

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
COMMERCE ADOPTING AMENDMENTS TO TITLE 12 (STREETS AND
SIDEWALKS) OF THE COMMERCE MUNICIPAL CODE BY ADDING
CHAPTER 12.05, ESTABLISHING REGULATIONS OF STREET CUTS
ON NEWLY PAVED STREETS**

WHEREAS, California Government Code sections 37350 et seq., and 38775 provide that a municipality may take care of and control its property for the common benefit, and prevent encroachments upon public ways; and

WHEREAS, Section 253 of the Federal Telecommunications Act of 1996 (47 U.S. Code § 253) recognizes “the authority of ... local government to manage the public rights-of-way,” provided that local regulation may not effectively prohibit a company’s ability to provide telecommunications service; and

WHEREAS, Article XI, Section 9 of the California Constitution allows cities to establish conditions and regulations over the use of the public right-of-way to supply utility services; and

WHEREAS, Public Utilities Code section 2902 reserves the right of cities to “regulate the relationship between a public utility and the general public in matters affecting the health, convenience, and safety of the general public, including matters such as the use and repair of public streets by any public utility, [and] the location of the poles, wires, mains, or conduits of any public utility, on, under, or above any public streets ...”; and

WHEREAS, Public Utilities Code section 7901.1 gives cities “the right to exercise reasonable control as to the time, place, and manner in which roads ... are accessed [,]” provided such control is “applied to all entities in an equivalent manner”; and

WHEREAS, Title 12 (STREETS AND SIDEWALKS), Chapter 12.04 (STREET AND HIGHWAY IMPROVEMENT), Section 12.04.010 adopts “The County of Los Angeles Ordinance No. 3597” by reference, regulating the City’s streets and highways by requiring permits for moving of buildings, excavation in the public streets, laying, constructing and repairing of curbs, and sidewalk; and

WHEREAS, the City Council annually adopts by resolution a Capital Improvement Program (CIP) that identifies certain anticipated capital improvement and maintenance projects and potential funding sources for roadway improvements; and

WHEREAS, excavations of city streets interfere with transportation and lead to degradation and shortening of the functional life of streets which imposes costs to the public including street repair and resurfacing. These conclusions are supported by a 2002 report to the American Public Works Association, which cites, among other things,

a study performed for the City of Los Angeles by pavement technologies expert Mohamed Y. Shahin, Ph.D., of the U.S. Army Construction Engineering Research Laboratory, who also prepared similar studies for San Francisco, Sacramento, and Santa Ana; and

WHEREAS, the City Council seeks to: (i) protect the City's investment in its Capital Improvement Program; (ii) prevent harm to City streets; (iii) regulate so that utility companies have a reason to plan and coordinate their street excavations and thereby (iv) protect the public health, safety, and welfare.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA DOES HEREBY ORDAIN AS FOLLOWS;

SECTION 1. The City Council hereby finds and determines that the recitals above are true and correct and are hereby incorporated into this Ordinance as though fully set forth herein.

SECTION 2. Chapter 12.05, "Regulation of Street Cuts on Newly Paved Streets," is hereby added to Title 12 (STREETS AND SIDEWALKS) of the City of Commerce Municipal Code, and shall read as follows:

CHAPTER 12.05 Establishing Regulations of Street Cuts on Newly Paved Streets

12.05.010 - Regulations of Street Cuts on Newly Improved Streets.

(1) Regulations. On a paved, constructed, reconstructed or resurfaced street, the pavement surface shall not be cut or opened for a period of five (5) years upon completion and acceptance by City Council. On a slurry sealed street, the pavement surface shall not be cut or opened for a period of two (2) years upon completion and acceptance by City Council.

(2) Exemptions. The Director of Public Works or the City Engineer may grant exemptions to the regulations imposed in subsection (1) of this Section under the following circumstances:

(i) for emergencies which endanger life or property or interrupt essential utility service, as determined by the Director of Public Works or the City Engineer;

(ii) for work that is mandated by City, County, State or Federal laws;

(iii) where no other reasonable means of providing service exists to a building, as determined by the Director of Public Works or

the City Engineer;

(iv) for any public utility possessing a franchise from the City and acting in accordance with the said franchise; or

(v) for other situations deemed by the Director of Public Works or the City Engineer to be in the public interest of the City.

(3) Imposition of Conditions when Granting an Exemption, Including Requirement to Repave. When granting an exemption to this regulation, the Director of Public Works or the City Engineer may impose conditions to ensure the rapid and complete restoration of the street and street paving.

(i) Repaving may include street grinding, base and sub-base repairs, restoration of pavement markings, and other related work, as determined by the Director of Public Works or the City Engineer and may include up to the full-width street paving of the roadway.

(ii) Any person who is required to repave a street shall obtain an encroachment permit and shall be responsible for the full cost of a plan preparation, plan review, construction inspection, material testing, bonding, and all other expenses related to the work.

(iii) Repaving shall be completed pursuant to the City of Commerce's requirements. For concrete streets, repaving shall be from joint to joint of Portland Cement Concrete pavement.

(iv) Pavement improvements shall be completed within thirty (30) calendar days of the completion of the work or project that required the pavement cut. If the Director of Public Works or the City Engineer determines that restoration of the street is not appropriate at a particular time for reasons relating to weather or other short-term factors, the Director of Public Works or the City Engineer may order a postponement until proper conditions allow for restoration work.

12.05.020 - Violation. It shall be unlawful for any person to trench, cut, dig, make or cause any cut or excavation in any City streets without a permit and in violation of this Chapter.

SECTION 3. In the event of any conflict between the provisions of this Ordinance and the Commerce Municipal Code, or any appendix or ordinance adopted therein by incorporation, the provisions of this Ordinance shall apply and supersede.

SECTION 4. CEQA. This ordinance is exempt from the California Environmental Quality Act ("CEQA") based on the following:

- A. Under CEQA Guidelines Section 15061(b)(3), CEQA review is not required because there is no possibility that this ordinance may have a significant effect on the environment.
- B. Under CEQA Guidelines Section 15378, the proposed amendment is not a project under CEQA because it will not cause a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, because it is limiting in nature and does not authorize any specific development activity or promote new construction.
- C. Any potential indirect physical change in the environment is speculative and not reasonably foreseeable.

SECTION 5. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or any part thereof is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrase would be subsequently declared invalid or unconstitutional.

SECTION 6. Should any provisions of this Ordinance be in conflict with State regulations, the State regulations shall supersede.

SECTION 7. The City Clerk shall attest to the adoption of this ordinance and shall cause the same to be published in a newspaper of general circulation within 15 days after its passage in accordance with Government Code section 36933. This ordinance shall take effect 30 days after its passage pursuant to Government Code section 36937.

PASSED, APPROVED AND ADOPTED this ____ day of _____, 2020.

John Soria
Mayor

ATTEST:

Lena Shumway
City Clerk