



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Katy Allen

**SUBJECT: PROPOSED REVISION TO THE  
UNDERGROUND UTILITY FEE  
ORDINANCE**

**DATE:** 04-28-08

Approved

Date

5/6/08

**COUNCIL DISTRICT:** Citywide

## **RECOMMENDATION**

That the City Council direct staff to work with the City Attorney's Office to revise the Underground Utility Fee Ordinance (Chapter 15.26 of the San José Municipal Code) to enable:

- a) Annual automatic adjustment of the Underground Utility Fee based on the Engineering News Record's 20-City Average Construction Cost Index.
- b) Reimbursement to developers for completing underground utility projects.

## **OUTCOME**

The proposed revisions to the Underground Utility Fee Ordinance will enable the fee to be adjusted annually based on the Engineering News Record's 20-City Average Construction Cost Index. Furthermore, the proposed modifications to the Underground Utility Fee Ordinance will encourage developers with sizeable development projects to underground the overhead facilities adjacent to their properties in order to expedite the City's current backlog of undergrounding projects.

## **BACKGROUND**

On April 29, 2008, the City Council accepted a report on the proposed fiscal year 2007/08 - 2012/13 Workplan for the Rule 20A and Rule 20B (In-Lieu Fee) Underground Utility Program. The Rule 20B program consists of utility undergrounding projects that are funded with fees collected from private development in lieu of construction. In order for this program to be viable, the in-lieu fee must be continually adjusted to be commensurate with the actual cost of City-administered utility undergrounding projects.

The Underground Utility Fee Ordinance (Chapter 15.26 of the San José Municipal Code) requires a private developer to pay the City a fee for the conversion of overhead utility facilities to underground facilities on major collector or arterial streets. Prior to the adoption of this

ordinance, developers were required, as a condition of their development permits, to convert the overhead utilities adjacent to their properties to underground systems. This placed the entire burden of utility undergrounding on the developer who happened to be on the side of the street with the overhead utilities. Future developers of properties on the opposite side of the street were not required to compensate the original developer, yet could receive the aesthetic benefit. Consequently, the Council approved the Underground Utility Fee Ordinance to equitably distribute the financial responsibility for undergrounding utilities to properties on both sides of the street.

The Underground Utility Fee is set forth in the Schedule of Fees and Charges. It is based on an amount per linear foot of the project site frontage adjacent to a major collector or arterial street with overhead utilities. The fee is intended to represent one-half of the cost to relocate overhead utilities underground. Developers on both sides of the street are required to pay the Underground Fee, even though overhead lines may be present on only one side of the street.

As development occurs along a major collector or arterial street, property owners on these streets are required to pay a fee representing their half of the costs of the undergrounding work. Underground Utility Fees are collected within an area, and the City then forms an Undergrounding District and completes the physical undergrounding. The construction is coordinated with utility companies, via a City-administered Capital project. The creation of an underground utility district is not required when the developers perform the undergrounding themselves.

Underground Utility Fees are programmed to be expended in areas included in the approved In-Lieu Fee Undergrounding Master Plan, which is presented to Council annually. The last In-Lieu Master Plan was adopted by Council in December 2007. Utility undergrounding projects that are funded by Underground Utility Fees are accomplished through the City's establishment of large projects. In all, undergrounding large aggregate projects results in lower unit costs for design and construction, which have traditionally been performed by the City or PG&E through an agreement with the City.

At its inception in 1989, the Underground Utility Fee was set at \$92 per linear foot of public street project frontage. Council approved a subsequent fee increase to \$112 in June 1996. In 2002, the Underground Utility Fee was increased to \$224 per linear foot per frontage. Since then, costs of utility undergrounding projects have risen gradually as indicated in the attached Fee Study performed by staff. Currently, the increased costs for these projects warrant a fee increase in order to make the program financially viable and 100 percent cost recovery.

## **ANALYSIS**

### *Fee Increase and Annual Automatic Adjustment*

During the 2008-2009 Fees and Charges process, staff will be bringing forward a proposed fee increase for the City Council's consideration. The proposed fee increase is based on recent costs of undergrounding projects, ranging in project size from 840 to 2,200 linear feet that have been constructed over the past five fiscal years (Attachment A). Project construction costs were calculated on a per-linear-foot basis and then adjusted using the Engineering News Record's (ENR) 20-City Average Construction Cost Index to current year (2008) dollars. This analysis determined that the average undergrounding cost is actually \$790 per linear foot of street frontage (see attached Fee Study). With the fee being shared equally by the projects on each side of the street, the proposed fee per development will be \$395 per linear foot of development street frontage. The increased fee will enable the City to recover 100 percent of the costs of the undergrounding program. Furthermore, it will provide adequate funding to complete proposed projects identified in the In-Lieu Fee Master Plan.

Project costs have risen for a number of reasons, primarily due to the soaring fuel, labor, material and equipment costs of undergrounding projects over the past five years. In addition, more-stringent construction working hour requirements have resulted in an increase in night and weekend work, thus increasing costs.

In order to keep up with the economic trend of increasing project costs, staff proposes revising the Underground Utility Fee Ordinance to provide for an annual automatic adjustment of the fee. The fee will be adjusted automatically based on the ENR's 20-City Average Construction Cost Index. Staff will annually evaluate the amount of the adjusted fee and project costs to ensure that the amount of the fee reflects the estimated amount needed to construct underground utility projects in San José. The proposed annual automatic fee adjustment will be processed through the annual Fees and Charges process. Staff will prepare a report analyzing the Underground Utility Fee program and the fee for the Council's consideration no later than four years after approval of the ordinance revisions. The actual timing of the report will depend on the number of underground utility projects completed.

#### *City Reimbursement*

During the review of the 2002 fee increase, the subject of creating an incentive to encourage private developers to underground the overhead facilities adjacent to their projects was discussed by the City Council. By design, the Underground Utility Fee program is intended to relieve developers of the responsibility of undergrounding projects themselves by paying fees for undergrounding. However, there are some instances when it is more efficient and desirable for a developer to underground the facilities rather than paying a fee to the City for a future undergrounding project.

The Underground Utility Ordinance currently allows developers to perform the undergrounding themselves if certain conditions are met subject to the approval of the Director of Planning, Building and Code Enforcement. Some examples include situations where there are significant frontage improvements required by the development (i.e., full half-street reconstruction or

widening) or large blocks (typically 600 feet or more) that are being developed at one time. In those situations where a street is going to be widened, the Department of Public Works has been encouraging developers to underground their overhead facilities to avoid re-trenching the street and sidewalk in the future.

As a financial incentive to facilitate undergrounding, staff is proposing to utilize previous fee payments to offset developer construction costs. Specifically, if the property on the opposite side of the street has paid fees to the City, and the development in question is agreeable to undergrounding the overhead facilities, staff is proposing that the fees paid by the development on the opposite side of the street be used to reimburse the developer who wants to do the undergrounding. The reimbursement amount will be limited to the amount of fees paid by the developer on the opposite side of the street and shall not exceed the amount paid by that developer for its portion of the underground work. Similar to the City's Landscape and Median Island Reimbursement program, the developer will be subject to public construction requirements including the payment of prevailing wage.

Currently, the Undergrounding Utility Ordinance does not allow for this type of reimbursement. Although, undergrounding by developers is not common place, staff recommends development of this amendment to provide staff the flexibility to utilize Underground Utility Fees collected to their maximum extent practicable to facilitate the timely undergrounding of overhead facilities. Upon direction from the Council, staff will work with the City Attorney's Office to prepare revisions to the Underground Utility Fee Ordinance that will enable reimbursement to developers. The ordinance will include criteria and guidelines for the reimbursement program similar to those set forth in Section 14.04.330 of the San José Municipal Code. The proposed revisions will be brought forward for the Council's consideration. Additionally, staff will include a report of the monies paid to developers under the proposed ordinance revisions during the Annual Development In-Lieu Fee Report.

#### **EVALUATION AND FOLLOW-UP**

The proposal for annual automatic fee adjustment will be consistent with the 100 percent cost recovery program that will provide adequate funding to complete proposed projects, and the proposal to reimburse developers to perform utility undergrounding projects themselves, in some instances will be more efficient than paying a fee to the City and the City constructing the project at a later date.

Based on direction from the Council, staff will return with revisions to Chapter 15.26 of the Municipal Code that incorporates both of these proposals.

#### **PUBLIC OUTREACH/INTEREST**

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**

- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This action does not meet any of the criteria above, however the fee increase was discussed at the Public Works Department's Development Industry Meeting on October 18, 2007, and at the Planning Department's monthly Developer Representative Roundtable Meeting on February 15, 2008. At both these meetings, the fee increase proposal was received with no objection. This memorandum will be posted on the City's website for the May 20, 2008 Council Agenda.

### COORDINATION

The proposed changes to the ordinance have been coordinated with the City Attorney's Office, the City Manager's Budget Office and the Department of Planning, Building and Code Enforcement.

### FISCAL/POLICY ALIGNMENT

This proposal is consistent with the Council-approved Budget Strategy to continue with capital investments that spur construction spending in the local economy. Most importantly, this proposed fee increase will bring the Undergrounding In-Lieu Fee to the current level necessary for the City to construct and administer underground utility projects as well as maintain a 100 percent cost recovery program.

### CEQA

CEQA: Not a project.



KATY ALLEN  
Director, Public Works Department

For questions, please contact DEPUTY DIRECTOR TIMM BORDEN, at 535-8300.

**UNDERGROUND UTILITY BASE FEE STUDY  
(BASED ON CONSTRUCTION COST DATA)**

**COST OF COMPLETED PROJECTS:**

<b>PROJECT Location</b>	<b>Length (ft)</b>	<b>CONSTRUCTION</b>			<b>2007*</b>	
		<b>Year</b>	<b>Cost</b>	<b>Cost/ft</b>	<b>Cost</b>	<b>Cost/ft</b>
SARATOGA/MOORPARK	1200	2002	\$674,900.00	\$562.42	\$822,028.20	\$685.02
KING ROAD	840	2002	\$351,098.00	\$417.97	\$427,637.36	\$509.09
McLAUGHLIN	1400	2002	\$866,736.00	\$619.10	\$1,055,684.45	\$754.06
SENER	2197	2003	\$1,232,791.00	\$561.12	\$1,467,021.29	\$667.74
McKEE-TOYON	1721	2004	\$941,118.00	\$546.84	\$1,053,675.71	\$612.25
SARATOGA/KIELY	1760	2006	\$1,527,310.00	\$867.79	\$1,569,616.49	\$891.83
<b>Total</b>	9118		\$5,593,953.00		\$6,395,663.50	

\* Based on ENR's Construction Cost Index (20 Cities)

**AVERAGE COST PER FOOT OF PROJECTS BASED ON CONSTRUCTION COST DATA:**

	<b>2007</b>	<b>2008**</b>
TOTAL Construction Costs:	\$6,395,663.50	\$ 6,587,533.41
TOTAL footage:	9,118 ft	9,118 ft
Cost/ft:	\$701.43 /ft	\$720.00 /ft
Program Administration Cost/ft (10%):	\$70.14 /ft	\$72.00 /ft
TOTAL Estimated Costs/ft:	\$771.58 /ft	\$792.00 /ft
<b>COST TO UNDERGROUND:</b>	\$771.58 /ft	\$790.00 /ft

**UNDERGROUND UTILITY FEE:**

**\$395 /ft \*\*\***

\*\*2008 Cost/ft: Based on estimated CCI increase of 3%

\*\*\* The findings to support the increase that are articulated in City Code Chapter 15.26 remain the same (Current fee \$224/LF)