



## Legislation Text

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**File #:** 18-957, **Version:** 1

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Ordinance amending Section 13.04 of the South San Francisco Municipal Code, adding Section adding Chapter 13.40 of the South San Francisco Municipal Code pertaining to open trench notification and telecommunication infrastructure improvements.

WHEREAS, broadband services provides fast, reliable and high quality links to the Internet, and is a necessity for residents and businesses in the City of South San Francisco (“City”); and

WHEREAS, high quality broadband service supports economic and educational development, and promotes equal access to opportunities and a higher standard of living; and

WHEREAS, broadband service and advanced telecommunications infrastructure is also essential for the City to perform its governmental functions, provide emergency services, and sustain many other municipal operations; and

WHEREAS, the City owns and maintains an extensive system of streets, sidewalks, and other infrastructure in the public right of way; and

WHEREAS, the paving and surfaces of the public right of way infrastructure are significantly reduced each time construction work involving excavation is performed thereupon;

WHEREAS, construction work involving excavations also creates significant traffic congestion and presents numbers safety issues;

WHEREAS, the City is responsible for acting in the public interest and preserve its investment in streets and public infrastructure; and

WHEREAS, the City desires to provide incentives for collaborative projects in the right of way to reduce the present and long-term impact of construction and excavation work on City streets and sidewalks; and

WHEREAS, the City also desires to minimize disruption to traffic and pedestrian access, and to encourage infrastructure development, including broadband and other telecommunications infrastructure; and

WHEREAS, the City maintains a citywide broadband network that supports all aspects of municipal operations, which requires constant upgrades to meet increasing demands; and

WHEREAS, the City desires to proactively develop this its broadband network and resources to support a growing population and economy; and

WHEREAS, the City has the authority to issue discretionary permits and other types of authorizations for construction projects in the public right of way, and to create development standards;

WHEREAS, to effectuate its intents described herein, the City is proposing to amend the South San Francisco Municipal Code to create an “open trench” notification requirement.

NOW, THEREFORE, based on the entirety of the record before it, as described below, the City Council of the City of South San Francisco does hereby ordain as follows:

**SECTION 1.** The City Council of South San Francisco finds that all Recitals are true and correct and are incorporated herein by this reference.

**SECTION 2.** Chapter 13.04 “Excavation and Construction on Public Property Regulated” is hereby amended to read as follows (with text in ~~strikeout~~ indicating deletion and double underline indicating addition). Sections and subsections that are not amended by this Ordinance are not included below, and shall remain in full force and effect.

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#### **13.04.010 Encroachment permit required.**

A. It is unlawful for any person, firm, corporation or other association of any description not otherwise under written contract to the city for such purpose to make, or cause to be made, any construction or excavation in, over or under the surface of any public street, lane, sidewalk or other public place for the installation, repair or removal of any pipe, conduit, duct ~~or~~ tunnel, or telecommunications or utility infrastructure or improvements, or for any other purpose, without first obtaining from the department of public services an encroachment permit to make such excavation. The director of public services, before issuing such a permit, shall require:

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**SECTION 3.** Title 13, “Public Improvements” of the South San Francisco Municipal Code is hereby amended by adding Chapter 13.40, “Open Trench Notification and Telecommunication Infrastructure Improvements,” to read as follows:

### **Chapter 13.40**

#### **OPEN TRENCH NOTIFICATION AND TELECOMMUNICATION INFRASTRUCTURE IMPROVEMENTS**

##### **13.40.001 Purpose.**

The city council finds and determines that the requirements and conditions in this chapter are necessary for the following reasons:

(a) To encourage the systematic development of telecommunications infrastructure and in turn maximize the availability of telecommunication and broadband service to residents and businesses within the city.

(b) To protect and control access to the public right-of-way, and to extend the life of city streets and other civil infrastructure, and reduce the cost of ongoing maintenance by encouraging cooperation between utility

companies, public agencies, and city departments.

(c) To streamline and simply the process of installing and upgrading telecommunications equipment throughout the city, and to encourage the improvement and modernization of the city's telecommunication infrastructure.

### **13.40.002 Definitions.**

As used in this chapter, the following terms shall have the following meanings:

- a) "Applicant" means an individual or entity submitting an encroachment permit application for an excavation project pursuant to section 13.40.003.
- b) "Public right-of-way" or "ROW" shall mean the area across, along, beneath, in, on , over, under, upon, and within the dedicated public alleys, boulevards, courts, lanes, roads, sidewalks, spaces, streets, and ways within the city.
- c) "Conduit" refers to a tube, duct, structure, or other device designed for enclosing telecommunication wires or cables.
- d) "Enhanced Remediation" means any and all standards and/or processes established by the Public Works Director that are intended to serve the purpose of ensuring that excavations performed in an area where an Open Trench Notification process has been completed will include all work necessary to restore the area to its original or enhanced condition prior to the excavation.
- e) "Excavation" refers to any process which breaks up or removes material from the ground through any digging, drilling, boring or other activity for the purpose of installing underground utilities, infrastructure, structures, or other equipment.
- f) "Facilities" and "Infrastructure" refer to wires, cables, conduit, switches, transmission equipment or other equipment for use in transmitting or processing telecommunications services or for providing support or connection to such equipment.
- g) "Open Trench Notification" shall mean the notification process set forth under Section 13.40.004.
- h) "Service providers" refers to any person, company, corporation or other entity providing data, voice, cable, video or other information services by wire, fiber optic cable or other technology.
- i) "Telecommunication" refers to data, voice, video or other information provided by wire, fiber optic cable or other technology.

### **13.40.003 Open Trench Notification Triggered for Excavation Projects.**

(a) The Public Works Director shall determine, upon receipt of an encroachment permit application for an

excavation project pursuant to Section 13.04.010 or approval of specifications for a public works project, that if either criteria in subsection (i) or (ii) below are met:

(i) The application or specification involves utility infrastructure construction, road construction or resurfacing, or other work that will result in an excavation that could reasonably include, or prepare for, the installation of broadband conduit, or is part of the Information Technology Strategic Plan.

(ii) It spans 900 feet or three city blocks within the ROW, or involves terrain that is difficult or expensive to traverse (e.g. a bridge), or is an element of a larger project that will require installation or upgrading of utility infrastructure.

(b) If an encroachment permit application for an excavation project or approval of specifications for a public works project satisfies either subsection (i) or (ii) above, the applicant shall be required to comply with the Open Trench Notification as provided in Section 13.40.004.

(c) The Public Works Department shall initiate the Open Trench Notification process by delivering notice and instructions for participation in accordance with the requirements of provided in Section 13.40.004.

#### **13.40.004 Notification Process.**

(a) In compliance with section 13.40.005, all Service Providers and third parties interested in collocating conduits and telecommunication facilities in the project excavation area shall inform the Public Works Department of the interest to participate in the manner set forth in subsection (a) of section 13.40.005 from the date of an Open Trench Notice issued pursuant to subsection (b) of this section.

(b) The Public Works Director, in consultation with the Information Technology Department, shall develop and implement an Open Trench Notification Policy, as may be amended from time to time, that establishes the standards and processes to carry out the intent and requirements of this chapter.

(c) At a minimum, the Open Trench Notification Policy shall include the following:

(i) The procedure by which the Public Works Department will initiate the Open Trench Notification process for each qualified excavation project pursuant to subsection (b) of section 13.40.003.

(ii) The procedure for receiving, processing, and reviewing of notices of intent to participate from interested Service Providers and third parties for collocation of conduits and telecommunication facilities in the project area.

(iii) The timeline for interested Service Providers and third parties to submit notices of intent to participate in collocation work and delivering notices received to the project applicant.

(iv) The criteria for determining whether responses received from interested Services Providers and third parties for collocation work are competent and may be forwarded to the applicant.

(v) The procedure for receiving, processing, and reviewing of any protests regarding negotiations between the parties for collocation of conduits and telecommunication facilities in the project area.

(vi) The criteria for determining whether the information provided in support of a protest sufficiently demonstrate that further negotiation is appropriate, and the timeline for such further negotiation if warranted.

### **13.40.005 Response to Open Trench Notifications**

(a) Services Providers and third parties interested in participating in the open trench collocation pursuant to section 13.40.004 shall submit a notice of intent to participate to the Public Works Department within 30 days of an Open Trench Notice issuance. The notice of intent shall contain sufficient information to constitute a competent response to be forwarded to the project applicant pursuant to subsection (c)(iv) of section 13.40.004.

(i) Responses to open trench notifications shall be forwarded to the project applicant. The applicant is responsible for negotiating collocation of conduits and/or other telecommunication facilities with any interested third parties for the project location.

(ii) Protests regarding negotiations between the parties for collocation work and any information in support thereof may be submitted to the Public Works Department. The Public Works Department shall be responsible to determine whether the information provided sufficiently demonstrate that further negotiation is warranted.

(b) The Information Technology Department Director shall designate staff to receive notifications of pending excavation projects, broadband-related work, and other encroachment permit applications that are subject to the Open Trench Notification process.

(c) The Information Technology Director shall determine whether to submit a response to the Open Trench Notification for collocating conduits or telecommunication facilities at the project location, by considering the following:

(i) The collocation of city-owned conduit in a given project is consistent with the Information Technology Strategic Plan, or will support the achievement of other city objectives.

(ii) The incremental installation cost is reasonable.

(iii) The cost of maintaining the conduit over time is proportionate to its value to the city.

(iv) Sufficient funds are available within existing budgets, or can be obtained from other sources.

(v) Collocation should be pursued in furtherance of overall city goals and priorities, the collocation makes sense.

(d) If the Information Technology Director submits a response to the Open Trench Notification for collocation work, the Information Technology Director or his designee shall attempt to negotiate an acceptable agreement with the project applicant. If negotiation is successful, the Information Technology Department shall coordinate the design and construction of the collocation work with the Public Works Department, including whether installation of facilities in addition to conduits would be necessary.

(e) Any conduits or telecommunication facilities collocated pursuant to subsection (b) shall be the property of the City.

(f) The Information and Technology Department shall maintain a geodatabase of communications assets located within or connecting to the city, including but not limited to:

(i) city-owned conduit and appurtenant facilities;

(ii) fiber optic cable;

(iii) towers and tower sites;

(iv) communications facilities and services belonging to third parties that are used by the city;

(v) real estate, poles, and other city-owned assets leased to third parties for telecommunication purposes.

(vi) Third party network data provided to the City in conjunction with such leases or permitting processes, or as may become available through other means, including but not limited to a future electronic plans submission program, or as collected by other agencies or provided by telecommunications companies.

#### **13.40.006 Compliance with the Open Trench Notification Process; Enhanced Remediation.**

(a) The Open Trench Notification Process shall be deemed complete if no responses were received from interested parties pursuant to subsection (a) of section 13.40.005, or if the applicant has negotiated collocation of conduits and/or other telecommunication facilities with any interested third parties pursuant to subsection (a) of section 13.40.005.

(b) The Open Trench Notification Process shall also be deemed complete if either party to the collocation negotiation required herein submits a protest to the Public Works Department regarding the negotiation, and the Public Works Department determines that, pursuant to subsection (c) of section 13.40.004 and based on the information provided to it, further negotiation is inappropriate or not warranted.

(c) The Public Works Director shall not approve any project application that is subject to the Open Trench Notification process and requirements of this chapter unless an application has satisfied the Open Trench Notification requirements established herein. A project that has satisfied the requirements of this chapter may be approved by the Director, subject to other applicable requirements and authorizations in the most current editions of the City's Municipal Code or any applicable public works construction standards, to allow permitted work to commence.

(d) After an application has been approved, any subsequent excavation work or project by the applicant or any other Service Provider or third party in the project area shall be subject to Enhanced Remediation requirements for five years following the completion or abandonment of such subsequent work or project. Enhanced Remediation may include general standards or standards specific to an excavation. The Public Works Department shall adopt policies and guidelines to set forth such Enhanced Remediation requirements consistent

with the intents of this chapter.

#### **13.40.007 Implementation.**

Within 60 days after this chapter takes effect, the city shall email, fax, mail or deliver a copy of it to telecommunications service providers and other affected entities doing business within the city.

#### **13.40.008 Waivers.**

(a) In the event of an emergency or urgent conditions that require immediate action, or for other good cause relating to the public health, safety or welfare, the Public Works Director may waive or modify, in whole or in part, the Open Trench Notification requirements established by this chapter.

(b) The Public Works Director may exempt projects from the requirements of this chapter where compliance has been determined by the Public Works Director to be not practical or feasible. Requests for an exemption shall be made in writing and the Public Works Director's decision shall be final. A request for exemption shall include all information necessary for the Public Works Director to make a decision, including but not limited to documentation showing factual support for the requested exemption. The Public Works Director may approve the exemption request in whole or in part, with or without conditions.

#### **13.40.009 Violations**

Violations of this chapter is hereby declared to be a public nuisance. Any violation of this chapter shall be subject to abatement by the city, as well as any other remedies that may be permitted by law for public nuisances, and may be enforced by injunction, upon a showing of violation.

#### **13.40.010 No Conflict with Federal or State Law.**

Nothing in this chapter shall be interpreted or applied so as to create any requirement, power, or duty in conflict with nay Federal or State law.

### **SECTION 4. Severability**

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid or unconstitutional, the remainder of this Ordinance, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable. The City Council of the City of South San Francisco hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

### **SECTION 5. Publication and Effective Date**

Pursuant to the provisions of Government Code section 36933, a summary of this Ordinance shall be prepared by the City Attorney. At least five (5) days prior to the Council meeting at which this Ordinance is

scheduled to be adopted, the City Clerk shall (1) publish the Summary, and (2) post in the City Clerk's Office a certified copy of this Ordinance. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall (1) publish the summary, and (2) post in the City Clerk's Office a certified copy of the full text of this Ordinance along with the names of those City Council members voting for and against this Ordinance or otherwise voting. This Ordinance shall become effective thirty (30) days from and after its adoption.

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