

## **ORDINANCE 507**

### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN RAMON AMENDING TITLE C, DIVISION C6 OF THE SAN RAMON MUNICIPAL CODE BY ADDING CHAPTER VII RELATING TO PAVEMENT CUT MORATORIUM**

THE CITY COUNCIL OF THE CITY OF SAN RAMON DOES ORDAIN as follows:

**SECTION 1:** CHAPTER VII (Pavement Cut Moratorium) is added to TITLE C, DIVISION C6 of the Municipal Code to read:

#### **Chapter VII PAVEMENT CUT MORATORIUM**

##### **Section C6-203. Intent.**

The purpose of the pavement cut moratorium in this chapter is to protect the City's investment in its infrastructure; and to preserve the life of streets and to provide a safe driving surface and a pleasing appearance to roadway surfaces that have undergone utility work.

No entity or organization shall be exempt from the requirements of this chapter including, but not limited to, utility companies, state agencies, federal agencies, school districts, and private developers.

##### **Section C6-204. Definitions.**

The following definitions are applicable within this chapter:

"Asphalt concrete" or "AC" means blend of aggregate and asphalt binder meeting the specifications set forth in the City of San Ramon standard specifications, Contra Costa County standard specifications, and the 2010 Caltrans Standard Specifications Section 39, "Hot Mix Asphalt," whichever is more stringent or as directed by the engineer.

"Completion date" means the date the Notice of Completion was adopted by the City Council for the completion of roadway construction, resurfacing operations, or maintenance. For streets paved as public improvements for a private development, this date shall be the date the Notice of Completion for the development was adopted by the City Council; for public improvements for which a Notice of Completion was not adopted by the City Council, this date shall be the actual date of completion of the work.

"Director" means Public Works Director or designee.

"Excavate" or "Excavation" means any cutting, digging, potholing or otherwise disturbing the street surface within the right-of-way to access or install a utility line or any related facility or for other reasons. All such excavations shall require an encroachment permit issued in accordance with Chapter 1, Encroachments.

"Facility" means any fiber optic, coaxial, or copper cable; communication service equipment; telephone, telecommunications, electric or other wire, line or equipment; utility structure; oil, gas, or other pipeline; duct; conduit; cabinet; tunnel; vault; drain; manhole; splice box; surface location marker; pole; subsurface tiebacks; soil nails; stairs; access ramps; subsurface foundations; landscape features, including curbs around planter areas; planter boxes; clocks; bus shelters; phone booths; bike racks; fencing; retaining walls; benches; stockpiles; building materials; and other appurtenances or tangible things located in, upon, above, beneath, or across any public right-of-way.

"Major defects" means any defects greater than the deficiency tolerances specified in the City of San Ramon, Contra Costa County, Caltrans, or individual contract standard plans and details, whichever is more stringent or as directed by the engineer.

"Owner" means the owner of the facility to be installed in the public right-of-way and includes, but is not limited to, the utility that owns the facility.

"Permit" means written authorization from the Director to excavate, encroach upon, or obstruct a public right-of-way.

"Preventative maintenance seals" 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 San Ramon, Contra Costa County, and Caltrans Standard Plans Specifications, and Details, whichever is more stringent or as directed by the engineer; Preventative maintenance seals include but are not limited to slurry seals, chip seals, or micro-surfacing and are usually less than ½ inch in thickness.

"Prohibition street" means a public street that has been reconstructed or resurfaced with preventative maintenance seal including but not limited to chip seal, slurry seal coating, or micro paving with less than ½ inch of new pavement within the past three years, or with a street overlay consisting of at least a ½ inch thick layer of asphalt within the past five years.

"Public right-of-way" means the area in, upon, above, beneath, or across any public street, parking lot, other City-owned parcels or easements, including but not limited to any highway, street, lane, court, alley, boulevard, sidewalk, median, parkway, parking lot, or easement reserved by or dedicated to the City for public use.

"Street overlay" means one or more courses of asphalt construction on an existing pavement; usually greater than ½ inch in thickness; generally includes an asphalt leveling course to correct the contour of the old pavement.

"Structure" means any physical alteration or improvement, including but not limited to a building, post, cabinet, fence, vault, sign, pole, guardrail, wall, facility, pedestrian walking path, sidewalk, driveway, track, surfacing, culvert, drainage facility, pipe, embankment, or excavation.

"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.

"Wearing surface defects" mean the defects in the surface of a public street that is in direct contact with traffic and that resists the resulting abrading, crushing, or other disintegrating action.

#### **Section C6-205. Moratorium on Pavement Cuts in Public Streets.**

Except as set forth in Section C6-206, and absent an Excavation Waiver as provided in C6-207, permission to excavate in public streets shall not be granted where any of the following apply: 1) for any pavement with a very good to excellent condition as determined by having a Pavement Condition Index rating of 80 or above using the pavement rating system approved by the Metropolitan Transportation Commission; 2) for five (5) years after the completion date of public street construction or maintenance, including but not limited to an inlay, overlay, chip seal, reconstruction or other similar maintenance; and 3) for three (3) years after the completion date of slurry seal coatings or micro-paving of the roadway surface. Utilities shall plan well enough in advance to determine alternate methods for making necessary repairs to avoid excavating in newly resurfaced public streets.

#### **Section C6-206. Moratorium Exceptions.**

- A. Exceptions to the above moratorium may be permitted in the following situations, at the discretion of the Director:
  - 1. Emergencies that endanger life, property, or public health and safety. In the event of an emergency, the person making an emergency use or encroachment shall apply for a written permit within ten calendar days, beginning with the first business day the city offices open.
  - 2. Interruption of essential utility service. In the event of such interruption of service, the person claiming an exception to the Moratorium under this paragraph shall apply for a written permit within ten calendar days, beginning with the first business day the city offices open.
  - 3. Work that is mandated by city, state, or federal legislation.
  - 4. Unforeseen circumstances where the financial burden outweighs the benefit to the public street infrastructure.
  - 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.
- B. The provisions of this chapter shall not apply to officers or employees of the City acting in the discharge of their official duties.

#### **Section C6-207. Excavation Waiver and Restoration.**

- A. To excavate within a public street within five (5) years of the completion date of original construction or of pavement maintenance as defined in Section C6-205 or within three (3) years of slurry seal coatings or micro-paving, a waiver must be obtained. To request a waiver, the applicant must submit a written request to the Director of Public Works. The request must include all of 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.
- B. In the event the waiver is granted under Subsection (A), any excavation in the public street shall be repaired in accordance with standard City of San Ramon trench restoration requirements as well as with full-lane paving on the street as follows:
1. Inlaid, overlaid or reconstructed roadway: All lanes that are affected shall be ground down two (2.0) inches and paved with two (2.0) inches of similar asphalt concrete material as the previous treatment to the satisfaction of the Director. Some roadways may require rubberized asphalt or other materials.
  2. Slurry sealed, chip sealed, or micro-surfaced streets: All lanes that are affected shall be resurfaced to the satisfaction of the Director with a treatment similar to what was previously utilized.
  3. The length of the pavement restoration shall be determined by the Director based on the conditions at the site including such factors as distance to intersections and driveways, changes in lane configuration and striping, drainage considerations, continuity of appearance and similar factors. Trenches and excavations shall be resurfaced for the entire trench or excavation length plus ten (10) feet on both ends.
  4. Exception: Full-lane width restoration shall not be required during a curb and gutter restoration in which the City has exempted the contractor from removing and replacing twenty-four (24) inches of asphalt paving from the edge of gutter, as required under City of San Ramon Standard Detail C-9 General Curb, Gutter and Sidewalk Notes, as may be amended from time to time. City staff will provide the waiver following an inspection determining the pavement cut is smooth and straight along the gutter lip and existing asphalt.
  5. As an alternative to completing the repairs, the permittee may request that the City complete them with its forces for an appropriate compensation. Approval of the request shall be at the sole discretion of the Director. The Director will determine the compensation based on existing or recent rates charged to the City for similar work and in light of anticipated projects to be completed by the City within 2 years that are of a similar nature.

#### **Section C6-208. Declaration of Public Nuisance.**

Any condition caused or permitted to exist in violation of any of the provisions of this Chapter is a threat to the public health, safety and welfare. Such condition is hereby declared and deemed to be a public nuisance within the provisions of Section B6-161 et seq. of the Municipal Code notwithstanding the fact that the sidewalk area within which the condition exists is public property.

### **Section C6-209. Permits.**

Except as provided Section C6-206A(1), prior to commencing maintenance or repair work an owner shall obtain an encroachment permit, if required, as well as any other approval required for such work and shall meet all City standards in performing the work.

### **Section C6-210. Hazardous Conditions and Noticing.**

The City reserves the right to require that required maintenance be completed at on a more rapid basis, as stipulated by the City, or be completed by City forces and subject to reimbursement, where in the Director's opinion a hazardous condition exists.

The permittee shall be given written notification of the required work sent by certified U.S. Mail or delivered in person. Within 15 calendar days from the date of the notice, the permittee may appeal the determination of the Director to the City Council by submitting an appeal letter to the City Clerk. This right of appeal shall be explained in the Director's notification letter to owner.

The notice shall provide permittee the options of requesting that City make the required repairs or of owner making the repairs following issuance of an encroachment permit.

If the work is not completed within the time provided in the notice, or any time extension given by the Director, the violation may be enforced in any manner provided by law, specifically including but not limited to:

1. Issuance of an administrative citation under section A1-27 et seq. of the Municipal Code;
2. Abatement of the violation as a public nuisance under Section B6-131 et seq. of the Municipal Code; and
3. Use of the procedure provided under California Streets and Highway Code section 5610 et seq.

### **Section C6-211. Continuing Violation.**

Any violation of this Chapter shall be deemed to commence upon expiration of the date for compliance specified in the written notice given under Section C6-210 and shall be treated as a separate violation every day thereafter.

### **SECTION 2: Severability**

If any part of this Ordinance is held invalid for any reason by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Ordinance, and the City Council hereby declares that it would have passed the remainder of the Ordinance if such invalid portion thereof had been deleted.

### **SECTION 3: Effective Date**

This ordinance shall take effect thirty (30) days from the date of its passage. Before the

expiration of fifteen (15) days after its passage, this ordinance shall be posted in three (3) public places within the City of San Ramon along with the names of the members of the City Council voting for and against the same.

The foregoing ordinance was introduced at the meeting of the City Council of the City of San Ramon on June 8, 2021 and after public hearing, was adopted on June 22, 2021 by the following vote:

**AYES:** *Cm. Armstrong, Perkins, Verose, Zafar, and Mayor Hudson*

**NOES:**

**ABSENT:**

**ABSTAIN:**

A handwritten signature in black ink, appearing to read 'David E. Hudson', written over a horizontal line.

David E. Hudson, Mayor

**ATTEST:**

A handwritten signature in blue ink, appearing to read 'Christina Franco', written over a horizontal line.

Christina Franco, City Clerk