

**ORDINANCE NO. 919**

**AN ORDINANCE OF THE MONTEREY PENINSULA  
AIRPORT DISTRICT REGARDING TELECOMMUNICATIONS IMPROVEMENTS ON  
MONTEREY PENINSULA AIRPORT DISTRICT PROPERTY**

**THE BOARD OF DIRECTORS OF MONTEREY PENINSULA AIRPORT DISTRICT DO  
ORDAIN AS FOLLOWS:**

**Section 1. Findings and Purpose.** The Board of Directors finds and declares as follows:

A. The 21st-Century economy is dependent upon affordable, high-speed internet access that encourages competition and enables the entire community to access the internet and compete in the world-market with gigabit fiber infrastructure; and

B. The Monterey Peninsula Airport District ("MPAD") is pursuing potential broadband infrastructure opportunities that advance the economic and community benefits of a robust broadband infrastructure for the community, tenants and visitors at the Monterey Regional Airport; and

C. It is the intent of the District, in enacting this Ordinance, to streamline and simplify the process of installing and upgrading telecommunications equipment throughout the Airport property, and to encourage improvement and modernization of telecommunications infrastructure; and

D. Access to modern telecommunications infrastructure is vital for communication, education and economic development; and

E. It is the responsibility of the District to protect and control access to public rights-of-way; and

F. It is necessary to update District policies and practices to recognize the authority of the California Public Utilities Commission as established in state and federal statutes; and

G. A dig-once policy is the first pivotal step to help streamline broadband infrastructure improvements when any entity is proposing to open streets and rights-of-way for utility construction, cost efficiencies can be realized because multiple entities can join in the single dig, reducing costs as well as reducing disruption to the road surface; and

H. The proposed dig-once policy is consistent with the Central Coast Broadband Consortium and Next Century Cities' recommended best practices; and consistent with approved policy in many local jurisdictions.

**Section 2. Definitions.** For purposes of this Ordinance, the following definitions shall apply:

"Telecommunications" refers to data, voice, video or other information provided by wire, fiber optic cable or other technology.

"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.

"Rights-of-way" refers to the area upon or adjacent to any District-owned road, highway or rail line or along or across any of the waters or lands owned or controlled by the District.

"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.

"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.

"Conduit" refers to a tube, duct or other device or structure designed for enclosing telecommunication wires or cables.

"Reconstruction" refers to any project which repairs or replaces fifty percent or more of an existing road, highway or rail line.

"District telecommunications infrastructure" shall mean conduits, pull boxes, and other facilities that are used by the District to provide or support communications services.

"Incremental cost" shall mean the cost associated with adding District communications infrastructure to an excavation project, including the cost of the materials needed by the District and any additional labor costs.

**Section 3. 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, all construction, reconstruction or repaving of a District right-of-way will include provisions for the installation of telecommunications cable, conduit and other related equipment wherever practical and feasible. Where appropriate, telecommunications infrastructure shall be installed in or adjacent to District rights-of-way in conformance with current District standards. District staff will work with contractors to identify the most cost-effective approach consistent with District requirements. If a public or private project includes excavation in or adjacent to a District right-of-way, installation of or upgrades to District telecommunications cable, conduit or other infrastructure will be included as needed. The District shall be responsible for the incremental costs when the District participates in an excavation project by installing District telecommunications infrastructure. District

staff will notify all known providers of the opportunity to join the open trench and help coordinate efforts for multiple parties to join the dig. All installations shall conform to the size, shape, location and other specifications as determined by the Executive Director, or his or her designee.

#### **Section 4. Exemption.**

The Executive Director, or his or her designee, may exempt 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 Executive Director's or his or her designee's decision shall be final.

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

The Executive Director, or his or her designee, may approve the exemption application in whole or in part, with or without conditions.

#### **Section 5. Enforcement.** Enforcement of this ordinance shall be as follows:

The Executive Director, or his or her designee, shall have primary responsibility for enforcement of this ordinance and shall have authority to issue citations for violation of this chapter. The Executive Director, or his or her designee, is authorized to establish regulations or administrative procedures to ensure compliance with this chapter and establish the standard methodology for determining the incremental costs associated with installing District communications infrastructure in excavation projects;

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

The District may seek legal, injunctive, or any other relief to enforce the provisions of this chapter and any regulation or administrative procedure authorized by it.

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

The Executive Director, or his or her designee, may inspect the premises of any construction, reconstruction, repaving or excavation project to verify compliance with this ordinance.

#### **Section 6. Violations.** A violation of this ordinance is hereby declared to be a public nuisance. Any violation described in the preceding paragraph shall be subject to abatement by the District, as well as any other remedies that may be permitted by law for public nuisances, and may be enforced by injunction, upon a showing of violation.

**Section 7. Severability.** If any section, subsection, subdivision, sentence, clause, phrase or portion 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. The Board of Directors hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

**Section 8. No Conflict with Federal or State Law.** Nothing in this ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any Federal or State law.

**Section 9. Preemption.** The provisions of this chapter shall be null and void if State or Federal legislation, or administrative regulation, takes effect with the same or substantially similar provisions as contained in this chapter. The Board of Directors shall determine whether or not identical or substantially similar statewide legislation has been enacted or regulations issued.

**Section 10. Effective Date.** This ordinance shall take effect 30 days from and after the date of its adoption.

**ADOPTED BY THE BOARD OF DIRECTORS OF THE MONTEREY PENINSULA AIRPORT DISTRICT:** This 11<sup>th</sup> day of May, 2016, by the following roll call vote:

<b>AYES:</b>	<b>DIRECTORS:</b>	Miller, Sabo, Searle, Chair Leffel
<b>NOES:</b>	<b>DIRECTORS:</b>	None
<b>ABSTAIN:</b>	<b>DIRECTORS:</b>	None
<b>ABSENT:</b>	<b>DIRECTORS:</b>	Nelson

Signed this 11<sup>th</sup> day of May, 2016

  
y Ann Leffel, Chair

ATTEST



Michael La Pier, A.A.E.  
Executive Director