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DEPARTMENT OF
PUBLIC WORKS

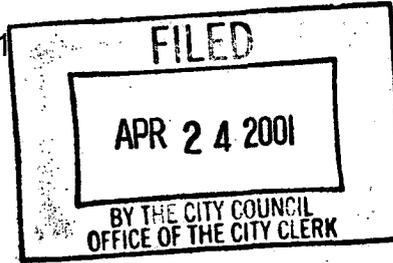
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April 10, 2001



City Council
Sacramento, California

Honorable Members in Session

SUBJECT: CONSTRUCTION RIGHT OF WAY MANAGEMENT STATUS REPORT

LOCATION: Citywide, All Districts

RECOMMENDATION: This item is for information only and no action is recommended.

CONTACT PERSONS: Dave Cullivan, Supervising Engineer, 433-6200
Jerry Way, Street Manager, 433-6381

FOR THE COUNCIL MEETING OF: April 24, 2001

SUMMARY:

This report provides a status update on Construction Right of Way management processes, outlines areas that require additional legal research and seeks City Council input on specific construction impacts and issues. Additionally, this report provides information about the City's trench cut recovery fee policy.

COMMITTEE/COMMISSION ACTION: None

BACKGROUND INFORMATION:

Construction activities in Sacramento, especially within the downtown area and in South Natomas, have increased due to a new cable company (Winfirst), fiber optic telecommunication companies, private and state office development, and Light Rail construction combined with ongoing capital improvement and maintenance projects. The encroachment permit process regulates a large portion of this activity. Approximately 115 encroachment permits have been issued to-date in 2001, and over 400 encroachment permits were issued in 2000. Each encroachment permit varies dramatically in scope and magnitude, and can range from one foot in length, as with monitoring well installations, to over 42,000 feet in length, as with some telecommunication providers. Since the implementation of the

Construction Right of Way Management concept last year, a number of changes to the encroachment permit process are being implemented by the Public Works Department to minimize the disruptive effects of this increased construction activity. Additional changes are anticipated.

Staff continues to identify issues related to each project and develop strategies for mitigating these issues. Quality of patches, trench plate abuse, Underground Service Alert (USA) markings left on streets and sidewalks, noise, traffic congestion, traffic control, public safety, public convenience, private property and park impacts, outreach, and communication are all examples of issues that have been identified in the last six months.

The Current Situation

Construction activities that involve placing non-City owned and operated facilities in the City's right-of-way are regulated through an encroachment permit. The authority to place these facilities in City streets depends on the entity installing the facilities. Winfirst's use of the City's right-of-way is authorized by the Sacramento Cable Commission. Pacific Gas & Electric Company (PG&E) is authorized to install facilities in City streets pursuant to a franchise granted by the City, for which PG & E pays the City approximately \$700,000 per year. Sacramento Municipal Utility District (SMUD) is granted the authority to utilize City streets for its facilities pursuant to Section 12808 of the California Public Utility Code. Another provision of the Public Utility Code (Section 7901) grants telephone companies, such as Pacific Bell, the right to construct telephone lines in City streets. Whether or not the facilities being installed by the new fiber optic telecommunication companies also are authorized by this statute depends on whether such facilities are deemed to be telephone lines installed by telephone companies, within the meaning of Public Utility Code Section 7901. The City Attorney's Office is researching this issue.

All facilities are subject to permit conditions relating to date, time, place, method, traffic control, type of material and review process determined by the City. The City controls construction activities with the review process and the conditions placed on the encroachment permit. The review process can be quick and easy for standard installations or replacements but can be long and drawn out if the methods are new or different or some other problem is anticipated.

Winfirst, fiber-optic telecommunication providers, Light Rail construction, and the State of California's "East End Project", are examples of large-scale encroachment permits currently active in the City. These also represent the areas that have received the majority of recent construction activity complaints and are outlined in this report.

Winfirst began by placing their facilities within the Public utilities easement behind the sidewalk with some conduit crossing underneath the city streets. Because of the massive disruption and complaints received, they started to place them underneath the sidewalk and to install their access boxes in the sidewalk. Many potholes, which are holes created in the sidewalk to expose existing facilities, were made to ensure existing facilities were not broken. This increased the number of sidewalk panels that needed to be removed and many were left open for an extended period of time causing great disruption to the neighborhood. Notification to

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residents of upcoming work by Winfirst has also been a problem and residents have expressed their displeasure.

The Public Works Department recently stopped issuing permits for this project until they get their construction processes under control. A new process to notify residents of construction will be developed and any concrete sidewalk panels removed to install access boxes will be replaced within three days. The conduit will now be placed in the street to reduce the number of sidewalk panels removed and potholes will now be located in the pavement area of the street. The total area under construction will be reduced when new permits are issued.

Fiber optic telecommunication companies' facilities are located throughout the city on arterial streets. Most disruption and complaints occur in the downtown area and problems associated with these facilities include traffic congestion, noise impacts, and cumulative impacts with most companies using the same streets. These cumulative impacts include multiple trench cuts and near continuous construction activity on the same street. In some cases, trench plates and temporary paving were left in place far too long.

The majority of the work on these projects now occurs on weekends or at night to minimize the impacts to the public, and all night work must meet the City's noise ordinance. Some operations, such as saw cutting and paving, are allowed on weekdays due to the level of noise created. No work may occur unless a traffic plan and schedule showing proposed work are submitted and approved. These are reviewed for noise impacts and conflicts with other street work for the upcoming week. The number of trench plates and the amount of temporary paving in place are also reviewed. Work is not authorized if plates and temporary paving are not removed within a reasonable time.

As the Regional Transit District continues to make mass transportation available to the southern part of our City, light rail construction has not been without problems. Sound wall construction has created public inconvenience to adjacent residents and businesses, arterial streets have been closed, and the crossings have been maintained in a much less comfortable traveling condition than normal.

Along the east and south sides of our State Capitol, sites are under heavy construction with new State facilities being erected in conjunction with the "East End Project". All basic services within these facilities such as water, electricity, gas, and communication must be accessed through existing sidewalks and into our street system. In addition to creating trenches by cutting into our infrastructure, heavy equipment is necessary to deliver and remove material, having a significant effect on adjacent streets. Trench plates, noise, reduced travel lanes, restricted sidewalks, temporary paving and loss of existing street light power in the nearby community are impacts that have surfaced with this project.

All of the projects outlined in this report have several important factors in common. 1) The construction impacts our City. 2) City officials are hearing complaints and frustration from their customers about these impacts. 3) The City benefits in many ways as these projects provide jobs, enhance communication and transportation, expand our State government employee

base in the Downtown area, and in general increase economic development and bring fresh tax dollars to our local economy. 4) These companies are in fact our customers as well, which makes Construction Right of Way Management challenging to balance.

Working toward a solution

The State of California government code requires Underground Service Alert (USA) markings to locate existing underground facilities before any contractor digs in the street. These markings can remain for some time after a project is complete and are often referred to as legalized graffiti. This is a statewide problem as there is no requirement for the type of paint used by those who mark their underground facilities. The use of water base or chalk paint is recommended, however, there is no current statewide requirement for anyone to remove these markings.

The Public Works Department is now requiring contractors working under an encroachment permit to remove all USA markings. These markings can be next to impossible to remove because there is no requirement for the type of paint used. The Public Works Department is experimenting with different methods of removing the paint as well as new types of paint that may be easier to remove. There is a new ultra violet sensitive paint that may prove easy to remove, and when proven contractors will be required to use this paint for their markings. Our experience will be passed on to the Underground Service Alert board who may want to add it to their recommended list of paints.

Trench plate abuse is a frequent issue as some contractors excavate long stretches of street for their convenience only to cover with steel trench plates and leave for extended periods of time. Public Works is working with contractors to remove all trench plates within a reasonable time frame while limiting the length of trench that may be opened before plates are removed. Temporary paving is a potential public safety issue particularly with our cycling community. The Public Works Department has developed a monitoring and tracking system to ensure that plates and temporary paving do not remain on streets for extended periods of time.

Noise, traffic control, traffic impacts, and other construction related issues are being targeted by a new Administrative Penalty that will soon be reviewed by our City Attorney's office. The Public Works Department has developed draft changes to the existing Administrative Penalty, which currently applies only to construction on primary streets during peak hours. These changes would include specific rules and guidelines for managing construction in our rights of way. The City Attorney's office is also looking into the potential for criminal prosecution of contractors who violate the conditions of their construction permit.

In 1997 the City established a trench cut recovery fee to collect the cost required to mitigate the pavement damage caused by the trench cut. Since 1998 when trench cut recovery fees began to be collected, approximately \$420,000 has been collected. The fee established by the ordinance recovers the utilities "fair share" of the cost of mitigating the pavement damage caused by excavations that cannot be coordinated. Consistent with City Council Policy, the fees collected on streets that are being rehabilitated will be expended on those streets,

approximately \$26,000 this year. Public Works coordinates with PG & E and other city departments to minimize cuts in new pavement. The upcoming overlays on H Street and 19th Street are examples of where resurfacing was coordinated to occur just after a major project was completed. Trench cut recovery fees collected from encroachment permits such as those outlined in this report will also be expended toward the rehabilitation of the streets where the fees were collected. During the development of the trench cut recovery fee policy, a moratorium on trench cuts was considered in conjunction with newly resurfaced streets but was not implemented based on advice from the City Attorney's office.

FINANCIAL CONSIDERATIONS:

This report is for information only.

ENVIRONMENTAL CONSIDERATIONS:

This report has no fiscal implications.

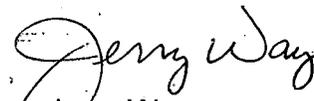
POLICY CONSIDERATIONS:

This report is for information only.

ESBD CONSIDERATION:

No goods or services are being purchased under this report.

Respectfully submitted,


Jerry Way
Street Manager

Approved:



Gene Moore
Maintenance Services Manager

RECOMMENDATION APPROVED:


ROBERT P. THOMAS
City Manager

Approved:


Michael Kashiwagi
Director of Public Works