



CITY OF HAYWARD
AGENDA REPORT

AGENDA DATE 05/13/03
AGENDA ITEM _____
WORK SESSION ITEM ws 3

TO: Mayor and City Council
FROM: Director of Public Works
SUBJECT: Status Report on Street Cut Fee Ordinance

RECOMMENDATION:

It is recommended that the City Council review and comment on this report.

BACKGROUND:

In recent years, cities have become increasingly aware that streets have failed prematurely due to trench cuts by utility companies servicing their underground lines. Studies have confirmed that the very process of trenching in a street causes that street to begin to fail at an earlier date than a similar street that has not been cut. This premature failure is due to the loss of side support in the trench wall and occurs regardless of how carefully the repair to the street is made.

With this awareness came a desire to impose a fee on the utilities making those cuts to offset the drain on resources required to make more frequent street repairs. Experience indicated that imposition of such fees through local ordinances would be supportable if backed by a technically sound local study documenting the early failure of streets caused by the utility cuts. Thus far, the cities of San Francisco, Sacramento, Union City, Stockton, Los Angeles, and Santa Ana have done the appropriate local studies and put in place ordinances imposing a fee on entities cutting streets.

Shortly after imposing these new fees, three of these cities (San Francisco, Union City and Santa Ana) were sued by utility companies. The suits essentially claim that the street cut fee is a violation of the franchise granted by the cities for the utility operations. To date, court cases that have gone to trial have been decided in favor of the utilities. These cases are now being reviewed at the Ninth Circuit Federal Court of Appeals level.

DISCUSSION:

In May of 2000, Hayward joined with other Alameda County jurisdictions in a study to investigate pavement degradation near existing trench patches at thirty sites in Alameda

County, five of them in Hayward. Hayward functioned as lead agency in this project in partnership with Fremont, Newark, Pleasanton, Livermore, Emeryville and Alameda County.

Results of the study can be summarized as follows:

- The findings in the study correlate to those studies performed previously by other jurisdictions in support of a Street Cut Fee.
- Each agency's street repair frequency and costs will be adversely affected in cases where roadways have been trenched. The cost effect to each agency will differ based on individual construction practices, cost of materials, size of typical projects and many other variables. Properly repairing roadway damage caused by street trenching may require one of the two following solutions:
 1. Thicken the overlay by as much as 3 inches compared to what would have been required had the street remained trench free.
 2. Construct dig out repairs within the zone of influence (approximately 5.5 feet on each side of the trench) prior to placing the required overlay thickness. Depth of repairs will vary with conditions, but should never be less than the existing asphalt concrete pavement section. Four to six inches is typical in most cities.

While the Alameda County study dealt with the technical aspects of the trenching issue, it did not address the issue of fees to be imposed and the resultant revenue to be generated. However, an estimate of the potential revenue to Hayward has been made using fees employed in Union City and in Sacramento. At the upper revenue end, we used the \$17.30/linear foot of trench flat rate employed in Union City and on the low end, the \$3.00 and \$6.00/linear foot rates used in Sacramento (rates vary depending on age of pavement and whether the trench is longitudinal or transverse). We applied these figures to our estimated annual total of 1260 feet of longitudinal trenches and 5040 feet of transverse trenches. These calculations show that a Street Cut Fee in Hayward would generate revenue between \$59,000 and \$206,000 per year.

It should be noted, that most jurisdictions in California who may have been considering a Street Cut Fee Ordinance have chosen to defer implementation due to the recent court decisions.

CONCLUSION:

Despite the fact that the Alameda County Study confirmed the adverse impact of trenching on the life of a street, staff believes that action on a Street Cut Fee Ordinance should be deferred, pending resolution of legal challenges. Staff will continue to monitor the status of the legal challenges and will return to Council with a recommendation at the appropriate time.

Prepared by:



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Recommended by:



Dennis L. Butler, Director of Public Works

Approved by:



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