cost.

(i) **Minimum Requirements.** At a minimum, the Director's technology requirements shall contain the following procedural and substantive requirements for the installation of communications infrastructure in excavation projects:

- (1) The process for the Director to review planned excavation projects in a timely manner to determine if City participation is feasible and to verify its participation by informing the applicant within 7 days of receiving notice;
- (2) The criteria to be used by the Director to decide whether to decline to participate in excavation projects;
- (3) The standard technical specifications for City communications infrastructure;
- (4) The standard methodology for determining the incremental costs associated with installing City communications infrastructure in excavation projects;
- (5) The requirements and process for excavators to seek exemptions from using the City's standard methodology for determining incremental costs when installing standard City communications infrastructure in excavation projects; and
- (6) Alternative methodologies for determining the City's incremental costs when exemptions are granted.

(j) **Exemptions.**

- (1) 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.
- (2) An exemption application shall include all information necessary for the Director to make a decision, including but not limited to documentation showing factual support for the requested exemption.
- (3) The Director may approve the exemption application in whole or in part, with or without conditions.

(k) **Reporting Requirements.** The Public Works Director shall file annual reports with the City Council regarding the number of excavation permits issued by the Director for projects meeting the criteria for Technology participation set forth in this Chapter, the locations of the excavations identified in the excavation projects, the identities of the applicants for the excavation permits, whether the Director opted to participate in the excavation projects by installing communications infrastructure, the City's costs to participate in the excavation projects by installing City communications infrastructure; and the status of the installation of City communications infrastructure in the excavation projects."

2. **Severability.**

In the event that any one or more of the provisions of this Ordinance are for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any of the other provisions of this Ordinance, and this Ordinance shall be construed as if such invalid, illegal or unenforceable provisions had never been contained herein.

3. **Effective Date and Publication.**

The City Clerk shall certify to the adoption of this Ordinance and shall publish or post the Ordinance as required by law. This Ordinance shall be effective thirty days from date of final adoption.

The foregoing Ordinance was duly and regularly adopted at a regular meeting of the City Council of the City of Hercules held on the 11th day of July, 2017 by the following vote of the Council:

AYES:

NOES:

ABSENT:

Myrna de Vera, Mayor

ATTEST:

Lori Martin, MMC
City Clerk