

ORDINANCE NO. 2023-13

**AN ORDINANCE OF THE CITY OF MARINA AMENDING CHAPTER 15, BY
ADDING A NEW SECTION 15.60, "PAVEMENT MORATORIUM", TO THE MARINA
MUNICIPAL CODE**

THE CITY COUNCIL OF THE CITY OF MARINA DOES ORDAIN THAT:

1. Title 15 amended. Title 15, Entitled "Buildings and Construction" is hereby amended by adding a new section, Chapter 15.60 "Pavement Moratorium", to the Municipal Code to read as set forth on the attached Exhibit "A" and incorporated herein by this reference thereto.

2. Effective Date. This ordinance shall take effect and be in force thirty (30) days from and after its final passage.

3. Posting of Ordinance. Within fifteen (15) days after the passage of this ordinance, the City Clerk shall cause it to be posted in the three (3) public places designated by resolution of the City Council.

The foregoing ordinance was introduced at a regular meeting of the City Council of the City of Marina duly held on October 3, 2023, and was passed and adopted at a regular meeting duly held on October 17, 2023, by the following vote:

AYES: COUNCIL MEMBERS: Visscher, McCarthy, Biala, Medina Dirksen

NOES: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: Delgado

ABSTAIN: COUNCIL MEMBERS: None

Cristina Medina Dirksen
Mayor Pro Tem

ATTEST:

Anita Sharp, Deputy City Clerk

Chapter 15.60
PAVEMENT MORATORIUM

15.60.010 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 Marina 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.

15.60.020 Definitions

For purposes of this Chapter:

“Asphalt Concrete” or “AC” means blend of aggregate and asphalt binder meeting the specifications set forth in the City of Marina Standard Specifications and the Caltrans Standard Specifications Section 39, “Asphalt Concrete,” as amended, whichever is more stringent or as directed by the Engineer.

“City” means the City of Marina.

“Encroachment” means constructing or placing temporary or permanent structures, improvements, facilities or materials in, on, over, or under any public right-of-way or using any right-of-way so as to prevent, obstruct, or interfere with the normal use of that way, including but not limited to the performance of any of the following acts:

1. Excavating or disturbing the public right-of-way;
2. Erecting or maintaining any post, sign, pole, fence, guard rail, wall, pipe, conduit, cable, wire, communication service equipment, or other facility or structure on, over, or under a public right-of-way;
3. Planting any tree, shrub, grass, or other growing thing within the public right-of-way;
4. Placing or leaving on the public right-of-way any rubbish, brush, earth, or material;
5. Constructing, placing, or maintaining on, over, under, or within a public right-of-way any pathway, sidewalk, driveway, or other surfacing; any culvert or other surface drainage or subsurface drainage facility; or any pipe, conduit, wire, communication service equipment or facility, or cable; and
6. Constructing, placing, planting, or maintaining any structure, embankment, excavation, tree, or other object adjacent to the public right-of-way which causes or may cause an encroachment.

“Engineer” means the City Engineer or designee.

“Excavation” means any trench cuts within the public street or public right-of-way, in excess of four (4) square feet or four (4) feet long, whichever is smaller, in order to access or install a utility line or any related facility or perform work within such public street or right-of-way.

“Facility” means any fiber optic, coaxial, or copper cable; communication service equipment; telephone, telecommunications, electric or other wire, line or equipment; water line, valve or water meter; sewer line, cleanout or manhole; 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, Caltrans, or individual Contract Standard Plans and Details, whichever is more stringent or as directed by the Engineer.

“Permittee” means any person, contractor, utility or public agency that has been issued a permit pursuant to this Chapter, including any lawful successor, transferee, or assignee of the original permittee. All obligations, responsibilities, and other requirements of the permittee shall be binding on successors in interest of the original permittee.

“Prohibition Street” means a public street that has been reconstructed or resurfaced within the past three to five years (see Section 15.60.30).

“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.

“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.

“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.

15.60.030 Prohibition Period

Newly constructed or resurfaced streets shall be termed “Prohibition Streets” with this Chapter. Permission to excavate in Prohibition Streets will not be granted for five (5) years following after the completion of street overlays. An overlay is at least one-half (1/2) inch thick asphalt layer. For those streets with chip seal, slurry seal coating, or micro paving with less than one-half (1/2) inch of new pavement, the prohibition period shall be three (3) years. Utilities shall plan well enough in advance to determine alternate methods for making necessary repairs to avoid excavating in newly resurfaced public streets.

15.60.040 Exceptions

Exceptions to the above Section are as follows:

1. Emergencies endangering life or property;
2. Interruption of essential utility service;
3. Work mandated by City, State, or Federal law(s);
4. Building service where no other reasonable means of providing service exists; or
5. Situations in which no alternative course of action exists, as determined by the Engineer in writing and setting forth facts concluding that no alternative exists.

When authorizing an exception, and for emergency encroachments, the Director of Public Works or Engineer is granted the discretionary authority to impose conditions determined appropriate by the Director of Public Works or Engineer to ensure the rapid and complete restoration of the street and the pavement. The Director of Public Works or Engineer's determination shall be final.

15.60.050 Waiver

To excavate in a Prohibition Street, a waiver must be obtained. To request a waiver, the applicant must submit a written request to the Director of Public Works or City Engineer. The request must include:

1. The location of the excavation;
2. Description of the work to be performed;
3. The reason(s) the work was not performed before the street was paved;
4. The reason(s) the work cannot be deferred until after the prohibition period;
5. The reason(s) the work cannot be performed at another location; and
6. The reason(s) it is justified to excavate the Prohibition Street

Before issuing a waiver, the Engineer will verify that the applicant has analyzed all feasible alternatives to make the necessary repairs using a trenchless method in Prohibition Streets to avoid excavating a newly resurfaced street whenever possible. The Engineer shall grant a waiver if the applicant demonstrates that one or more of the circumstances under Section 15.60.40 exists and that the work cannot be completed using a trenchless method.

15.60.060 Pavement Repair

Any Prohibition Street excavations approved by waiver under Section 15.60.050 shall be repaired with full lane-width paving on the street as follows:

1. Overlaid or reconstructed streets: All lanes that are affected shall be ground down two (2) inches and repaved with two (2) inches of similar asphalt concrete material as the previous treatment to the satisfaction of the Engineer. Some streets may require rubberized asphalt of other materials.
2. Slurry sealed, chip sealed, or micro-surfaced streets: All lanes that are affected shall be resurfaced to the satisfaction of the Engineer with a treatment similar to what was previously utilized.
3. A minimum of one (1) foot on either side of the trench shall be resurfaced if the excavation is a lateral cut. For longitudinal trenches, the entire length plus one (1) foot on either end shall be resurfaced.
4. Exception - Full lane width restoration shall not be required if either of the following applies:
 - a. The work is not defined as an excavation in Section 15.60.020
 - b. The work 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 up to 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.

15.60.070 Permits

Except as provided Section 15.60.040, 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.

15.60.080 Violation

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this chapter. Failure to comply with any of the requirements of this chapter shall constitute a violation of this code and subject to enforcement under Chapters 1.08, 1.10 and 1.12.