



STAFF REPORT

DATE: MARCH 1, 2022

TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS

FROM: BILL SMITH, CITY MANAGER

PREPARED BY: CAROLINA PADILLA, CITY CLERK

SUBJECT: WAIVE FULL READING, READ BY TITLE ONLY AND PASS SECOND READING OF AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COLTON, CALIFORNIA, ADDING SECTION 12.08.230 TO THE COLTON MUNICIPAL CODE, TO ENACT A PAVEMENT CUT MORATORIUM TO PRESERVE NEWLY PAVED STREETS, ORDINANCE NO. O-02-22.

RECOMMENDED ACTION

Staff recommends that the City Council take the following action:

The City Council Waive Full Reading, and Approve Second Reading of an Ordinance of the City Council of the City of Colton, California, Adding Section 12.08.230 to the Colton Municipal Code, to Enact a Pavement Cut Moratorium to Preserve Newly Paved Streets.

ATTACHMENT

1. Ordinance No. O-02-22

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ORDINANCE NO. O-02-22

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COLTON, CALIFORNIA, ADDING SECTION 12.08.230 TO THE COLTON MUNICIPAL CODE TO ENACT A PAVEMENT CUT MORATORIUM TO PRESERVE NEWLY PAVED STREETS.

THE CITY COUNCIL OF THE CITY OF COLTON does hereby ordain as follows:

WHEREAS, pursuant to the California Constitution, Article, XI, section 7, the City of Colton may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general law; and

WHEREAS, Article XI, section 9 of the California Constitution proscribes that corporations which establish and operate works for supplying light, water, power, heat, transportation or means of communication, to residents of a municipal corporation shall establish and operate such services upon conditions and under regulations that municipal corporation may prescribe under its law; and

WHEREAS, the California Constitution grants the City the right to adopt reasonable regulations regarding its right-of-ways, which reasonable regulations would include the establishment of a street cut moratorium; and

WHEREAS, the public right-of-way is a unique public resource held in trust for the benefit of the public; this physically limited resource requires proper management to maximize its efficiency and minimize the costs to taxpayers, to protect against foreclosure of future economic expansion because of premature exhaustion of the public right-of-way, and to minimize the inconvenience to and negative effects on the public from use of the public right-of-way by contractors and utility companies; and

WHEREAS, to protect the integrity and quality of streets and public right-of-way, the Colton Municipal Code sets forth, in Chapter 12.08 ("Removal of Property--Excavations"), a permitting and fee system for encroachments and trench cuts to City streets; and

1 WHEREAS, a street cut moratorium would protect the City's investment in its
 2 infrastructure, preserve the life of streets, and provide a safe driving surface and a pleasing
 3 appearance to roadway surfaces that have undergone utility work; and

4 WHEREAS, the City desires to establish a street cut moratorium through the adoption
 5 of this Ordinance to further the purposes stated herein.

6 NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF COLTON FINDS AND
 7 ORDAINS AS FOLLOWS:
 8

9 **Section 1.** The above recitals are all true and correct and are hereby adopted as
 10 findings.

11 **Section 2.** A new Section 12.08.140 entitled "Moratorium on Trench Cuts in
 12 Newly Paved Streets," is hereby added to Chapter 12.08 ("Removal of Property--
 13 Excavations") of the Colton Municipal Code to adopt a street cut moratorium on newly
 14 improved streets, to read as follows:
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16 "12.08.230 Moratorium on Trench Cuts in Newly Paved Streets.

17 A. Definitions. The following definitions are applicable within this section:

18 "Director" means Public Works and Utility Services Director or designee.

19 "Excavate" or "Excavation" means any cutting, digging, potholing or otherwise
 20 disturbing the street surface with the right-of-way to access or install a utility
 21 line or any related facility or for other reasons.

22 "Facility" means any fiber optic, coaxial, or copper cable; communication
 23 service equipment; telephone, telecommunications, electric or other wire, line
 24 or equipment; utility structure; oil, gas, or other pipeline; duct; conduit; cabinet;
 25 tunnel; vault; drain; manhole; splice box; surface location marker; pole;
 26 subsurface tiebacks; soil nails; stairs; access ramps; subsurface foundations;
 27 landscape features, including curbs around planter areas; planter boxes;
 28 clocks; bus shelters; phone booths; bike racks; fencing; retaining walls;

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benches; stockpiles; building materials; and other appurtenances or tangible things located in, upon, above, beneath, or across any public right- of-way.

“Moratorium street” means a street, alley, and public place that was (a) constructed, reconstructed, or overlaid within the past five (5) years or (b) slurry sealed within the past three (3) years.

”Permit” means written authorization from the Director to excavate, encroach upon, or obstruct a public right-of-way in compliance with this section.

“Utility” means any person or entity providing electricity, gas, telephone, telecommunications, water, sanitary sewer or other services to customers, and which pursuant to state law or local franchise is entitled to install its facilities in the public right-of-way.

B. Moratorium. For streets, alleys, and public places that were constructed, reconstructed, overlaid, or sealed, the following shall apply:

- 1. Non-emergency street excavation is prohibited for a period of five (5) years from the date of notice of completion of street construction, reconstruction, or overlay.
- 2. Non-emergency street excavation prohibited for a period of three (3) years from the date of notice of completion of slurry seal.

Utilities shall plan well enough in advance to determine alternate methods for making necessary repairs to avoid excavating newly resurfaced public streets.

C. Exceptions. Exceptions to the moratorium may be permitted in the following situations, at the discretion of Director:

- 1. Emergencies that create imminent endangerment of life or property.
- 2. Interruption of essential utility service.
- 3. Work that is mandated by the city, state, or federal law.

Attachment: Ordinance No. O-02-22 (3514 : Second Reading of Ordinance No. O-02-22)

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- 4. Service for new development or new customers where no other reasonable means of providing service exists.
- 5. Other situations deemed by the Director to be in the best interest of the general public.

Emergencies and other exceptions do not exempt the permittee from any requirements to repair the pavement as included herein or as conditions of approval of a permit. The provisions of this section shall not apply to officers or employees of the City acting in the discharge of their official duties.

D. Waiver Application. To apply for a waiver to excavate within a public street within five (5) years of the completion date of the street construction, reconstruction, or overlay or within three (3) years of the date of notice of completion of slurry seal, the applicant must submit a written request to the Director. The request must include the following:

- 1. The location of the excavation.
- 2. Description of the work to be performed.
- 3. A statement from the applicant setting forth good cause for why the work was not performed before the public street was resurfaced.
- 4. A statement from the applicant setting forth good cause for why the work cannot be deferred until after the five (5) year period.
- 5. A statement from the applicant setting forth good cause for why the work cannot be performed at another location.

E. Permit Conditions. In the event that a waiver is granted under subsection (C) of this section, any excavation in the public street shall be repaired in accordance with any and all conditions of the permit and the following standards:

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1. Construction, Reconstruction, Overlay:

i. For street cuts/trenches, on a moratorium street, perpendicular to traffic lanes (a transverse street cut): The permittee will be required to grind and overlay, two (2) inches of Asphalt Concrete (AC), twenty (20) feet on both sides of the trench line and for the full width of all impacted traffic lane(s) cut; but not less than five (5) feet from the end(s) of the trench. If the trench end(s) is less than or equal to five (5) feet from a lane line the adjacent lane shall be included, or as directed by the City Engineer. The full width of street shall be slurry sealed within the limits of the grind and overlay, or as directed by the City Engineer. All work requires a properly licensed contractor. All other criteria from the City of Colton Standard Drawing No. 124 are applicable.

ii. For street cuts/trenches, on a moratorium street, parallel to traffic lanes (a longitudinal street cut): The permittee will be required to grind and overlay two (2) inches of AC, one-half (1/2) street width minimum, for the length of the cut plus ten (10) feet on both ends, but not less than or equal to five (5) feet from trench edge both sides of trench, if this limit encroaches into adjacent lane, the other half of the street, then the full lane width shall be included, or as directed by the City Engineer. The full width of the street shall be slurry sealed, within the limits of the grind and overlay, or as directed by the City Engineer. All work requires a properly

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licensed contractor. All other criteria from City of Colton Standard Drawing No. 124 are applicable.

2. Slurry Seal

i. For street cuts/trenches, on a moratorium street, perpendicular to traffic lanes (a transverse street cut): The permittee will be required to slurry seal, match existing slurry seal, twenty (20) feet on both sides of the trench line and for the full width of all impacted traffic lane(s) cut; but not less than five (5) feet from the end(s) of the trench. If the trench end(s) is less than or equal to five (5) feet from a lane line the adjacent lane shall be included. All work requires a properly licensed contractor. All other criteria from City of Colton Standard Drawing No. 124 are applicable.

ii. For street cuts/trenches, on a moratorium street, parallel to traffic lanes (a longitudinal street cut): The permittee will be required to slurry seal, match existing slurry seal, one-half (1/2) street width minimum, for the full length of the cut/trench plus ten (10) feet on both ends, but not less than or equal to five (5) feet from trench edge both sides of trench, if this limit encroaches into adjacent lane, the other half of the street, then the full lane width shall be included. All work requires a properly licensed contractor. All other criteria from Colton Standard Drawing No. 124 are applicable.

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F. Violation and Penalties. Any street cut, trench, or condition caused or permitted to exist in violation of any of the provisions of this section is a threat to public health, safety, and welfare. Such condition is hereby declared and deemed to be a public nuisance and may be corrected or abated as directed by the Director. Any person creating a public nuisance is guilty of a misdemeanor and may also be subject to administrative citations and fines.”

Section 3. If any provision of the Ordinance is held invalid, such invalidity shall not affect the remaining provisions of this Ordinance, which shall remain in effect absent the provision held to be invalid, and to this end, the provision of this Ordinance are declared to be severable.

Section 4. The City Clerk shall certify to the adoption of this Ordinance, and cause the same to be published in the local newspaper, and the same shall take effect thirty (30) days after its date of adoption:

PASSED, APPROVED, AND ADOPTED this 15th day of February, 2022.

FRANK J. NAVARRO
Mayor

ATTEST:

CAROLINA R. PADILLA
City Clerk

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