



**Town of Paradise
Council Agenda Summary
October 8, 2019**

Agenda Item: 6(d)

Originated by: Colette Curtis, Senior Management Analyst
Reviewed By: Lauren Gill, Town Manager
Subject: Consider adopting a “Dig Once” Policy in the Town of Paradise.

Council Action Requested:

1. After discussion, consider waiving the first reading of Town Ordinance No. ____, and read by title only; and, introducing Town Ordinance No. ____, “ An Ordinance of the Town Council of the Town of Paradise, California, establishing an Ordinance adding Chapter 12.26 to the Paradise Municipal Code Relating to Telecommunications Infrastructure Improvements. (ROLL CALL VOTE)

Background:

As the Town of Paradise recovers from the Camp fire, rebuilding and hardening our Town’s infrastructure is of vital importance. Our experience during the fire, of utility poles catching fire, falling, starting more fires and blocking evacuation routes has shown that having utilities underground is a step towards safety that is needed for our community. PG&E has already announced their intention to put all their utility lines underground in the Town of Paradise, a process which they estimate will take 5 years to complete. Work has already begun on the undergrounding project in Town.

During the recovery period, the Town expects many agencies and companies needing to access the public right of way to construct and maintain their infrastructure. It is important that these efforts are done in coordination with each other and the Town to lessen the impacts to our roadways and our residents. Other cities manage this coordination by enacting a “Dig Once” ordinance.

Discussion:

As proposed, the Dig Once Ordinance would implement an open trench approach that requires coordination between the Town, public utilities and telecommunication companies to cost-efficiently (incremental costs) install conduit for telecommunications services and/or any other utility. The object of this ordinance is to support an open and transparent process for notifying telecom companies and combined coordination between public works, public utilities that are planning to trench within the Town right-of-way, and telecom companies for the installation of conduit. The Town of Paradise

would be the facilitator in this process by requiring the utilities to obtain a permit prior to excavating within a Town right-of-way.

The expected result is that telecom companies will join PG&E to install conduit along its infrastructure undergrounding projects. The proposed ordinance codifying this policy establishes a 5-year moratorium on re-opening pavements that were just constructed, reconstructed, or repaved. This will provide an incentive and sense of urgency for telecom companies to join PG&E in its coming projects.

Fiscal Impact Analysis:

There is no financial impact to the general fund for this item, as it sets a policy for public and private utility companies. Some staff time will be involved in the coordination of the utilities for open trench periods.

**TOWN OF PARADISE
ORDINANCE NO. ____**

**ORDINANCE ADDING CHAPTER 12.26 TO THE PARADISE MUNICIPAL CODE
RELATING TO TELECOMMUNICATIONS INFRASTRUCTURE IMPROVEMENTS**

The Town Council of the Town of Paradise does **ORDAIN AS FOLLOWS:**

Section 1. Chapter 12.26 is hereby added to the Paradise Municipal Code to read as follows:

CHAPTER 12.26

TELECOMMUNICATIONS INFRASTRUCTURE IMPROVEMENTS

Section 12.26.010	Purpose and Findings
Section 12.26.015	Definitions
Section 12.26.020	Telecommunications Infrastructure Improvement
Section 12.26.025	Implementation
Section 12.26.030	Exemptions
Section 12.26.035	Enforcement
Section 12.26.040	Public Nuisance
Section 12.26.045	Severability

12.26.010 Purpose and Findings.

A. It is the intent of the Town of Paradise, in enacting Chapter 12.26 to streamline and simplify the process of installing and upgrading telecommunications equipment throughout the town, and to encourage deployment, improvement and modernization of telecommunications infrastructure; especially in the town's rebuild efforts after the Camp Fire in 2018.

B. The objectives of Chapter 12.26 are the following:

- a. Minimize disruption of the town's public infrastructure, such as paved roads and sidewalks.
- b. Ensuring efficient, non-duplicative placement of infrastructure in the town's right of way.
- c. Reducing infrastructure deployment barriers by reducing costs of all underground work in the town's right of way for electric or gas utility, telephone or telecommunications companies and internet service providers.
- C. Access to modern telecommunications infrastructure is vital for communication, emergency and disaster response, economic development, education, healthcare, among other uses.
- D. It is the desire of the town to foster a fair and level playing field for all market competitors that does not disadvantage or advantage one service provider or technology over another.
- E. The town seeks to promote widespread access to the most technologically advanced telecommunications services for all town residents and businesses in a nondiscriminatory manner regardless of socioeconomic status; and seeking these services will work as an incentive for residents and businesses to establish in the Town of Paradise.
- F. It is the responsibility of the town to protect and control access to public rights-of-way, and ensuring that use of public rights-of-way align with the vision for a resilient and modern Town of Paradise.
- G. The town has a duty to ensure that all service providers utilizing town property, facilities or rights-of- way comply with all applicable state and local health, safety and other laws.
- H. It is consistent with the town's goals and values to encourage investment in telecommunications infrastructure to ensure access to ubiquitous high-speed internet services to residents, businesses, community anchor institutions, and community organizations, in order to help close the digital divide.
- I. It is necessary to update town policies and practices to recognize the authority of the California Public Utilities Commission (CPUC) as established in state and federal statutes.
- J. It is the desire of the town to assess fees sufficient to recover the actual costs of providing services but not to discourage improvement of necessary infrastructure.

12.26.015 Definitions.

A. For the purpose of this chapter, the following definitions apply:

1. "Company" refers to any electric or gas utility or telephone or telecommunications company, or broadband service provider that is authorized by any government entity or law to provide services or operate in the Town of Paradise.
2. "Conduit" refers to a tube, duct or other device or structure designed for enclosing telecommunication wires or cables.
3. "Excavation" refers to any process which removes material from the ground through digging, drilling, boring or other activity for the purpose of installing utilities, infrastructure or other structures or equipment.
4. "Facilities" and "infrastructure" refers 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.
5. "Feasible" refers to capable of being accomplished in a successful manner within a reasonable period of time, taking into account appropriate environmental, physical, legal, economic and technological factors.
6. "Incremental cost" refers to the cost associated with adding telecommunications cable, conduit and other related equipment to an excavation project, including the cost of the materials needed and any additional labor cost.
7. "Reconstruction" refers to any project which repairs or replaces fifty percent or more of an existing road, highway or rail line.
8. "Rights-of-way" ("ROW") refers to the area upon or adjacent to any town-owned road, highway or rail line or along or across any of the waters or lands owned or controlled by the town.
9. "ROW permit" refers to a permit issued pursuant to this chapter.
10. "Telecommunications" refer to data, voice, video or other information provided by copper wire, coaxial cable, fiber optic cable or other technology.
11. "Telecommunications 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.
12. "Town Manager" refers to the town manager of the Town of Paradise or his or her designee.

12.26.020 Telecommunications Infrastructure Improvement.

In recognition of the need to provide local residents and businesses within the community with the infrastructure required to meet their telecommunications needs, this chapter requires the following:

- A. No company may undertake any construction, reconstruction, or repaving project involving excavation of the town ROW without first obtaining a ROW permit pursuant to this chapter.
- B. No fewer than 30 days prior to a company's intended construction, reconstruction or repaving start date, a written application for a town public ROW permit, along with payment of any fees or deposit required by the town, shall be filed with the town manager or his or her designee, in the form and manner required by the town manager or his or her designee.
- C. The ROW application shall contain, at a minimum, all of the following information:
 - a. General information regarding any infrastructure and/or equipment that the company plans to apply for permits to install within the ROW in the next six (6) months, regardless of whether a permit is currently sought for the infrastructure and/or equipment.
 - b. Site plan of the infrastructure and/or equipment proposed to be located within the ROW, including a map in digital and/or other form required by the town, including digital geographical information system (GIS) formats.
 - c. Estimated project start and completion dates.
 - d. A traffic control plan, if required, that complies with guidelines established by the town manager or his or her designee.
- D. Companies leading construction, reconstruction or repaving projects involving excavation of town rights-of-way shall notify, advise and coordinate with other companies (i.e., telephone or telecommunications companies or broadband service providers) regarding construction work to install telecommunications infrastructure in the right of way, to the extent reasonably practical and feasible. This coordination shall be conducted through town or company sponsored coordination meetings. The frequency of the meetings shall be determined in coordination between the town manager or his or her designee and project leading company. As a result of the coordination, installation of or upgrades to telecommunications facilities or infrastructure will be included as needed. In new developments, a company shall contact the developer to determine whether any surplus conduit is available in the areas that the company plans to install

facilities or infrastructure, and whether any joint trenching or boring projects are feasible.

E. The town manager or his or her designee shall maintain a list of companies (i.e., telephone and telecommunications companies and broadband service providers) and shall send notifications to these companies regarding construction, reconstruction and repaving projects and coordination to install telecommunications infrastructure in the right of way, to the extent reasonably practical and feasible.

F. The town may also determine whether to participate in the installation of telecommunication infrastructure in the construction, reconstruction or repaving projects.

G. When companies or the town participate or join in a construction, reconstruction or repaving project, which involves excavation in the town ROW, by installing telecommunications facilities or infrastructure in such projects, these companies shall be responsible for the ROW permit applicant's incremental costs for installing these facilities and infrastructure.

H. The town manager or his or her designee will work with companies and contractors to identify cost-effective approaches consistent with town requirements.

I. All installations shall be approved by the town manager or his or her designee. Technical specifications for installing telecommunications infrastructure shall be discussed among companies participating in the project and technical specifications may also be developed associated to this chapter.

J. In order to verify that a company has carried out the construction, reconstruction or repaving project in the town ROW pursuant to this chapter, the town reserves the right to inspect the project, as well as to inspect all necessary documents related to said project.

K. There shall be a five-year moratorium on excavating in the town ROW that has been constructed, reconstructed, or repaved in the preceding five years to protect the public infrastructure and maintain the integrity of the pavement and ROW. However, waivers to the moratorium may be granted by the town manager or his or her designee for "good cause," such as:

- a. to repair leaks
- b. to respond to emergencies
- c. to provide services to buildings where no other reasonable means of providing service exists

d. other situations deemed by the town manager or his or her designee to be in the best interest of the general public

12.26.025 Implementation.

No less than 15 days before this chapter takes effect, the Town of Paradise shall e-mail, fax, mail or deliver a copy of it to all telecommunications service providers and other affected entities doing business within the Town of Paradise.

12.26.030 Exemptions.

A. The town manager or his or her designee, may exempt construction, reconstruction or repaving projects from the requirements of this chapter where compliance is found to be not practical or feasible. Requests for an exemption shall be in writing, and the town manager or his or her designee's decision shall be final.

B. An exemption application shall include all information necessary for the town manager or his or her designee to make a decision, including but not limited to documentation showing factual support for the requested exemption.

C. The town manager or his or her designee may approve the exemption application in whole or in part, with or without conditions.

12.26.035 Enforcement of this Chapter.

Enforcement of this chapter shall be as follows:

A. The town manager or his or her designee, shall have primary responsibility for enforcement of this chapter and shall have authority to issue citations for violation of this chapter. The town manager, or his or her designee, is authorized to establish regulations or administrative procedures to ensure compliance with this chapter.

B. A person or entity violating or failing to comply with any of the provisions of this chapter shall be guilty of an infraction.

C. The town manager or his or her designee may seek legal, injunctive, or any other relief to enforce the provisions of this chapter and any regulation or administrative procedure authorized by it.

D. The remedies and penalties provided in this chapter are cumulative and not exclusive of one another.

E. The town manager or his or her designee may inspect the premises of any construction, reconstruction, repaving or excavation project to verify compliance with this chapter.

12.26.040 Public Nuisance.

Violation of this chapter is hereby declared to be a public nuisance. Any violation of this chapter shall be subject to abatement pursuant to chapter 8.04 of the Paradise Municipal Code.

12.26.045 Severability.

If any word, phrase, sentence, part, section, subsection, or other portion of this chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The Town of Paradise hereby declares that it would have passed this title, and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases had been declared invalid or unconstitutional.

SECTION 2. This ordinance shall take effect thirty (30) days after the date of its passage. Before the expiration of fifteen (15) days after its passage, this ordinance or a summary thereof shall be published in a newspaper of general circulation published and circulated within the Town of Paradise along with the names of the members of the Town Council of Paradise voting for and against same.

PASSED AND ADOPTED BY THE Town Council of the Town of Paradise, County of Butte, State of California, on this ___ day of October 2019, by the following vote:

AYES:

NOES:

ABSENT:

NOT VOTING:

Jody Jones, Mayor

ATTEST:

DINA VOLENSKI, Town Clerk

APPROVED AS TO FORM:

DWIGHT L. MOORE, Town Attorney