



COUNCIL AGENDA: 06-23-09

ITEM: 2.2 (q)

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: LEE PRICE
CITY CLERK

SUBJECT: ORDINANCE NO. 28581
ESTABLISHING RULE 20A
UNDERGROUND UTILITY
DISTRICT

DATE: JUNE 19, 2009

RECOMMENDATION

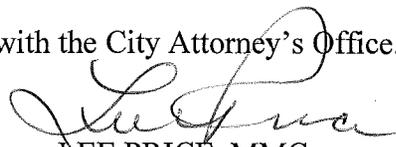
Re-adopt Ordinance 28581 – Establishing Rule 20A Underground Utility District along Coleman Avenue between West Hedding Street and Spring Street, North Market Street between West Julian Street and West St. James Street, and Devine Street between North San Pedro Street and North First Street.

BACKGROUND

This ordinance was passed for publication on June 2, 2009 and put on the Council agenda for final adoption on June 16, 2009. Pursuant to City Charter Section 604, the title of an ordinance shall be published in the newspaper no later than the *third day immediately preceding* the date of the final adoption. Due to a technical issue with the required legal publication, the title for this ordinance will publish on June 20, 2009. Staff is, therefore, recommending that the Council re-adopt the ordinance to comply with the Charter. The effective date of the ordinance will be July 24, 2009.

COORDINATION

Preparation of this report has been coordinated with the City Attorney's Office.


LEE PRICE, MMC
City Clerk

Attachment: Ordinance No. 28581 (to publish in the San José Mercury News on June 20, 2009)



ORDINANCE NO. 28581

**AN ORDINANCE OF THE CITY OF SAN JOSE ESTABLISHING
RULE 20A UNDERGROUND UTILITY DISTRICT ALONG COLEMAN
AVENUE BETWEEN WEST HEDDING STREET AND SPRING STREET,
NORTH MARKET STREET BETWEEN WEST JULIAN STREET AND
WEST ST. JAMES STREET, AND DEVINE STREET BETWEEN NORTH
SAN PEDRO STREET AND NORTH FIRST STREET**

WHEREAS, by Resolution No. 74881, the City Council of San José set a Public Hearing on June 2, 2009 at 1:30 P.M., in the Council Chambers of the City of San José, City Hall, 200 E. Santa Clara Street, at the corner of Fourth and East Santa Clara Streets, San José, to ascertain whether an Underground Utility District should be established in the area designated as the "COLEMAN AVENUE UNDERGROUND UTILITY DISTRICT" (hereinafter called "District") and more fully described and shown on EXHIBITS A-1 and A-2 hereto; and

WHEREAS, written notice of the Public Hearing has been given pursuant to Section 15.24.050 of the San José Municipal Code, such hearing has been duly and regularly held, and all persons interested have been given a reasonable opportunity to be heard; and

WHEREAS, the criteria to form a district as set forth in San José Municipal Code Section 15.24.060 include:

- a. Removal of overhead wires and placement underground will eliminate an unusually heavy concentration of poles and overhead wires within the Proposed District; and
- b. Public streets or rights-of-way within the Proposed District are extensively used by the general public and carry a heavy volume of pedestrian or vehicular traffic; and

- c. Public streets or rights-of-way within the Proposed District adjoin or pass through a civic area or public recreation area or an area of unusual scenic interest to the general public; and

WHEREAS, pursuant to Section 15.24.060 of the San José Municipal Code, the City Council hereby finds and determines, based on evidence presented at the Public Hearing including the memorandum from the Director of Public Works dated March 23, 2009, and attached hereto as Exhibit A-3, that the above conditions exist within the proposed district, and public necessity, health, safety, and welfare require and it is in the general public interest that existing poles and overhead wires within the District be removed therefrom and thereafter prohibited and that wires and associated facilities within the District for transmitting, conducting, conveying, distributing, or supplying electricity for the purpose of providing light, heat, power, telephone, telegraph, communication, television, or other similar or associated service be installed underground; and

WHEREAS, this Ordinance is subject to Mitigated Negative Declaration project file number PP08-257;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of San Jose:

SECTION 1. The City Council hereby declares that a certain area of the City of San Jose described and shown on EXHIBITS A-1 and A-2, attached hereto, made a part hereof, and incorporated herein by reference is established as an underground utility district to be designated "COLEMAN AVENUE UNDERGROUND UTILITY DISTRICT" and orders and requires that existing poles and overhead wires within said District be removed therefrom by the operators of the utilities and thereafter prohibited and that wires and associated facilities within said District for transmitting, conducting, conveying, distributing, or supplying electricity for the purpose of providing light, heat, power, telephone, telegraph, communication, television, or other similar or associated

service be installed underground subject to all of the provisions and exceptions contained in Part 3, Chapter 15.24, of the San Jose Municipal Code.

SECTION 2. Existing poles and overhead wires and associated facilities within the District for transmitting, conducting, conveying, distributing or supplying electricity for the purpose of providing heat, power, telephone, telegraph, communication, television or other similar or associated service shall be removed by the operators of the utilities ("Utility Companies") no later than January 31, 2012.

Wires and associated facilities within the District for transmitting, conducting, conveying, distributing or supplying electricity for the purpose of providing heat, power, telephone, telegraph, communication, television or other similar or associated service shall be installed underground no later than January 31, 2012. Persons owning any property as shown on the last equalized assessment roll served by overhead service drops which are extended from poles or spans located within the District must be ready to receive light, heat, power, telephone, telegraph, communications, television, or other similar or associated service by means of underground wires and facilities no later than January 31, 2012.

SECTION 3. The City Council does hereby request that the Pacific Gas & Electric Company and AT&T provide payment, computed pursuant to Rule 20 and Rule 32 respectively for the installation of no more than one hundred (100) feet (measured from the property line) of trenching, excavation, conduit installation, backfill, and surface restoration of each customer's individual service lateral to each qualifying premise affected by the District.

SECTION 4. The City Council does hereby request that the Pacific Gas & Electric Company pay, from the existing Rule 20A allocation, for the conversion of electric service panels to accept underground service, up to \$1,500 per service entrance, excluding permit fees.

SECTION 5. Within twenty (20) days of the effective date of this ordinance, the Director of Public Works shall give written notice to all affected Utility Companies owning, possessing, or controlling any poles or overhead wires in the district and all owners and occupants of property affected by said District as required by Sections 15.24.150 and 15.24.160 of the San José Municipal Code.

SECTION 6. In lieu of a notice to the Utility Companies for disconnection of service pursuant to Section 15.24.140 of the San José Municipal Code, the Director of Public Works may give an additional notice to any noncompliant property owners or occupants in said District pursuant to Section 15.24.170 of the San José Municipal Code.

SECTION 7. All encroachment permits, agreements or contracts issued or approved with the Utility Companies related to undergrounding activities in the District shall include term(s) and/or condition(s) requiring compliance with Mitigated Negative Declaration project file number PP08-257.

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SECTION 8. The Director of Public Works is hereby empowered to extend the time for any act required under this ordinance for the period of time and for the reasons set forth in Section 15.24.180 of the San José Municipal Code.

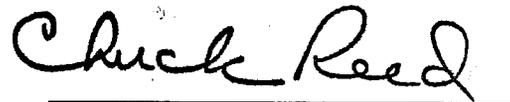
PASSED FOR PUBLICATION of title this 2nd day of June, 2009, by the following vote:

AYES: CAMPOS, CHU, CONSTANT, HERRERA, KALRA,
LICCARDO, OLIVERIO, PYLE, REED.

NOES: NONE.

ABSENT: CHIRCO, NGUYEN.

DISQUALIFIED: NONE.



CHUCK REED
Mayor

ATTEST:



LEE PRICE, MMC
City Clerk

Attachments:

- Exhibit A-1, Map
- Exhibit A-2, Description
- Exhibit A-3, Staff Memorandum

EXHIBIT A-2

DESCRIPTION OF PROPOSED BOUNDARY OF AN UNDERGROUND UTILITY DISTRICT ALONG COLEMAN AVENUE BETWEEN WEST HEDDING STREET AND SPRING STREET, NORTH MARKET STREET BETWEEN WEST JULIAN STREET AND WEST ST. JAMES STREET, AND DEVINE STREET BETWEEN NORTH SAN PEDRO STREET AND NORTH FIRST STREET.

All that certain real property situated in the City of San Jose, County of Santa Clara, State of California, described as follows:

BEGINNING at a true point at the intersection of the northerly right-of-way line of Coleman Avenue and the westerly right of way line of Spring Street;

THENCE proceeding in a northwesterly direction 2,800'+/- along the northerly right-of-way line of Coleman Avenue to a point of intersection with the southerly right-of-way line of Asbury Street;

THENCE proceeding in a northeasterly direction 115'+/- along the southerly right-of-way line of Asbury Street;

THENCE proceeding in a northwesterly direction 70'+/- perpendicular to the centerline of Asbury Street to a point of intersection with the northerly right-of-way line of Asbury Street;

THENCE proceeding in a southwesterly direction 120'+/- along the northerly right-of-way line of Asbury Street to a point of intersection with the northerly right-of-way line of Coleman Avenue;

THENCE proceeding in a northwesterly direction 410'+/- along the northerly right-of-way line of Coleman Avenue to a point of intersection with the southerly right-of-way line of Emory Street;

THENCE proceeding in a northeasterly direction 120'+/- along the southerly right-of-way line of Emory Street;

THENCE proceeding in a northwesterly direction 70'+/- perpendicular to the centerline of Emory Street to a point of intersection with the northerly right-of-way line of Emory Street;

THENCE proceeding in a southwesterly direction 120'+/- along the northerly right-of-way line of Emory Street to a point of intersection with the northerly right-of-way line of Coleman Avenue;

THENCE proceeding in a northwesterly direction 415'+/- along the northerly right-of-way line of Coleman Avenue to a point of intersection with the southerly right-of-way line of University Avenue;

THENCE proceeding in a northeasterly direction 94'+/- along the southerly right-of-way line of University Avenue;

THENCE proceeding in a northwesterly direction 70'+/- perpendicular to the centerline of University Avenue to a point of intersection with the northerly right-of-way line of University Avenue;

THENCE proceeding in a southwesterly direction 94'+/- along the northerly right-of-way line of University Avenue to a point of intersection with the northerly right-of-way line of Coleman Avenue;

THENCE proceeding in a northwesterly direction 362'+/- along the northerly right-of-way line of Coleman Avenue;

THENCE proceeding in a southwesterly direction 95'+/- perpendicular to the centerline of Coleman Avenue to a point of intersection with the southerly right-of-way line of Coleman Avenue;

THENCE proceeding in a southeasterly direction 3,630'+/- along the southerly right-of-way line of Coleman Avenue;

THENCE proceeding in a northeasterly direction 100'+/- perpendicular to the centerline of Coleman Avenue to the true point of beginning.

NORTH MARKET STREET

BEGINNING at a true point at the intersection of the southerly right-of-way line of East Julian Street and the westerly right of way line of North Market Street;

THENCE proceeding in a southeasterly direction 237'+/- along the westerly right-of-way line of North Market Street to a point of intersection with the northerly right-of-way line of Devine Street;

THENCE proceeding in a southwesterly direction 194'+/- along the northerly right-of-way line of Devine Street;

THENCE proceeding in a southeasterly direction 60'+/- perpendicular to the centerline of Devine Street to a point of intersection with the southerly right-of-way line of Devine Street;

THENCE proceeding in a northeasterly direction 194'+/- along the southerly right-of-way line of Devine Street to a point of intersection with the westerly right-of-way line of North Market Street;

THENCE proceeding in a southeasterly direction 245'+/- along the westerly right-of-way line of North Market Street to a point of intersection with the northerly right-of-way line of St. James Street;

THENCE proceeding in a northeasterly direction 100'+/- perpendicular to the centerline of North Market Street to a point of intersection with the easterly right-of-way line of North Market Street;

THENCE proceeding in a northwesterly direction 245'+/- along the easterly right-of-way line of North Market Street to a point of intersection with the southerly right-of-way line of Devine Street;

THENCE proceeding in a northeasterly direction 411'+/- along the southerly right-of-way line of Devine Street;

THENCE proceeding in a northwesterly direction 60'+/- perpendicular to the centerline of Devine Street to a point of intersection with the northerly right-of-way line of Devine Street;

THENCE proceeding in a southwesterly direction 411'+/- along the northerly right-of-way line of Devine Street to a point of intersection with the easterly right-of-way line of North Market Street;

THENCE proceeding in a northwesterly direction 242'+/- along the easterly right-of-way line of North Market Street to a point of intersection with the southerly right-of-way line of East Julian Street;

THENCE proceeding in a southwesterly direction 100'+/- perpendicular to the centerline of North Market Street to the true point of beginning.