



# AGENDA REPORT

**TO:** Edward D. Reiskin  
City Administrator

**FROM:** Ryan Russo  
Director, Oakland  
Department of  
Transportation

**SUBJECT:** Caltrans Maintenance Agreement  
Amendments for Bikeway Facilities

**DATE:** October 14, 2021

City Administrator Approval 

Date: Nov 2, 2021

## **RECOMMENDATION**

**Staff Recommends That City Council Adopt A Resolution Authorizing The City Administrator To Execute Amendments To Maintenance Agreements Between The City And California Department Of Transportation (Caltrans) Relating To Bikeway Infrastructure In Order To Reduce Delay of Construction Projects.**

## **EXECUTIVE SUMMARY**

City of Oakland maintains 830 miles of streets (including related bicycle and pedestrian facilities), many of which cross under and over Caltrans facilities. Where these roadway cross Caltrans jurisdiction, the City and Caltrans have established Freeway Maintenance Agreements, many dating back to the 1960s or earlier, identifying that the City is responsible for maintaining the City's roadway. When City roadway work is in Caltrans jurisdiction, the City must request a Caltrans Encroachment Permit before performing work on the roadways in Caltrans' Right of Way (ROW). This requirement applies to construction work such as streetscape improvements and also routine pavement rehabilitation.

In 2021, multiple City paving and street improvement projects have been delayed for months due to Caltrans delay in issuing encroachment permits. These include paving and/or safety improvement projects on 98<sup>th</sup> Avenue, Miles Avenue, Mountain Boulevard, Park Boulevard, Telegraph Avenue, Washington Street, West Street, and W. Grand Avenue (in Council Districts 1, 2, 3, 4, and 7). In addition, the permit-related delay on these streets also delayed pavement maintenance and safety improvements other streets outside of Caltrans ROW, including E 15<sup>th</sup> Street, Foothill Boulevard, and Bancroft Avenue (in Council Districts 2, 5, 6, and 7). This is because these streets were included in a larger contract that included other streets in Caltrans ROW. Without the final permit for those streets, contractors were unwilling to partially mobilize.

In each case, Caltrans has withheld issuing an encroachment permit due to a new Caltrans directive to require amendments to the existing Maintenance Agreements if bikeway facilities are present in their ROW. Caltrans' requested amendment language for each project follows a

template and is not dependent on the type of bikeway facility or whether there was already a pre-existing bikeway facility.

Based on staff experience and Caltrans staff communication to staff, this requirement is anticipated to be a pre-requisite for all encroachment permits covering City work on a roadway that includes a bicycle facility. Given that amendments to the Caltrans Maintenance Agreements require City Council approval, this resolution would provide City Council authorization for the City Administrator or designee, following City Attorney review, to execute any future Maintenance Agreement amendments reflecting the pre-approved language included in **Attachment A**.

### **BACKGROUND / LEGISLATIVE HISTORY**

For most Caltrans ROW locations in Oakland, the existing Maintenance Agreement was first established through City Council approval in the time period that the particular freeway was constructed in Oakland. Two examples are provided in **Attachment B**. Periodically, staff have brought forward new Maintenance Agreements or Maintenance Agreement amendments as requested and required by Caltrans. Often these actions are in relation to a capital project which has changed the underlying infrastructure.

Encroachment permits are typically required for a construction project occurring within another agency's ROW. City staff apply for the encroachment permit to obtain permission to work in the ROW. For Caltrans encroachment permits, Caltrans' review of the City's application typically involves significant review of and commenting on the proposed work. Once the encroachment permit is approved, the City's contractor then submits for their own "rider" permit, following on the City's permit, to be approved to work in the area. The City cannot initiate construction without an approved encroachment permit.

Caltrans new requirement to amend any and all existing Maintenance Agreements related to bikeway facilities—and requiring the amendment be executed before an encroachment permit can be issued—is a new circumstance.

Per Oakland Charter Section 504(l), the City Administrator shall represent the City in its intergovernmental relations and to negotiate contracts for joint governmental actions, when directed by the City Council.

### **ANALYSIS AND POLICY ALTERNATIVES**

The proposed resolution would authorize the City Administrator to execute amendments to existing Caltrans Maintenance Agreements that follow the template language included in **Attachment A**. This would enable the City to proceed without additional delay on current construction projects. It would also ensure that future projects subjected to this requirement would not be delayed for the same reason. If Caltrans were to request materially new or different language in the amendments, staff would return to Council for additional approval. Similarly, if Caltrans identified the need for a new Maintenance Agreement, staff would return to Council for approval of the new Agreement. This proposed resolution would only address

Maintenance Agreement amendments, and specifically just those amendments that follow the template language in **Attachment A**.

In response to the new requirement, staff have requested that Caltrans provide exceptions to the requirement for projects entering construction. During the past 9 months, Caltrans has—after some delay—provided such an exception for two projects: Telegraph Avenue Highway Safety Improvement Program, and an 11.7-mile paving project which included work in the Caltrans ROW at W. Grand Avenue, West St, and 98<sup>th</sup> Avenue. These two projects were originally scheduled for construction before the end of the fiscal year (June 2021) and are now expected to begin in November 2021. However, staff have been advised by Caltrans that no additional exceptions will be made. This impacts projects currently in construction, but paused for an undetermined period of time, including completion of a pavement rehabilitation and safety improvement project on Park Boulevard near I-580, and pavement rehabilitation on Miles Avenue and Mountain Boulevard.

This also impacts all future projects that include a bikeway within Caltrans ROW. Not approving this resolution would mean that before construction could begin on such future projects, each street project including a bikeway in Caltrans ROW would require an individual Council action to approve an amendment to the Caltrans Maintenance Agreement in order for Caltrans to approve the City's encroachment permit.

The template amendment language has been reviewed and approved by the City Attorney, and the City Attorney's Office would review each proposed amendment executed by the City Administrator under this resolution for consistency with the approved template.

If the resolution is not approved, the City could be subject to contractor delay claims as approval of each projects' Caltrans encroachment permits would require an individual Council action to approve the amendment to the Caltrans Maintenance Agreement.

### **FISCAL IMPACT**

The City is already responsible for maintaining the City roadways in Caltrans ROW. No additional fiscal impact is anticipated from approving this proposed resolution.

### **PUBLIC OUTREACH / INTEREST**

Each specific construction project will be subject to its own separate public outreach. No public outreach other than public noticing requirements for the City Council meeting is required for this item.

### **COORDINATION**

The Budget Bureau and City Attorney's Office provided review and coordination of this agenda report and resolution.

**SUSTAINABLE OPPORTUNITIES**

**Economic:** This resolution will ensure that planned improvements and maintenance in Oakland roadways can continue without delay, reducing the likelihood of contractor delay claims.

**Environmental:** There are no environment opportunities associated with this resolution.

**Race & Equity:** There are no racial equity opportunities associated with this resolution.

**ACTION REQUESTED OF THE CITY COUNCIL**

Staff Recommends That City Council Adopt A Resolution Authorizing The City Administrator To Execute Amendments To Maintenance Agreements Between The City And California Department Of Transportation (Caltrans) Relating To Bikeway Infrastructure In Order To Reduce Delay of Construction Projects.

For questions regarding this report, please contact Sarah Fine, Program Manager.

Respectfully submitted,



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RYAN RUSSO  
Director, Department of Transportation

Reviewed by:  
Fred Kelley, Assistant Director  
Department of Transportation

Prepared by:  
Sarah Fine, Paving Program Manager  
Complete Streets Paving & Sidewalks

*Attachments (2):*

*A: Caltrans Maintenance Agreement Amendment Template*

*B: Caltrans Maintenance Agreement Dated November 24, 1964 and Caltrans Maintenance Agreement Dated December 22, 1958 to Amend Agreement from October 4, 1949.*

