

ORDINANCE NO. 171922

An ordinance of the City of Los Angeles amending the Los Angeles Municipal Code to impose a Street Damage Restoration Fee.

THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:

Section 1. LEGISLATIVE FINDINGS.

The City Council of the City of Los Angeles hereby finds and declares as follows:

- (1) The City of Los Angeles spends millions of dollars annually to improve and maintain public streets and alleys (hereinafter streets);
- (2) Studies undertaken for the cities of Burlington, Cincinnati, Oxnard, Phoenix, San Francisco, Sacramento, and by the firm of Shahin & Associates for the City of Los Angeles, have concluded that excavations in paved streets 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. Studies also have shown that pavement degradation occurs no matter how well the excavation is restored;
- (3) The cutting of the pavement and trenching in the streets permits water seepage into the street as well as the weakening of the pavement support around the patch edges thereby allowing deterioration at an accelerated rate;
- (4) In order to determine the extent to which the pavement degradation found by studies in other cities occurs in the City of Los Angeles, the City retained Shahin & Associates to determine the effect of excavations on the surface of streets in the City of Los Angeles. The study performed by Shahin & Associates showed that even if pavement restoration in the trench itself is structurally adequate, excavations damage the strength and life of the pavement located adjacent to the trench where the excavation occurs. The San Francisco study showed that the potential for damage to the pavement is magnified when a street is subject to multiple excavations after the street is surfaced or resurfaced and before the next scheduled resurfacing. The Los Angeles study also showed that the potential for damage to pavement is magnified when a street is subjected to heavier traffic such as the difference between major and local streets;

- (5) Hundreds of millions of dollars in public funds have been invested to build, maintain and repair the streets within the City's geographical boundaries, and the City holds these streets as an asset for its citizens. It is desirable to adopt regulations that will help protect the structural integrity of City streets and thereby safeguard the value of the public investment in City streets for the benefit of all City residents, by requiring a fee to be paid to help offset the shortened life of the streets that are cut. This fee should provide an incentive that will encourage utilities to install, maintain and repair their underground facilities without making excavations in City streets wherever feasible, and should promote better coordination among utilities making excavations in City streets and between these utilities and the City (i) to minimize the number of excavations being made wherever feasible, and (ii) to ensure that excavations are performed, to the maximum extent possible, prior to the date on which streets are scheduled for resurfacing when such resurfacing is scheduled within twelve months of the excavation;
- (6) When an excavation is performed in a paved street that is not scheduled for resurfacing within twelve months of the excavation, the entity making and benefiting from the excavation should be required to pay the City a fee that recovers the costs of mitigating the damage caused to the pavement over and adjacent to the trench, in addition to any other applicable fees or charges. Because excavations cause the greatest damage to newly surfaced streets, and to provide an incentive to avoid excavations in newly surfaced streets wherever feasible, the fee should be highest for excavations in newly surfaced streets, and should decrease as the age of the street surface being excavated increases;
- (7) Requiring the payment of a fee for excavations performed in streets that are not scheduled for resurfacing within twelve months of the excavation will provide an important incentive for utilities to coordinate their excavations with other utilities and with the City's street resurfacing schedule, to avoid excavations in these streets wherever feasible;
- (8) Entities making and benefiting from an excavation in a City street also should comply with standards and requirements for compaction, backfill and pavement restoration and resurfacing that ensure the best possible restoration of the paved surface over and adjacent to the trench or cut;
- (9) Provisions of State law, including but not limited to Sections 7901 and 12808 of the Public Utilities Code, grant to some utilities the right to install underground facilities in City Streets, while utilities that are not granted a statutory right to install underground facilities in City streets generally must obtain a franchise and pay an annual franchise fee in order to do so. Utilities granted the right to install underground facilities in City streets by State law have claimed that Federal and

State law prohibits cities from charging them a Street Damage Restoration Fee. Utilities that provide compensation to cities through the payment of annual franchise fees have also claimed that they cannot legally be required to pay additional Street Damage Restoration Fees, because they claim that all costs associated with their use of City streets are already included in their annual franchise fee;

- (10) The City disagrees with these claims. Street Damage Restoration Fees are not in conflict with or otherwise affected by provisions of State law granting some utilities the right to install underground facilities in City streets, because a Street Damage Restoration Fee is not charged for the same right granted by State law, but, instead, is charged to recover the costs of mitigating the damage that the excavation causes to the pavement over and adjacent to the trench. Similarly, Street Damage Restoration Fees do not conflict with the right of any utility issued a franchise by and paying an annual franchise fee to the City, because (i) a franchise is intended solely to authorize a utility's use of City streets, ways, alleys and places, (ii) franchise fees established for franchises were not intended to recover the costs of mitigating damage to the pavement over or adjacent to the trench, nor was this damage known to the City when fees for the City's existing franchises were established, (iii) the City does not use, nor is it required to use, franchise fee revenue to pay for street surfacing, resurfacing and/or reconstruction, and (iv) franchises are subject to ordinances and regulations subsequently enacted by the City in the exercise of its police power. The only exception to the above is where the express language of a particular franchise would clearly establish that the franchise fee was for full and exclusive payment for all use of the streets and for all excavating or cutting of the streets that produces the damages covered by this Ordinance;
- (11) Regulation of excavations in City streets to help reduce disruption of and interference with public use of the streets, and to help minimize pavement damage and maintain the safe condition of the streets protects the public health, safety and welfare, is a valid and appropriate exercise of the City's police power, and is a municipal affair;
- (12) With respect to the installation of telecommunications facilities, Section 253(C) of the Federal Telecommunications Act of 1996 expressly recognizes the authority of local governments to impose reasonable nondiscriminatory fees upon telecommunications providers using the public right-of-way, and California Government Code § 50030 specifically authorizes the imposition of permit fees that do not exceed the reasonable costs of providing the service for which the fee is charged.

- (13) The Street Damage Restoration Fee imposed by this ordinance and any associated Resolution is a reasonable fee and is imposed to recover the actual cost to the City of the more frequent street resurfacing and reconstruction necessitated by the excavation activity;
- (14) Under existing law, public and private utilities with facilities installed in any street typically must relocate their facilities at their own cost in the event that the relocation is required or made necessary by any proper governmental use of the street. The imposition of fees or other requirements in order to mitigate and reduce the adverse impacts of excavations, as authorized in this ordinance, is not intended to in any way affect or alter this obligation; said fees or other requirements are in addition to any relocation obligation.

Sec. 2. Section 62.06 of the Los Angeles Municipal Code is hereby added, such new section to provide as follows:

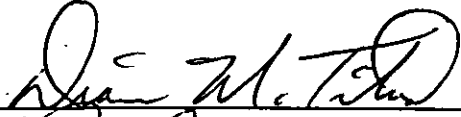
Section 62.06. Establishment of a Street Damage Restoration Fee.

- A. Any person, corporation, agency, or entity including any Department, Bureau, or Agency of the City of Los Angeles or any other governmental agency or authority that is required to obtain a permit to excavate or do other work in the public streets or alleys under Los Angeles Municipal Code Sections 62.02, 62.04, 62.105, 64.17 or 65.04 shall pay a Street Damage Restoration Fee. At the time of obtaining any permit required under this Code, a Street Damage Restoration Fee in an amount established by Resolution adopted pursuant to this Ordinance by the City Council shall be paid to the City for deposit into the Street Damage Restoration Fee Special Fund. No portion of this Ordinance shall be construed to require that the Bureau of Street Maintenance will obtain permit authority to accomplish its normal work program which includes maintenance, construction and reconstruction activities within public rights-of-way and easements.
- B. The City Council shall establish, from time-to-time, by Resolution, the amount of the Street Damage Restoration Fee. The amount of such fee shall not exceed an amount reasonably necessary to recover the estimated costs for all future maintenance, repair, reconstruction or resurfacing that would be necessary to fully mitigate the damage and degradation caused by the excavation to the pavement located over and/or adjacent to the trench where the excavation occurs. The fee shall be highest for excavations in newly surfaced streets and shall decrease as the age of the street surface being excavated increases. Further, the Resolution may

Sec. 4. The City Clerk shall certify to the passage of this ordinance and cause the same to be published in some daily newspaper printed and published in the City of Los Angeles.

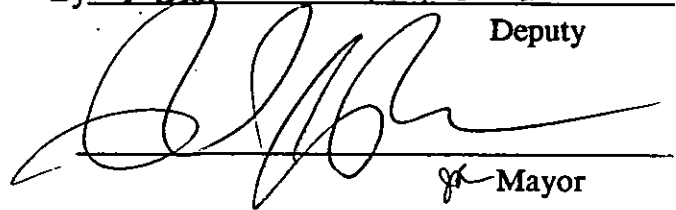
I hereby certify that the foregoing ordinance was introduced at the meeting of the Council of the City of Los Angeles JAN 28 1998, and was passed at its meeting of FEB 04 1998.

J. MICHAEL CAREY, CITY CLERK

By 
Deputy

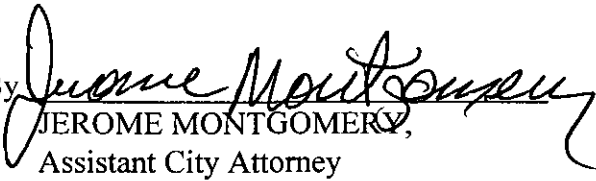
FEB 18 1998

Approved _____


Mayor

Approved as to Form and Legality

1/15/98
JAMES K. HAHN, City Attorney

By 
JEROME MONTGOMERY,
Assistant City Attorney

File No. CF96-0726

DEPUTY MAYOR
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City Clerk Form 23
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