

CITY OF FAIRFIELD

ORDINANCE NO. 2020-16

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAIRFIELD ADDING
SECTION 16.31 ARTICLE V, TO THE FAIRFIELD MUNICIPAL CODE,
ESTABLISHING A STREET EXCAVATION MORATORIUM**

THE CITY COUNCIL OF THE CITY OF FAIRFIELD DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 16.31 Article V is hereby added to the Fairfield City Code to read as follows:

ARTICLE V. STREET EXCAVATION MORATORIUM

16.31.1 Purpose

16.31.2 Definitions

16.31.3 City Exemption

16.31.4 Moratorium

16.31.5 Permits

16.31.1 Purpose

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.

To achieve the purpose of this Chapter, the City of Fairfield shall endeavor to coordinate its Capital Improvement Programs with those of utility companies and franchisees with facilities in, on, under or above the public right-of-way. Information about any planned work in the right-of-way shall be shared at the earliest possible time. Utility owners and franchisees are encouraged to coordinate their street excavations so that all work is done simultaneously, and the street is not excavated more than once within a twelve-month period.

16.31.2 Definitions

- A. “City Engineer” means the City Engineer of the City of Fairfield, California or his or her designee.
- B. “Preventative Maintenance Seal” means a mixture of polymer modified asphalt emulsion, mineral aggregate, mineral filler, water, and other additives, properly proportioned, mixed, and spread in accordance with the City of Fairfield, and Caltrans Standards Plans, Specifications, and Details, whichever is more stringent as directed by the City Engineer; usually less than ½ inch in thickness.
- C. “Moratorium Street” means streets that have been newly constructed or received preventative maintenance seal within the past five years (see Section 16.31.4(A), below).
- D. “Excavation” means any trench cuts within the public streets or public right-of-way in order to access or install a utility line or any related facility.
- E. “Public Right-of-Way” means the area in, upon, above, beneath, or across any land or interest which by deed, conveyance, agreement, easement, dedication, usage, or process of law is reserved for or dedicated to the use of the general public for travel, and includes any public street, road, highway, freeway, bridge, lane, court, alley, boulevard, sidewalk, median, parkway, or emergency vehicle easement.
- F. “Public Street” means the full width of the surfaced or travel portion, including shoulders, of any road, street, path, lane, or alley dedicated to, reserved for, or used by or for the general public when those roads, streets, paths, lanes, and alleys have been accepted as and declared to be part of the city system of public streets, except highways forming a part of the state highway system.
- G. “Utility” means any person or entity providing electricity, gas, telephone, telecommunications, water, 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.

16.31.3 City Exemption

The provisions of this chapter shall not apply to officers or employees of the City acting within the capacity of their official duties.

16.31.4 Moratorium

- A. Newly constructed or resurfaced streets shall be termed “Moratorium Streets” within this section. Permission to excavate in Moratorium Streets will not be granted for five (5) years after the completion of street overlays or reconstructions, which consists of at least a ½ inch thick layer of asphalt, and streets that have received a preventative maintenance seal. For the purpose of this section, the time shall be measured from the date the applicable project substantially completed. Utilities shall plan well enough in advance to determine alternate methods of making necessary repairs to avoid excavating in newly resurfaced streets.

Exceptions to the above policy are as follows:

1. Emergency excavations that are immediately necessary to protect life or property.
 2. Repairs or modifications that are necessary to prevent interruption of essential utility service.
 3. Work that is mandated by city, state, or federal law.
 4. Excavations necessary to provide utility service for buildings where no other reasonable means of providing service exists.
 5. Excavations, as determined by the City Engineer in writing, necessary for situations in which no alternative course of action exists.
- B. Exceptions of Section [A] notwithstanding, a waiver must be obtained to excavate in a Moratorium Street.
1. To request a waiver, the applicant must submit a written request to the City Engineer. The request must include:
 - a. The location of the excavation.
 - b. Description of the work to be performed.
 - c. The reason(s) the work was not performed before the street was paved.
 - d. The reason(s) the work cannot be deferred until after the moratorium period.

- e. The reason(s) the work cannot be performed at another location.
 - f. The reason(s) it is justified to excavate the Moratorium Street.
2. Before issuing a waiver, the City Engineer will verify that the applicant has analyzed all feasible alternatives to make the necessary repairs using a trenchless method in the Moratorium Street to avoid excavating a newly resurfaced street whenever possible. The City Engineer shall grant a waiver if the applicant demonstrates that one or more of the circumstances under section 16.31.4(B)(1).
- C. Any pavement restoration work on Moratorium Streets shall comply per the current City Standard Specifications and Details, however, the City Engineer may determine that alternative repaving requirements are appropriate due to circumstances unique to the restoration site.

Exception: Full lane width pavement restoration shall not be required if the work is being performed on behalf of a low-income household in order to bring an owner-occupied single-family residence into compliance with sanitary sewer regulations at any time other than as part of the sale of the residence. Low-income is defined as 80% of area median family income. The purpose of this exception is to prevent hardship to property owners of limited means and it shall be interpreted and applied solely to achieve that purpose.

16.31.5 Permits

Any and all construction work within the public right-of-way shall require an encroachment permit pursuant to [Section 16.10](#) of Article III. Anyone excavating within the City of Fairfield public right-of-way shall obtain an encroachment permit for the purpose of excavation in addition to any other required permits.

SECTION 2. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid, such a decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted each section, subsection, paragraph, sentence, clause, or phrase of this Ordinance irrespective of the invalidity of any section, subsection, paragraph, sentence, clause, or phrase thereof.

SECTION 3. Any provisions of the Fairfield Municipal Code, or appendices thereto, or any other ordinance of the City inconsistent herewith, to the extent of such inconsistencies and no further, are hereby repealed.

SECTION 4. This Ordinance shall be effective thirty (30) days following its adoption by the City Council. A summary of this Ordinance shall, within fifteen (15) days after passage, be published in accordance with Section 36933 of the Government Code of the State of California with the names of the City Council members voting for and against it.

INTRODUCED at a regular meeting of the City Council of the City of Fairfield on the 18th day of August, 2020; and

PASSED AND ADOPTED this 15th day of September, 2020, by the following vote:

AYES: COUNCILMEMBERS: PRICE / BERTANI / MOY / TIMM / VACCARO

NOES: COUNCILMEMBERS: _____

ABSENT: COUNCILMEMBERS: _____

ABSTAIN: COUNCILMEMBERS: _____

MAYOR

ATTEST:

CITY CLERK