

ORDINANCE NO. 2775

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE APPROVING CODE AMENDMENT NO. A-154-10 TO ADD CHAPTER 9.48 TO TITLE 9 OF THE GARDEN GROVE MUNICIPAL CODE PERTAINING TO UNDERGROUNDING OF UTILITIES AND AMENDING TITLE 9, CHAPTER 9.40, SECTION 160, PERTAINING TO REQUIRED SUBDIVISION IMPROVEMENTS

City Attorney's Summary

This Ordinance adds Chapter 9.48 to Title 9 of the Garden Grove Municipal Code to require the undergrounding of proposed and existing on-site and off-site utilities in conjunction with the development, redevelopment or subdivision of property in the city, and to allow a developer to voluntarily pay a fee in-lieu of undergrounding existing off-site utilities, which will be deposited in a fund used solely for future undergrounding of utilities in the city. This Ordinance also amends existing provisions of the Municipal Code pertaining to the required undergrounding of utilities in conjunction with subdivisions to be consistent with new Chapter 9.48.

WHEREAS, the case, initiated by City of Garden Grove, proposes amending Title 9 (Zoning Ordinance) of the Municipal Code to incorporate requirements for the undergrounding of utilities into Title 9 in a new Chapter 9.48, Undergrounding of Utilities, and to make conforming revisions to the existing provisions in Chapter 9.40, Subdivisions;

WHEREAS, the Planning Commission, at a Public Hearing held on March 4, 2010, determined that this Amendment is exempt from the California Environmental Quality Act (CEQA) based on the proposed amendments not being considered a project under Section 21065 of the Public Resources Code as these code revisions are not an action which have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect change in the environment. The proposed amendment does not commit the City to any definite course of action and all future undergrounding projects shall be reviewed for potential environmental impacts pursuant to CEQA. And furthermore, the Amendment would be exempt under Class 5/Section 15305 (the project constitutes a minor alteration in land use limitations in areas, with an average slope of less than 20%, which do not result in any changes in land use or density);

WHEREAS, pursuant to Resolution No. 5710, the Planning Commission, at a Public Hearing held on March 4, 2010, recommended approval of Amendment No. A-154-10;

WHEREAS, pursuant to a legal notice, a Public Hearing was held by the City Council on April 13, 2010, and all interested persons were given an opportunity to be heard;

WHEREAS, the City Council of the City of Garden Grove in Regular Session assembled on April 13, 2010, does hereby determine that this project is exempt pursuant to the Sections listed above of the CEQA;

WHEREAS, the City Council of the City of Garden Grove has considered the proposed Code Amendment to add Chapter 9.48 to Title 9 of the Garden Grove Municipal Code to require the undergrounding of proposed and existing on-site and off-site utilities in conjunction with the development, redevelopment, or subdivision of property in the City, and to allow a developer to voluntarily pay a fee in-lieu of undergrounding existing off-site utilities, which will be deposited in a fund used solely for future undergrounding of utilities in the city, along with revisions to the existing provisions of the Municipal Code pertaining to the required undergrounding of utilities in conjunction with subdivisions, as provided and attached to this Ordinance, together with comments received during the public review process. The record of proceedings on which the City Council of the City of Garden Grove decision is based is located in the Community Development Department at the City of Garden Grove, 11222 Acacia Parkway, Garden Grove, California. The custodian of record of proceedings is the Director of Community Development. The City Council of the City of Garden Grove finds, based upon the exercise of its independent judgment, on the basis of the whole record before it, including comments received, that the project is categorically exempt; and

WHEREAS, the City hereby finds that: (1) the Amendment is consistent with and promotes the general goals and objectives from the General Plan, in the Land Use Element relating to the preservation of neighborhoods and the redevelopment or revitalization of aging areas and properties, in the Community Design Element relating to the attractive design of structures and corridors, and in the Safety Element relating to protecting residents and development from risks associated with seismic activity and natural disasters; and (2) the Amendment promotes the public interest, health, safety, and welfare through the benefits of undergrounding utilities, providing aesthetic and safety benefits to individual properties and the community as a whole as well as providing a viable alternative to developers who would pay a disproportionately high cost to underground off-site utilities in comparison to the cost of their development project.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GARDEN GROVE DOES ORDAIN AS FOLLOWS:

Section 1. Amendment No. A-154-10 is hereby approved, and Title 9 of the Garden Grove Municipal Code, is hereby amended as provided in this Ordinance, pursuant to the facts and reasons stated in Planning Commission Resolution No. 5710,

a copy of which is on file in the Office of the City Clerk and incorporated herein by reference with the same force and effect as if set forth in full. Chapter 9.48 is hereby added as Division IV of Title 9 of the Garden Grove Municipal Code to read as follows:

CHAPTER 48

UNDERGROUNDING OF UTILITIES

SECTION 9.48.010: Purpose

SECTION 9.48.020: Definitions

SECTION 9.48.030: Requirements

SECTION 9.48.040: Exceptions to Undergrounding Requirement

**SECTION 9.48.050: Voluntary Payment of Fee In-Lieu of
Undergrounding Existing Off-Site Utilities**

SECTION 9.48.060: Relationship to Underground Utility Districts

SECTION 9.48.010: Purpose

The purpose of this Chapter is to provide for the reasonable and orderly removal of existing overhead utility facilities and the construction of new underground utility facilities on both public and private property, in order to promote and preserve the health, safety, and general welfare of the public and to assure the orderly and desirable development of the city.

SECTION 9.48.020: Definitions

For the purpose of this Chapter, the following words and phrases shall have the meanings set forth in this Section:

“Developer” means any property owner or other person or entity developing, redeveloping or subdividing property to which the undergrounding requirements of this Chapter applies.

“Off-site utilities” means those existing or proposed utility facilities serving the property to be developed, redeveloped, or subdivided, and which (i) are located within the public right-of-way adjacent or peripheral to the property or project, or (ii) are otherwise providing service to the property or project.

“On-site utilities” means those existing or proposed utility facilities serving the property to be developed, redeveloped, or subdivided, and which are located within the boundaries of the property or project, excluding those utility facilities located in the public right-of-way.

“Underground or undergrounding” means the location or relocation of utilities so that all of the utility facilities are located under the surface of the ground.

"Utilities or utility facilities" means, without limitation, poles, towers, supports, wires, cables, lines, conduit, guy wires, conductors, buys, stubs, platforms, braces, transformers, insulators, cutouts, switches, communication circuits, appliances, ducts, pipes and similar devices designed and/or utilized for providing, supplying, supporting, and/or distributing electrical energy and service, communication, telecommunication, cable television, and/or video programming to a property or consumer.

SECTION 9.48.030: Requirements

- A. In addition to any other provisions of this Code, the developer shall, at its cost, underground all existing and proposed on-site and off-site utility facilities associated with property which the developer is developing, redeveloping or subdividing within the city. Required undergrounding shall be a condition to the approval of any final map, discretionary permit, and building, plumbing, or electrical permit issued for the development, redevelopment, or subdivision of property.
- B. All such undergrounding work, where required, shall be constructed, installed and maintained in accordance with all applicable laws, rules, regulations, and requirements of the City and other applicable agencies or entities, including, but not limited to, rules, regulations and tariffs, applicable to the affected utility, adopted or approved by the Public Utilities Commission of the State of California.
- C. The developer shall be responsible for complying with the requirements of this Chapter and shall make the necessary cost and other arrangements with the utility companies for the installation of underground utility facilities and appropriate relocation and undergrounding of existing utility facilities. It shall also be the responsibility of the developer to establish to the satisfaction of the City Manager or his designee that the necessary arrangements with the utility companies have been made for the undergrounding, construction, and installation of such utility facilities.

SECTION 9.48.040: Exceptions to Undergrounding Requirement

- A. Undergrounding shall not apply to:
 - 1. Poles or electroliers used exclusively for street lighting.
 - 2. Utility facilities exempted from undergrounding by the Public Utilities Commission or applicable federal, state, or local law.
 - 3. Utility facilities that do not provide service to the property or structure being developed, redeveloped, or subdivided.

4. Temporary poles, overhead wires, and associated structures used, or to be used, in conjunction with construction projects.
5. Existing poles, overhead wires, and associated structures used for the transmission of electrical energy at nominal voltages 66,000 volts or greater if it is determined by the City Engineer that such undergrounding is not technically or economically feasible;
6. Antennae, associated equipment, and supporting structures used by a utility company for furnishing communication services.
7. Equipment appurtenant to or associated with underground facilities, such as surface mounted transformers, meter cabinets, pedestal-mounted terminal boxes, and concealed ducts, which, in the determination of the City Engineer, should be placed above ground for technical or public safety reasons.
8. Temporary poles, overhead wires, and associated structures for emergency service installed and maintained for a period not to exceed ten (10) days, unless a longer period is approved in writing by the City Manager or his designee.
9. Utility facilities the undergrounding of which the City Engineer determines would be impractical or technically infeasible due to physical constraints such as topography, soil, or other existing conditions.
10. Existing above-ground utility facilities, where the project is limited to the construction, enlargement, alteration, or rehabilitation of one (1) single family dwelling. The developer shall underground all new utility facilities associated with the project.
11. Existing above-ground utility facilities, where the project is limited to the enlargement, alteration, or rehabilitation of buildings or structures other than a single family dwelling where the enclosed floor area is not increased by more than twenty-five percent (25%). The developer shall underground all new utility facilities associated with the project.

SECTION 9.48.050: Voluntary Payment of Fee In-Lieu of Undergrounding Existing Off-Site Utilities

- A. In lieu of undergrounding existing off-site utilities, the developer may elect to pay the City an in-lieu fee to offset the developer's fair share of

the costs of undergrounding the off-site utilities. The amount of such an in-lieu fee shall be the lesser of the following:

1. The developer's proportionate share of the estimated then current cost of undergrounding similarly situated above-ground utility facilities of the same type, as determined by the City Engineer.
 2. One percent (1%) of the total estimated construction cost of the developer's project. This Subdivision A.2 shall not apply in circumstances where the developer is only processing a subdivision map without concurrently processing entitlements for a development project in conjunction with the subdivision.
- B. The developer shall be responsible for submitting all information and documentation necessary for and/or reasonably requested by the City Engineer to calculate the amount of the in-lieu fee. The submission of false or misleading information or documentation by any person pursuant to this Section shall be punishable as a misdemeanor.
- C. All in-lieu fees paid pursuant to this Section shall be deposited in a special account to be used solely for future undergrounding of utilities in the city.
- D. This Section shall not be applicable to, and undergrounding shall be required for, developments, redevelopments, or subdivisions of five (5) acres or more.

SECTION 9.48.060: Relationship to Underground Utility Districts

The provisions of this Chapter are in addition to, and not in substitution for or limitation of, the provisions of Chapter 24 of Title 11 of this Code.

Section 2. Section 160 of Chapter 40 or Division II of Title 9 of the Garden Grove Municipal Code is hereby amended and restated in its entirety to read as follows (new text in bold/underline; deleted text in strikeout):

SECTION 9.40.160: Improvements Required.

- A. The minimum improvements that the subdivider will be required to make or enter into an agreement to make in the subdivision prior to the acceptance and approval of the final map by the City Council shall be:
1. Separate and adequate distribution lines for domestic water supply to each lot;
 2. Sewage collecting system where main lines of an adequate disposal system are available;

3. Adequate drainage of the subdivision streets, highways, ways, and alleys;
4. Adequate grading and surfacing of streets, highways, ways, and alleys;
5. Concrete curbs, gutters, and cross gutters;
6. Concrete sidewalks;
7. Survey monuments;
8. Fire hydrants at locations designated by the City Engineer;
9. Street name signs, two (2) to each intersection;
10. Traffic control devices;
11. Necessary barricades and safety devices;
12. Fee for the planting of parkway trees, as provided in Division I of this Title;
13. Ornamental street signs;
14. All street, vehicular, and pedestrian ways within a condominium project shall be improved to meet the same city standards as is required for public streets and associated improvements;
15. ~~Utility facilities including, but not limited to all facilities, wires, cables and ducts for supplying and distributing electrical energy and service, street lighting, communication, and cable television shall be required to be placed underground in any new tract or in any revised or reactivated tract;~~ **Undergrounding of all existing and proposed on-site and off-site utility facilities shall be pursuant to Chapter 9.48. Section 9.40.160, Subsection B, below, shall not apply to the undergrounding of utilities;**
16. Fees for, or dedication of, park and recreation facilities;
17. Intersection widening;
18. Highway safety lighting;

19. Turnout bays; and

20. Median islands.

~~B. For the purpose of this division, appurtenances and associated equipment, such as, but not limited to, surface-mounted transformers, meter cabinets and pedestal-mounted terminal boxes and concealed ducts in an underground system, may be placed above ground.~~

~~C. The subdivider shall make the necessary arrangements with the utility companies for the installation of such facilities. It shall also be the responsibility of the subdivider to establish, to the satisfaction of the city engineer, that the necessary arrangements with the utility companies have been made.~~

~~1. These requirements may be waived by the city council if topographical, soil or other conditions make such underground installations unreasonable or impractical.~~

~~2. This division shall not apply to utility lines that do not provide service to the area being subdivided.~~

BD. **Except as provided otherwise in this Section,** the subdivider may make application for exception from the provisions of this Section in the following manner:

1. A written application shall be filed with the Public Works Department. Within thirty (30) days, the department shall file a report on the appeal to the City Council.

2. Such application shall include all information necessary to properly apprise the City Council of the circumstances existing that require such an exception.

3. Within thirty (30) days after the filing of such application, the City Council shall conduct a hearing on the application. The City Council may then grant, partially grant, or deny the application.

Section 3. Severability. If any section, subsection, subdivision, sentence, clause, phrase, word, 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 City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, word, or portion thereof, irrespective

of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, words or portions thereof be declared invalid or unconstitutional.

Section 4. Effective Date. The Mayor shall sign and the City Clerk shall certify the passage and adoption of this Ordinance and shall cause the same, or summary thereof, to be published and posted pursuant to the provisions of law and this Ordinance shall take effect thirty (30) days after adoption.

The foregoing Ordinance was passed by the City Council of the City of Garden Grove on the ____ day of _____.

ATTEST:

MAYOR

CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS:
CITY OF GARDEN GROVE)

I, KATHLEEN BAILOR, City Clerk of the City of Garden Grove, do hereby certify that the foregoing Ordinance was introduced and presented on April 13, 2010, with a vote as follows:

AYES: COUNCIL MEMBERS: (4) BROADWATER, JONES, NGUYEN, DALTON
NOES: COUNCIL MEMBERS: (0) NONE
ABSENT: COUNCIL MEMBERS: (1) DO