



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Katy Allen

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

DATE: 05-26-09

Approved

Date

6/2/09

COUNCIL DISTRICT: Citywide

RECOMMENDATION

Approve an ordinance amending Sections 15.26.100, 15.26.120, 15.26.130, 15.26.140, 15.26.145 and 15.26.180 of Chapter 15.26 of Title 15 of the San José Municipal Code (Underground Utility Fee Ordinance), to allow annual automatic adjustment of the underground utility fee and reimbursement to developers for completion of underground utility projects and to make technical changes.

OUTCOME

The proposed revisions to the Utility Undergrounding Fee Ordinance will enable the fee to be adjusted annually based on the Engineering News Record's 20-City Average Construction Cost Index or its equivalent. Furthermore, the proposed modifications to the Utility Undergrounding 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 May 20, 2008, the City Council directed staff to work with the City Attorney's Office to propose revisions to the Underground Utility Fee Ordinance (Chapter 15.26 of the San José Municipal Code) that would provide for the: a) annual automatic adjustment of the Underground Utility Fee; and b) reimbursement to developers for completing underground utility projects.

The Utility Undergrounding Fee Ordinance requires private developers to pay the City a fee for the conversion of overhead utility facilities to underground facilities on major collector or arterial streets within San José.

The Utility Undergrounding Fee is currently 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 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 In-Lieu Underground Fee. Because the fee is used to fund actual construction projects, it is imperative that the fee keep pace with actual costs for the program to be sustained.

As development occurs along a major collector or arterial street, developers are required to pay a fee representing their half of the costs of the undergrounding work. Upon the collection of a majority of Utility Undergrounding Fees within a geographic area, the City will form an Underground Utility District and complete the undergrounding. The construction is coordinated with utility companies, via a City administered Capital project. It is important to note that the creation of an Underground Utility District is not required when the developers perform the undergrounding themselves.

At its inception in 1989, the Utility Undergrounding Fee was set at \$92 per linear foot of public street project frontage. Council approved a subsequent fee increase to \$112 per linear foot in June of 1996. In 2002, the Utility Undergrounding Fee was increased to \$224 per linear foot per frontage. The current Utility Undergrounding Fee is \$395 per linear foot per frontage.

ANALYSIS

ANNUAL AUTOMATIC FEE ADJUSTMENT - During the 2008-2009 Fees and Charges process, the Utility Undergrounding Fee was increased to \$395 per linear foot. The fee increase was based on recent average costs of undergrounding projects, and adjusted using the Engineering News Record's (ENR) 20-City Average Construction Cost Index to 2008 dollars. The analysis determined that the average undergrounding cost was \$790 per linear foot of street frontage. With the fee being shared equally by projects on each side of the street, the fee is \$395 per linear foot of development street frontage. The increased fee enables the City to recover 100% of the costs of the undergrounding program.

In order to keep up with the economic trend of increasing utility undergrounding project costs¹, the proposed revisions to the Ordinance will provide for an annual automatic adjustment of the fee. The current fee of \$395 will be moved from the Schedule of Fees and Charges and included in the Ordinance along with a provision that the fee will be adjusted automatically based on the ENR's 20-City Average Construction Cost Index or its equivalent.² The fee will be evaluated and adjusted accordingly in January of each year and will become effective on January 31st. Although notice of the potential increase is provided for in the terms of the ordinance itself, notification of any fee increase will also be done via outreach to the Development Industry.

¹ It should be noted that the In-Lieu Fee could decrease if the costs of construction decrease as reflected in the ENR's 20-City Average Construction Cost Index.

² The fee will remain in the Schedule of Fees and Charges until January 30, 2010 when the adjusted fee set forth in the Ordinance takes effect on January 31, 2010.

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The annual fee adjustment will also be included in the Report on the Rule 20A and Rule 20B (In-Lieu Fee) Underground Utility Program and Five-Year Workplan. This report provides information on the utility undergrounding program and projects.

CITY REIMBURSEMENT –During the review of past fee increases, 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 Utility Undergrounding Fee program is intended to relieve developers of the full 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 they choose. Often times, they express interest due to the immediate aesthetic benefit of removing overhead utilities from their frontage, yet they lack the financial resources to complete such a project. In addition, there are certain projects where the Department of Public Works will encourage developers to perform the undergrounding themselves in order to avoid re-trenching the street and sidewalk in the future e.g., in cases where there are significant frontage improvements required by a development (i.e. full half-street reconstruction or widening) or large blocks (typically 600-feet or more).

To facilitate the developer completing the undergrounding in these cases, the proposed Ordinance amendment will allow the use of previous fee payments to partially offset developer construction costs for completing underground utility projects. For example, if a property on the opposite side of the street has paid fees to the City, and the development in question wants to underground the overhead facilities located along the their frontage, the fees paid by the development on the opposite side of the street can be used to partially 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. The developer will be subject to the City's public construction requirements including the payment of prevailing wage. The developer will also be required to enter into a City-private developer contract pursuant to San José Municipal Code Section 14.04.330, so the City can ensure that the undergrounding is being performed in accordance with City standards and requirements.

Although undergrounding by developers is not commonplace, the proposed revisions will provide the flexibility to utilize the Utility Undergrounding Fees to facilitate the timely undergrounding of overhead facilities. Monies paid to developers will be reported in the Annual Development In-Lieu Fee report.

USE OF FUNDS –The current Ordinance allows that In-lieu Fees may be used for contributions to underground utility districts that are established on designated streets. This means that In-lieu Fees can be used for undergrounding projects whether the project is funded by PG&E's Rule

20A program, by In-Lieu Fees as a 20B project, or as a combination 20A/20B project, as long as the project is within an underground district established on a designated street.

The Ordinance provides that the fees may be used to pay for City administrative expenses related to In-Lieu Fee (20B) funded undergrounding projects. The proposed revisions to the Ordinance would clarify that the fees may be used for administrative costs related to undergrounding projects that are within an underground utility district whether it's a 20A, 20B, or combination 20A/20B project. This is consistent with Section 15.26.120(3) described above, which currently allows In-Lieu Fees to be contributed to projects regardless of whether the project is a 20A, 20B or combination 20A/20B project. Use of In-Lieu Fees for administrative costs of undergrounding projects within underground utility districts is also appropriate since Rule 20A projects will reduce the overall costs of the Rule 20(B) In-Lieu Fees program over the life of the undergrounding program.

City administrative expenses include, without limitation, the legislation of utility underground districts, hosting community meetings, reviewing and coordinating responsibilities during the design and construction phases of the project, and construction inspection.

EVALUATION AND FOLLOW-UP

The Utility Undergrounding Fee will be evaluated annually in January and adjusted accordingly based on Engineering New Record's (ENR) 20-City Average Construction Cost Index. The fee adjustment will be reported annually in Annual Rule 20A and Rule 20B (In-Lieu Fee) Underground Utility Program Five-Year Workplan.

Also, staff will include a report of the monies paid to developers under the proposed ordinance revisions during the Annual Development In-Lieu Fee report.

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 annual fee increase and reimbursement was discussed at the Public Works Department's Development Industry Meeting

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on October 18, 2007, and at the Planning Department's monthly Developer Representative Roundtable Meeting on February 15, 2008. At both these meetings, the automatic fee increase and developer reimbursement proposal were received with no objection. This memorandum will be posted on the City's website for the June 16, 2009, Council agenda.

COORDINATION

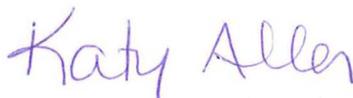
The proposed changes to the ordinance have been coordinated with the Community and Economic Development CSA. This memo has been coordinated with the City Attorney's Office, the City Manager's Budget Office and the Department of Planning, Building and Code Enforcement.

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, the proposed automatic fee adjustment will allow the Utility Undergrounding Fee to be at the current level necessary for the City to construct and administer underground utility projects as well as maintain a 100 percent cost recovery program. Also, the reimbursement to developers will encourage developments with significant frontage improvements to perform the utility undergrounding work themselves.

CEQA

CEQA: Not a project.



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For questions, please contact TIMM BORDEN, DEPUTY DIRECTOR, at (408) 535-8300.

RC/PD:SK/ML