

**ORDINANCE NO. Insert No.**

**AN ORDINANCE OF THE CITY OF MENIFEE, CALIFORNIA, AMENDING  
TITLE 14 OF THE MENIFEE MUNICIPAL CODE AND ADOPTING CHAPTER  
14.02, ENTITLED “PUBLIC STREET EXCAVATION MORATORIUM”**

**WHEREAS**, the City of Menifee invests significant financial resources annually in the preservation and maintenance of the City’s street network; and

**WHEREAS**, the City’s streets also serve as utility easements for many franchise utility owners who regularly perform maintenance and construction as part of new development, their own Capital Improvement Project program to expand/upgrade or reconstruct their facilities and services, and for emergency reasons; and

**WHEREAS**, trenching on newly paved streets not only damages the work completed but also negatively affects the City’s investment in pavement preservation; and

**WHEREAS**, a utility cut damages an area of pavement larger than the actual area of excavation; and

**WHEREAS**, the City of Menifee seeks to prolong pavement integrity, minimize pavement degradation, maintain a smooth riding surface for all modes of transportation, limit negative visual impacts, and limit public traffic inconveniences; and

**WHEREAS**, establishing a Street Excavation Moratorium will limit developers, utility companies, and City crews from damaging newly paved or resurfaced streets; and

**WHEREAS**, the City Council desires to amend Title 14 of the Municipal Code to ensure the City is able to effectively plan and coordinate improvements to the City’s growing infrastructure.

**NOW, THEREFORE**, the City Council of the City of Menifee, California does ordain as follows:

**Section 1.** The above recitals are true and correct and are incorporated herein.

**Section 2.** Chapter 14.02 entitled “Street Excavation Moratorium” is hereby added to Title 14 of the City of Menifee’s Municipal Code to read in its entirety as shown in Exhibit 1.

**Section 3.** Severability. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance, and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional, without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

**Section 4.** Effective Date. This ordinance shall take effect 60 days from the date of its adoption.

**Section 5.** Notice of Adoption. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause to be published within fifteen (15) days after its passage

in a newspaper of general circulation and circulated within the City in accordance with Government Code Section 36933(a) or, cause this Ordinance to be published in a manner required by law using the alternative summary and posting procedure authorized under Government Code Section 36933(c).

This Ordinance was introduced and read on the \_\_\_\_ day of \_\_\_\_\_, 2023 and  
APPROVED AND ADOPTED THIS \_\_\_\_ DAY of \_\_\_\_\_, \_\_\_\_\_.

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Bill Zimmerman, Mayor

Attest:

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Kay Vinson, Acting City Clerk

Approved as to form:

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Jeffrey T. Melching, City Attorney

## **EXHIBIT 1**

### **Chapter 14.02**

#### **Public Street Excavation Moratorium**

##### **Sections:**

<b>14.02.010</b>	<b>Purpose</b>
<b>14.02.020</b>	<b>Definitions</b>
<b>14.02.030</b>	<b>Moratorium Period</b>
<b>14.02.040</b>	<b>City Waivers</b>
<b>14.02.050</b>	<b>Procedures</b>
<b>14.02.060</b>	<b>Permits</b>
<b>14.02.070</b>	<b>Excavation Liability</b>
<b>14.02.080</b>	<b>Pavement Degradation Fees</b>
<b>14.02.090</b>	<b>Enforcement and Penalties</b>

##### **14.02.010 Purpose**

The purpose of the street excavation moratorium is to protect the City's investment in its infrastructure, to preserve the longevity of streets, to provide an improved and safe driving surface, to reduce pavement degradation, and to extend the life and structure of the pavement.

To achieve the purpose of this Chapter, the City of Menifee shall endeavor to coordinate its Capital Improvement Programs with those of utility owners and franchises with facilities in, on, under, or above the public right-of-way. Information about any planned work in the public right-of-way shall be shared at the earliest possible time. Utility owners and franchises are encouraged to coordinate their street excavations so that all work is done simultaneously, and if possible, in coordination with planned City Capital Improvement Projects to ensure the street is not excavated more than once in a short period of time.

##### **14.02.020 Definitions**

**Bona Fide Emergency.** A genuine emergency where no other alternative to mitigation exists under the circumstances.

**Chip Seal.** Resurfacing application that consists of eight-inch aggregates and emulsion.

**Complete.** Construction has concluded and pending recordation of a Notice of Completion.

**Excavation.** Any opening in the paved surface or subsurface of the public right-of-way.

**Excavation Influence Area.** The area impacted by the excavation as determined by the City Engineer.

**Excavator.** A person or party with approved permit or City waiver excavating in the public right-of-way.

**Moratorium Street.** A newly constructed street, reconstructed street, or portion thereof, completed in the preceding five-year period, or a resurfaced street or portion thereof, completed in the preceding three-year period.

**Municipal Improvement Project.** Construction or major repair of City buildings, infrastructure, and facilities such as streets, roads, highways, bridges, curbs, gutters, sidewalks, storm drains, traffic signals, streetlights, gas and water distribution facilities, and parks.

**Notice of Completion.** The City of Menifee City Council approved document recorded with the Riverside County Recorder's office after project acceptance.

**Overlay.** One or more courses of asphalt construction on an existing pavement.

**Public right-of-way.** Public easements or public property that are or may be used for streets, alleys, or other public purpose.

**Reconstructed.** A street or streets in which involve removal and replacement of pavement surface.

**Rehabilitation.** A street or streets receiving repairs of existing pavement to reset the deterioration process.

**Slurry Seal.** A mixture of polymer modified asphalt emulsion, mineral aggregate, mineral filler, water, and other additives, properly proportioned, mixed, and spread in accordance with local requirements.

#### **14.02.030 Moratorium Period**

Permission to excavate on newly constructed or reconstructed streets and streets receiving overlay and treatments of one-inch thickness or greater, will not be granted for a period of five (5) years after completion. Enforcement of the moratorium shall be effective upon final pavement cap, and the timed moratorium period shall begin upon recordation of a Notice of Completion.

Permission to excavate on streets receiving a seal coat, such as a slurry seal or chip seal, will not be granted for a period of three (3) years after completion. Enforcement of the moratorium shall be effective upon final street seal, and the timed moratorium period shall begin upon recordation of a Notice of Completion.

Streets that are constructed or rehabilitated and have a Notice of Completion on file on or after the Effective Date of this ordinance shall be subject to all provisions under this chapter. Streets that were constructed or rehabilitated prior to the Effective Date of this ordinance will also be subject to all provisions of this chapter. The moratorium period of these streets, however, will become effective from the date of recordation of the Notice of Completion throughout the applicable duration stated under the guidelines of this chapter.

#### **14.02.040 City Waivers**

The Director of Public Works/City Engineer, or their designee, shall grant a waiver to the prohibition of excavation on a Moratorium Street when one or more of the following conditions are present:

1. A Bona Fide Emergency exists that:
  - a) Endangers the public's health and safety or property, and
  - b) Requires an excavation in order to remediate the emergency.
2. New service to a specific location cannot be provided:
  - a) Either through existing conduit, where trenchless technology is impractical due to soil conditions, proximity of facilities or economically impractical, and
  - b) The public utility demonstrates to the Director of Public Works/City Engineer's satisfaction that the service cannot be provided from another location.
3. The installation or relocation of facilities by a non-government owned public utility is both required by the City, County, State or Federal Government and not required as a result of an underground utility district.
4. Only a non-linear excavation or exploratory excavation will be made.
5. Work is initiated by municipal improvement projects.
6. Where geological conditions prohibit boring.
7. Where there is a lack of working space for bore pits at each end of the street crossing bore.
8. An open trench is required to expose existing distribution facilities in street to terminate or establish service lines, or to provide emergency repair of existing underground facilities.
9. Existing facilities in the street conflict with the proposed bore.
10. Joint trench use is required and if within 200 feet of an open sewer or water trench, consideration will be given to an open trench.
11. Unusual circumstances are present, and the Director of Public Works/City Engineer finds that the public interest is best served by allowing such a cut.

To request a waiver, a written request must be submitted to the Director of Public Works/City Engineer. The request must include:

1. The location of the excavation.
2. A description of the work to be performed.
3. Construction plans and other supporting documents as deemed appropriate by Public Works Director/City Engineer.
4. The reason(s) the work was not performed prior to street paving.
5. The reason(s) the work cannot be deferred until after the prohibition period.
6. The reason(s) the work cannot be performed at another location.
7. The reason(s) it is justified to excavate the Prohibition Street

#### **14.02.050        Procedures**

##### **A. Excavation Procedures**

Excavations with a City waiver approved in writing by the Public Works Director/City Engineer under section §14.02.040 are subject to the following:

1. Where the excavation is in the direction of traffic (longitudinal trenches Exhibit A):
  - a) The approved Excavator must resurface the entire length of the excavation area, the excavation influence area on each end of the excavation area, and the entire lane or lanes.
    - i. Extend T-cut to one foot beyond the trench limits and replace the existing asphalt thickness plus one inch (4" minimum)
    - ii. If the asphalt depth is four (4) inches or deeper, the Excavator must grind two (2) inches minimum and place a minimum of two (2) inches overlay over the entire lane or lanes that are impacted regardless of street classification.
    - iii. If the existing asphalt depth is less than four (4) inches, the Excavator must grind the full depth of asphalt and replace asphalt in-kind of a minimum of two (2) inches over the entire lane or lanes that are impacted regardless of street classification.
2. Where the excavation is perpendicular to the direction of traffic (lateral trenches Exhibit B)
  - a) The approved Excavator must resurface the length of excavation from lane to lane, or for the length of the excavation plus the excavation influence area extending on each end of the excavation, whichever is less. This resurface includes the excavation area plus the excavation influence area on each side of the excavation.

- i. Extend T-cut to one foot beyond the trench limits and replace the existing asphalt thickness plus one inch (4" minimum)
  - ii. If the asphalt depth is four (4) inches or deeper the Excavator must grind two (2) inches minimum. The Excavator must also place two (2) inch overlay to twenty-five (25) feet beyond each side of the trench and over the entire lane or lanes that is impacted regardless of street classification. Or as directed by the City Engineer in cases involving intersections.
  - iii. If the existing asphalt depth is less than four (4) inches, the Excavator must grind the full depth of the asphalt and replace asphalt in-kind of a minimum of two (2) inches over the entire lane or lanes (curb to curb or curb to median curb) that are impacted regardless of street classification. The Excavator must also place two (2) inch overlay to twenty-five (25) feet beyond each side of the trench and over the entire lane or lanes that is impacted regardless of street classification. Or as directed by the City Engineer in cases involving intersections.
3. All excavations must utilize the most current City Standard Drawings with the modifications required under this section for moratorium streets as depicted in Exhibit "C" and in a manner approved by the City Engineer.
4. Excavation of streets not under the Street Moratorium classification under this chapter are subject to the standards set forth in the most current City Standard Drawings.

#### B. Coordination of Excavation Procedures

Public utilities shall coordinate planned infrastructure projects to minimize damage to the City's Street network caused by multiple excavations in the same area, by providing the City with a two (2) year plan for work anticipated in the public right-of-way.

On April 1, or on the first business day immediately thereafter, of each year, any public utility with anticipated work in the City shall prepare and submit to the City a plan that shows all major work anticipated to be done in the public right-of-way in the following twenty-four (24) months. Any public utility that does not propose major work is anticipated shall submit a statement that no such major work is anticipated and shall immediately report any major work to the City as soon as it becomes foreseeable.

### **14.02.060 Permits**

Any person needing to excavate on public right-of-way requires an encroachment permit pursuant to Ordinance 499 and shall be responsible for the full cost of plan preparation, plan review, construction inspection, material testing, bonding, and any other associated expenses relating to the work.

#### **14.02.070 Excavation Liability**

The Excavator is responsible for the quality of the excavation performed in the public right-of-way and liable for the consequences of any conditions of such excavation and any facilities installed in the public-right-of-way. The issuance of any permit, inspection, repair or suggestion, approval, or acquiescence of any City Official shall not excuse any Excavator, or agent thereof, from such responsibility or liability.

#### **14.020.080 Pavement Degradation Fees**

All excavations approved by the Public Works Director/City Engineer during the Moratorium Period of a street shall be subject to a Pavement Degradation Fee. The Pavement Degradation Fee recovers the increased repaving and reconstruction costs incurred by the City that are reasonably attributable to the impact of the excavation to the public right-of-way.

The Pavement Degradation Fee shall not exceed an amount reasonably necessary to recover the estimated costs, including all administration, investigation, inspection, monitoring, reconstruction, slurry seal, and resurfacing necessary to fully mitigate the damage and degradation caused by the excavation.

Each Excavator shall pay to the City a Pavement Degradation Fee in addition to the fee required by the encroachment permit or other administrative fees under this Title. The fee shall be established by resolution of the Menifee City Council.

#### **14.02.090 Enforcement and Penalties**

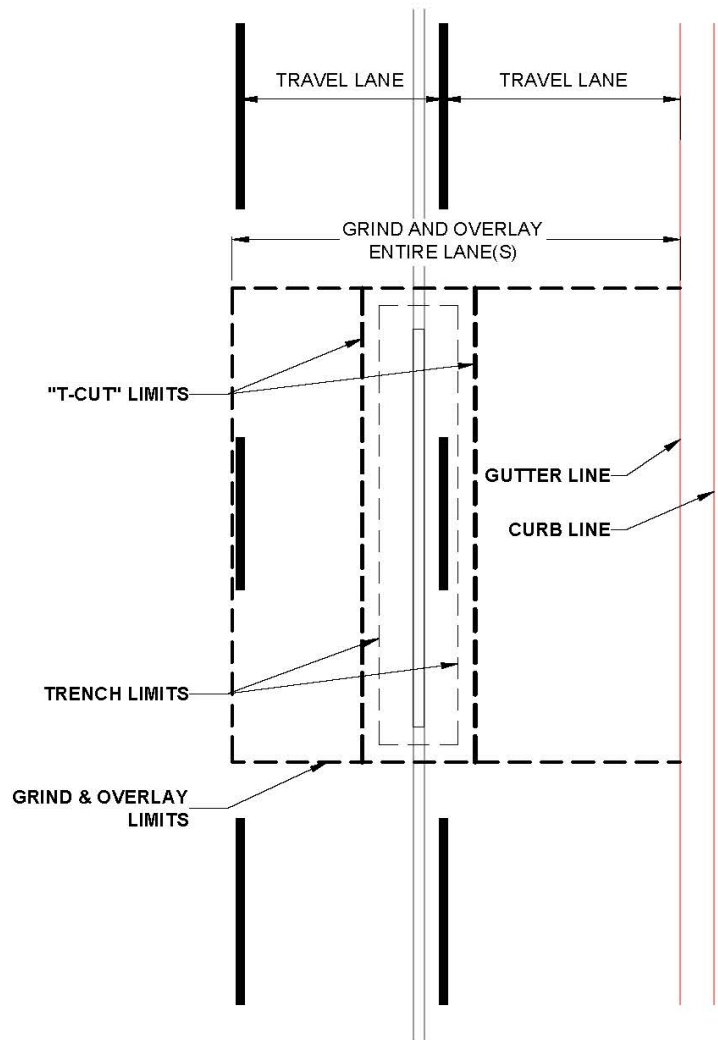
Violation under this chapter can result in enforcement and corrective actions by the City of Menifee which may result in fines in an amount set forth in a schedule adopted by resolution of the City Council. Fines incurred for violations under this chapter shall be subject to the requirements set forth in Title 1 Chapter 1.03 of the City of Menifee Municipal Code.

##### **Types of Violations**

1. Performing work without a permit.
2. Performing operations that are not included in the approved permit.
3. Failure to comply with permit requirements.
4. Failure to comply with requirements set forth under this chapter.

In addition to any penalties assessed for violation of this chapter, any person in violation must remedy any damage caused to the public right-of-way, all costs incurred for repairs are the sole responsibility of the violator of this chapter. Persons in violation of this chapter shall make repairs and restorations in the manner, and within the time period, specified by the Director of Public Works/City Engineer or their designee.

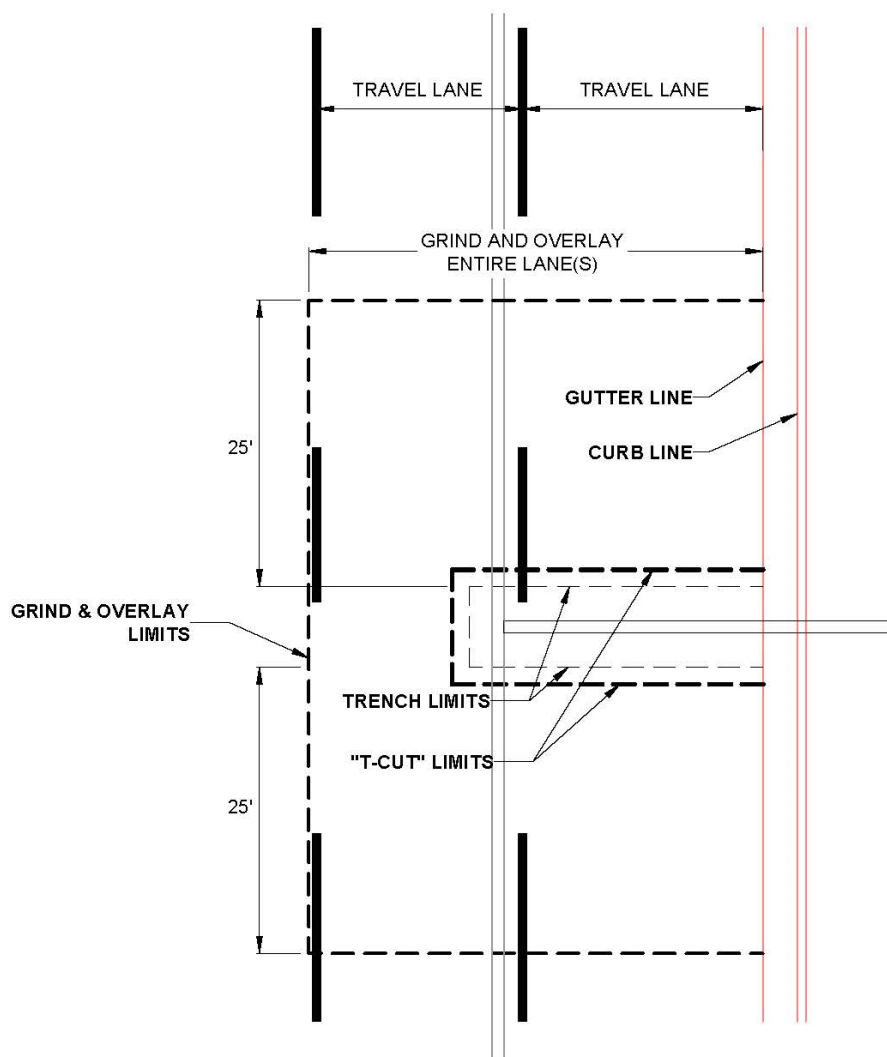




EXCAVATION LONGITUDINAL TO CURB

**CITY OF MENIFEE**

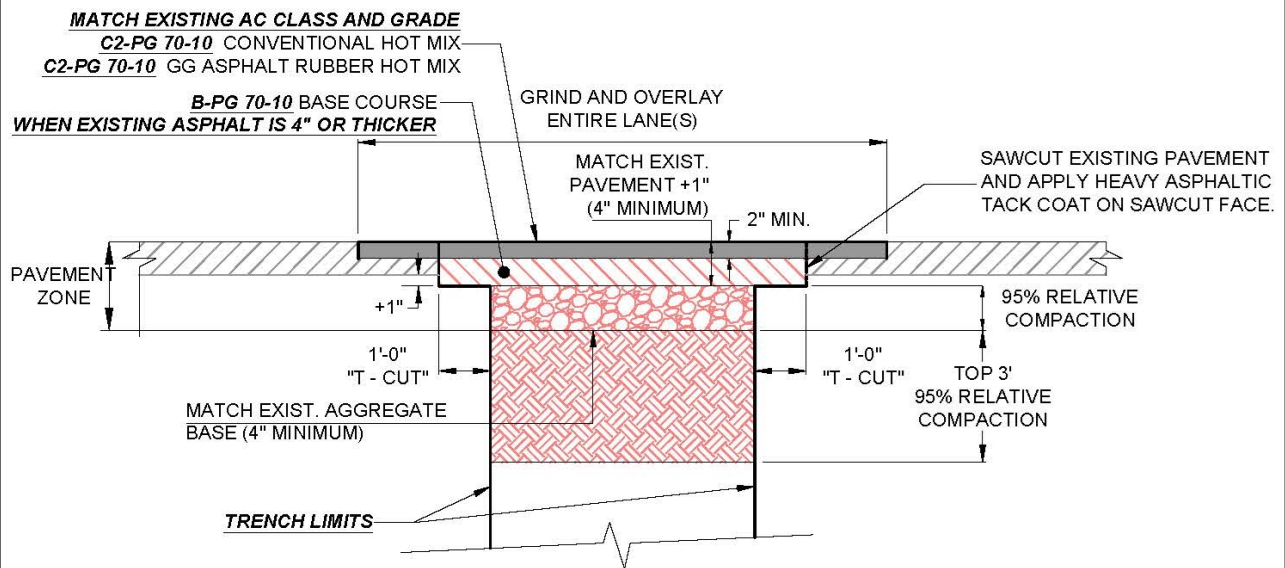
**STREET MORATORIUM  
ROADWAY REPAIR  
EXHIBIT A**



EXCAVATION PERPENDICULAR TO CURB

**CITY OF MENIFEE**

**STREET MORATORIUM  
ROADWAY REPAIR  
EXHIBIT B**



CITY OF MENIFEE

STREET MORATORIUM  
ROADWAY REPAIR  
EXHIBIT C