

RESOLUTION NO. 28-2022

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFICA SETTING RATES FOR THE UTILITY PAVEMENT CUT RECOVERY FEE AND THE CONSTRUCTION VEHICLE IMPACT FEE AND ADDING BOTH FEES TO THE CITY'S MASTER FEE SCHEDULE

WHEREAS, the City of Pacifica Municipal Code ("PMC") imposes upon all persons who excavate portions of the City's pavement to service utility infrastructure the obligation to pay a Utility Pavement Cut Recovery Fee (PMC § 7-2.214 referred to herein as "Utility Cut Fee"); and

WHEREAS, PMC section 7-2.214(b) empowers the City Council to establish the amount of the Utility Cut Fee by resolution; and

WHEREAS, the City contracted with NCE Consulting Engineers to study the impact of utility cuts on the City's street network and to develop proposed fees related to these impacts; and

WHEREAS, NCE Consulting Engineers completed a study, in January 2022, to compare pavement performance for the street sections with and without cuts, quantify damage caused by utility cuts to the pavement within the City and to develop a fee schedule for the City to recover any costs associated with such damage ("Utility Cut Impact Fee Study"), which is attached to the staff report accompanying this resolution and incorporated herein by reference; and

WHEREAS, the Utility Cut Impact Fee Study concluded that pavements with cuts of any size deteriorates more quickly than pavements without cuts across all pavement age groups, and therefore, utility cuts reduce the remaining service life of all pavement;

WHEREAS, the City Council desires to ensure that persons engaging in utility cuts pay for the impacts to the City's pavement; and

WHEREAS, the Utility Cut Impact Fee Study establishes that there is a reasonable relationship between the amount of the proposed Utility Cut Fee and the additional costs associated with repairing and maintaining pavement with utility cuts; and

WHEREAS, the Utility Cut Fee adopted herein is considered a fee for the use of government Property pursuant to Article XIII C, section 1(e)(4), which excludes such fees from the definition of "tax;" and

WHEREAS, in the alternative, the Utility Cut Fee could also be exempt from the definition of "tax" under Article XIII C, section 1(e)(1) or (6); and

WHEREAS, this Resolution does not conflict with provisions of State law, including but not limited to, Public Utilities Code sections 7901 and 12808 related to interstate telecommunications franchises because the fees hereunder are not charged for the same right

granted by State law, but instead are charged to recover costs of mitigating the degradation that the excavation causes to City pavement and the increased cost to the City in reconstructing a street that has been patched following an excavation; and

WHEREAS, this Resolution is in conformance with Section 253(C) of the Federal Telecommunications Act of 1996 which expressly recognizes the authority of local governments to impose reasonable nondiscriminatory fees upon telecommunications providers using the public right-of-way, as well as California Government Code 50030 which specifically authorizes the imposition of a permit fee that do not exceed the reasonable costs of providing the service for which the fee is charged; and

WHEREAS, the PMC requires that all individuals who obtain a building permit must pay a Construction Vehicle Impact Fee (PMC Chapter 8-21 referred to herein as “Construction Vehicle Impact Fee”); and

WHEREAS, Section 8-21.04 empowers the City Council to establish the amount of the Construction Vehicle Impact Fee by resolution; and

WHEREAS, NCE Consulting Engineers also completed a study to investigate damage caused to City streets by heavy construction vehicles related to the construction of development projects (“Construction Vehicle Impact Fee Study”), which is attached to the staff report accompanying this resolution and incorporated herein by reference; and

WHEREAS, with regard to the impact of construction vehicles, the Construction Vehicle Impact Fee Study found that such vehicles contribute to the damage to City streets by reducing the life of the pavement; and

WHEREAS, the Construction Vehicle Impact Fee is necessary to address the impacts of construction vehicles on City roads; and

WHEREAS, this Resolution is in conformance with Vehicle Code section 9400.8 because it is a fee charged as a condition of development, not a fee for the use of City roads; and

WHEREAS, the Construction Vehicle Impact Fee is exempt from the definition of “tax” under Article XIII C, section 1(e)(6) because it is a charge imposed as a condition of property development; and

WHEREAS, the Construction Vehicle Impact Fee Study establishes that there is a reasonable relationship between the amount of the proposed Construction Vehicle Impact Fee and the costs of remedying the impacts to the City’s pavement caused by construction vehicles; and

WHEREAS, the staff report includes information that supports the City’s actions, as required by subdivision (a) of Section 66001 of the Government Code; and

WHEREAS, the Construction Vehicle Impact Fee Study substantiates a methodology that will charge each new development project only for the costs necessary to mitigate the impacts expected to be caused by that development project; and

WHEREAS, there is a reasonable relationship between the Construction Vehicle Impact Fees and the development projects on which the fees will be imposed because the fees will only fund costs necessitated by each new development; and

WHEREAS, the Construction Vehicle Impact Fees will not exceed the estimated reasonable costs of providing the infrastructure improvements for which the fees are imposed; and

WHEREAS, the Construction Vehicle Impact Fees will not be levied, collected, or imposed for general revenue purposes, but are levied specifically to fund the restoration of the City's pavement related to the impact of construction vehicles; and

WHEREAS, the Construction Vehicle Impact Fee Study establishes proposed amounts and provides an evaluation of the need for new Construction Vehicle Impact Fees and establishes the nexus between the imposition of the new fees and the estimated reasonable costs of providing the services for which the fees are charged; and

WHEREAS, the Construction Vehicle Impact Fee Study identifies the City's existing level of pavement quality, identifies the proposed new level of service, and includes an explanation of why the new level of service is appropriate; and

WHEREAS, pursuant to Government Code section 66018 the enactment or increase in any fees to be charged for services must be adopted by the City Council by ordinance or resolution, after providing notice and holding a public hearing; and,

WHEREAS, pursuant to Government Code sections 66018 and 6062a, a notice of a public hearing on the proposed fee schedule, including the proposed Utility Pavement Cut Recovery Fee and the proposed Construction Vehicle Impact Fee, was published on June 1, 2022 and June 8, 2022 in the Pacifica Tribune a newspaper of general circulation; and

WHEREAS, pursuant to Government Code sections 66016 and 66016.5, notice of the time and place of the meeting, including a general explanation of the matters to be considered and a statement that required data is available was mailed at least 30 days prior to the meeting to those members of the public who filed a written request with the City; and

WHEREAS, a duly noticed public hearing before the City Council was held on June 13, 2022 at which public testimony was received and duly considered on the proposed new fees; and

WHEREAS, at least ten (10) days prior to the public hearing referenced above, the City made available for public inspection information required under Government Code section 66018; and

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Pacifica hereby resolves as follows:

Section 1. **Findings.** The City Council finds and determines as follows:

- a) The fees established are imposed for a specific government service provided directly to the payor and/or for the use of government property.
- b) The above recitals are correct and are material to this Resolution and are incorporated into this Resolution as findings of the City Council.
- c) These fees are not subject to the requirements of Proposition 26. The fees are not a “tax” under Section 1(e) of Article XIII C of the California Constitution, since they do not exceed the reasonable costs to the City of providing the service or product or the City’s costs to address the impacts of development projects.

Section 2. **Adoption of Fee Reports.** The City Council approves and adopts the Utility Cut Impact Fee Study and the Construction Vehicle Impact Study and determines that they are consistent with the General Plan.

Section 3. **Master Fee Schedule.** The Utility Cut Impact Recovery Fee and the Construction Vehicle Impact Fee are hereby adopted at the rates set forth in **Exhibit A** and **Exhibit B**, respectively, which are attached hereto and incorporated by this reference. The new fees shall be incorporated into the Master Fee Schedule.

Section 4. **Effective Date.** This Resolution shall take effect 60 days after its adoption and shall be published or posted as required by law.

Section 5. **Validity.** The above recitations are true and correct, are material to the adoption of this Resolution, and are incorporated herein by reference.

Section 6. **Environmental review.** The City Council finds that this Resolution is not subject to the California Environmental Quality Act (“CEQA”). This action is not a project within the meaning of the CEQA Guidelines Section 15378 and 15061(b)(3) as it has no potential for physical effects on the environment because it involves an adoption of certain fees and/or charges imposed by the City, does not commit the City to any specific project, and said fees and/or charges are applicable to future development projects and/or activities, each of which future projects and/or activities will be fully evaluated in full compliance with CEQA when sufficient physical details regarding said projects and/or activities are available to permit meaningful CEQA review (see CEQA Guidelines, Section 15004(b)(1)). Pursuant to CEQA Guidelines section 15378(b)(4), the creation of government funding mechanisms which do not involve any commitment to any specific project which may cause significant effect on the environment, is not defined as a “project” under CEQA. Therefore, approval of the fees and/or charges is not a “project” for purposes of CEQA, pursuant to CEQA Guidelines, Section 15378(b)(4); and, even if considered a “project” under CEQA, is exempt from CEQA review pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that approval of the fees and/or charges may have a significant effect on the environment.

Section 7. Severability. Should any section, subsection, paragraph, sentence, clause, or phrase of this Resolution be declared unconstitutional or invalid for any reason, such declaration shall not affect the validity of the remaining portions of this Resolution.


The City Council hereby declares that it would have passed this and each section, subsection, phrase, or clause thereof irrespective of the fact that any one or more sections, subsections, phrase, or clauses be declared unconstitutional on their face or as applied.

Section 8. The City Clerk shall certify the adoption of this Resolution and shall cause a certified Resolution to be filed in the Office of the City Clerk.


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PASSED AND ADOPTED at a regular meeting of the City Council of the City of Pacifica, California, held on the 13th day of June 2022, by the following vote:

- AYES**, Councilmembers: Beckmeyer, Bier, Bigstyck, O'Neill, Vaterlaus.
- NOES**, Councilmembers: n/a
- ABSENT**, Councilmembers: n/a
- ABSTAIN**, Councilmembers: n/a

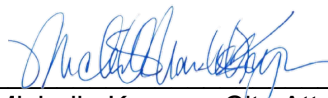

Mary Bier (Jun 17, 2022 17:20 PDT)
Mary Bier, Mayor

ATTEST:



Sarah Coffey, City Clerk

APPROVED AS TO FORM:



Michelle Kenyon, City Attorney

EXHIBIT A

Utility Pavement Cut Fee - effective August 12, 2022			
Utility Pavement Cut Fee (<10% Section Area) = ((Length+4')*(Width+4') * (Unit Cost))/(0.10)			
Utility Pavement Cut Fee (≥10% Section Area) = Full Block Area * Unit Cost			
● = Full block area defined as center of intersection to center of intersection and edge of pavement to edge of pavement			
	Age Group	Unit Costs	
		<10% of Section Area	≥10% of Section Area
Arterials/Collectors	<10 years	\$2.50	\$4.00
	≥10 years	\$1.50	\$2.50
Residential	<10 years	\$1.50	\$3.00
	≥10 years	\$1.00	\$2.50
Accessory Dwelling Units (ADU): Utility Pavment Cut Fee shall not be charged for any ADU that is under 750 square feet or an ADU of any size when the ADU is being constructed at the same time, under the same permit, as a new main residential unit or an expansion of the main unit that make payment of the fees as required.			
Partial or Full Credit Utility Cut Fees for Developments with Pavement Improvements: A credit my be applied against the Utility Cut Fees for completing frontage roadway paving.			
Reduced Utility Cut Fees Related to Sewer Lateral Repairs Not Requiring a Lateral Compliance Certificate: A minimal fee of \$500 will be charged for pavement cuts fees related to fixing a sewer lateral not requiring a Sewer Lateral Compliance Certificate.			

EXHIBIT B

Construction Vehicle Impact Fee - effective August 12, 2022		
	Residential Unit / Multi-Family Fee	Non-Residential Unit Fee
Per Square Foot of Construction	\$1.19 / sq. ft.	\$1.19 / sq. ft.
<p>Accessory Dwelling Units (ADU): Construction Vehicle Impact Fees shall not be charged for any ADU that is under 750 square feet or an ADU of any size when the ADU is being constructed at the same time, under the same permit, as a new main residential unit or an expansion of the main unit that make payment of the fees as required.</p>		









For Signature: ResolutionNo28-2022_UTILITYCUTFee_VEHICLEIMPACTFee

Final Audit Report

2022-06-20

Created:	2022-06-17
By:	Sarah Coffey (scoffey@pacifica.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAARS4GLFNwTLBs7VWWhCsjlJCBnOhgUaJLZ

"For Signature: ResolutionNo28-2022_UTILITYCUTFee_VEHICLEIMPACTFee" History

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-  Document e-signed by Mary Bier (mbier@pacifica.gov)
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