

ORDINANCE NO. 27687

**AN ORDINANCE OF THE CITY OF SAN JOSE ESTABLISHING A RULE
20A UNDERGROUND UTILITY DISTRICT ALONG PARK AVENUE FROM
BASCOM AVENUE TO NAGLEE AVENUE; NAGLEE AVENUE FROM
PARK AVENUE TO SHASTA AVENUE**

WHEREAS, by Resolution No. 73088, the City Council of San José set a Public Hearing on March 28, 2006 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 Santa Clara Streets, San José, to ascertain whether an Underground Utility District should be established in the area designated as "PARK/NAGLEE 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 8, 2006, 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, on January 26, 2006, this Ordinance was found to be categorically exempt from environmental review per the provisions of Section 15302 of the California Environmental Quality Act of 1970, as amended, under File No. PP06-002.

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

SECTION 1. The City Council hereby declares that a certain area of the City of San José 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 "PARK/NAGLEE 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, and that public convenience and necessity requires that certain existing poles be exempt from the proposed underground utility district subject to all of the provisions and exceptions contained in Part 3, Chapter 15.24, of the San José 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 no later than December 31, 2008.

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 December 31, 2008.

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 December 31, 2008.

SECTION 3. The City Council does hereby request that the Pacific Gas & Electric Company and SBC is this 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 Utilities 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. 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 28th day of March, 2006, by the following vote:

AYES: CAMPOS, CHAVEZ, CHIRCO, CORTESE, LeZOTTE,
NGUYEN, PYLE, REED, WILLIAMS, YEAGER;
GONZALES

NOES: NONE

ABSENT: NONE

DISQUALIFIED: NONE

RON GONZALES
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 ON PARK AVENUE FROM BASCOM AVENUE TO NAGLEE AVENUE; NAGLEE AVENUE FROM PARK AVENUE TO SHASTA AVENUE

All that certain real property situate 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 easterly right-of-way line of Bascom Avenue and northerly right-of-way line of Naglee Avenue;

THENCE proceeding in a northeasterly direction 3200±' along the northerly right-of-way line of Naglee Avenue to intersection with the northerly right-of-way line of Park Avenue;

THENCE proceeding in a southeasterly direction 2500±' along the northerly right-of-way line of Park Avenue to a point of intersection with the southerly right-of-way line of Hanchett Avenue;

THENCE proceeding in a southwesterly direction 80±' perpendicular to the centerline of Park Avenue to a point of intersection with the westerly right-of-way line of Park Avenue;

THENCE proceeding in a northwesterly direction 2400±' along the westerly right-of-way line of Park Avenue to a point of intersection with the southerly right-of-way line of Naglee Avenue;

THENCE proceeding in a southwesterly direction 3100±' along the southerly right-of-way line of Naglee Avenue;

THENCE proceeding in a northwesterly direction 80±' parallel to the centerline of Bascom Avenue to the true point of beginning.

Two utility poles will be exempted at the following locations:

Utility pole located in the sidewalk between Assessor Parcel Number 261-22-001 and 261-22-021; utility pole located in the sidewalk between Assessor Parcel Number 261-22-022 and 261-22-067.

EXHIBIT A-3

COUNCIL AGENDA: 03-28-06
ITEM: 5.3



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Katy Allen

SUBJECT: PARK/NAGLEE UNDERGROUND
UTILITY DISTRICT

DATE: 03-08-06

Approved

Date 3/14/06

Council District: 6

RECOMMENDATION

Conduct a Public Hearing and upon its conclusion approve an ordinance establishing a Rule 20A Underground Utility District on Naglee Avenue between Bascom Avenue and Park Avenue and on Park Avenue between Naglee Avenue and Hanchett Avenue.
CEQA: Exempt, PP06-002.

EXECUTIVE SUMMARY

City staff recommends conducting a public hearing and establishing an ordinance for the proposed Park/Naglee Underground Utility District. Establishing an ordinance for an underground utility district will require utility companies to remove utility poles and aerial cables from the City right-of-way. The proposed project is located along Naglee Avenue between Bascom and Park Avenues and along Park Avenue between Naglee and Hanchett Avenues. It will compliment the Rose Garden Park and new Rose Garden Branch Library along Naglee Avenue. The project will be funded by utility company funds designated by Rules 20A and 32 of the California Public Utilities Commission and per the City's settlement agreement with Comcast.

BACKGROUND

The Department of Public Works manages the Rule 20A Underground Utility Program for the City of San José. Through Rule 20A, the California Public Utilities Commission requires Pacific Gas and Electric Company (PG&E) to annually set aside funds for financing the undergrounding of overhead distribution facilities located on public streets within the City of San José.

The proposed Park/Naglee Underground Utility District (District), as shown in Attachment A, is included in the 2004/05-2009/10 Rule 20A and Rule 20B (In-Lieu Fee) Underground Utility

EXHIBIT A-3

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Program Five Year Workplan reported to Council on March 23, 2005. It meets all the criteria approved by the CPUC and the criteria established by the City in 1978 to complete the undergrounding of utilities that front City facilities such as parks and libraries. In this case the proposed District will front the new Rose Garden Branch Library and the Rose Garden Park.

ANALYSIS

On March 8, 2006, notices of the public hearing were mailed to all utility companies and owners of properties adjacent to the proposed District.

A schedule for establishment and implementation of the proposed Underground Utility District is presented in Attachment B.

OUTCOME

Approval of this ordinance will establish the Park/Naglee Underground Utility District in accordance with the San José Municipal Code. In addition, it will enable City staff to direct utility companies to begin design of the project. Establishment of this district will improve the appearance, pedestrian mobility and ease of utility equipment maintenance.

PUBLIC OUTREACH

A community meeting was held on January 25, 2006, to inform the public of this undergrounding project. All present at the meeting were in support of the proposed project. City staff also presented PG&E's desire to obtain no-cost easements to install 26 aboveground cabinets in easements on private property.

Most questions from the community meeting were regarding further details on the conversion of electrical services, costs and private property owner responsibility. City staff used displays of previous projects and schematic drawings to explain the modifications required to accept the new underground service and identify property owner responsibility. Typical costs for the conversion of private electrical services on previous projects were discussed.

Some property owners asked where the aboveground cabinets would be located within the District. City staff indicated that the majority of the easement requests were on the lands of Hoover Middle School and Trace Elementary School. Only a few private properties on Naglee and Park Avenues would be impacted, and on March 6, 2006, letters were mailed out to those individual property owners with a request to respond by March 22. If property owners refuse to grant easements, then PG&E would have to redesign the system.

EXHIBIT A-3

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On March 27, 2006, staff will transmit a supplemental memo should any comments or protest be received for consideration at the public hearing.

Upon Council's approval of the ordinance at the public hearing, staff will send notices of adoption of the ordinance to all utility companies, owners and occupants of the properties adjoining the proposed District.

Prior to the start of construction activities, PG&E will place "Door Hanger" construction notices on properties adjoining the proposed District and those affected by construction.

COORDINATION

The establishment of the proposed District and project schedule has been coordinated with PG&E, SBC, Comcast, Rose Garden Neighborhood Preservation Association and the Shasta Hanchett Park Neighborhood Association. The City Attorney's Office has reviewed the required ordinance to establish the District. This memo was coordinated with the Planning, Building and Code Enforcement Department and the City Manager's Budget Office.

COST IMPLICATIONS

1. AMOUNT OF RECOMMENDATION: None

2. COST OF PROJECT (ESTIMATED):

COST TO UTILITIES:

PG&E Rule 20A Allocation	\$1,058,000
SBC Rule 32	874,000
Comcast	368,000
Total Cost to Utility Companies	2,300,000

COST TO CITY:

Project Development, Administration and Construction Inspection (Fund 416)	220,000
Construction:	
City Facilities Conversion (20A) (Fund 429)	180,000
Total Cost to City	400,000

TOTAL PROJECT COSTS (ESTIMATED): **\$2,700,000**

EXHIBIT A-3

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- 3. SOURCE OF FUNDING: Fund 416 - Underground Utility Fund
Fund 429 - Building and Structure
Construction Tax Fund

- 4. FISCAL IMPACT: This project is consistent with the Council-approved Budget Strategy for Economic Recovery section in that it will spur construction in our local economy and have no significant impact on the General Fund.

BUDGET REFERENCE

Fund #	Appn #	Appn. Name	RC #	Total Appn.	Amt. for Contract*	2005-2006 Adopted Budget (Page)	Last Budget Action (Date, Ord. No.)
Remaining Project Costs**				\$400,000			
Current Funding Available							
429	5063	Underground Utilities-City Conversions	TBD	\$150,000	0	V-1054	
416	4786	Underground Utility Administration (20A)	12808 9	\$221,000	0	V-130	
Total Current Funding Available				\$371,000	0		
*Project Development costs of \$6,000 are anticipated in 2005-2006. In addition, remaining City project costs of \$394,000 are anticipated in FY2006-2007, FY2007-2008 and FY2008-2009. Funding for these remaining project costs has been programmed in the 2006-2010 Adopted Traffic and Developer Assisted Projects CIP's.							

CEQA

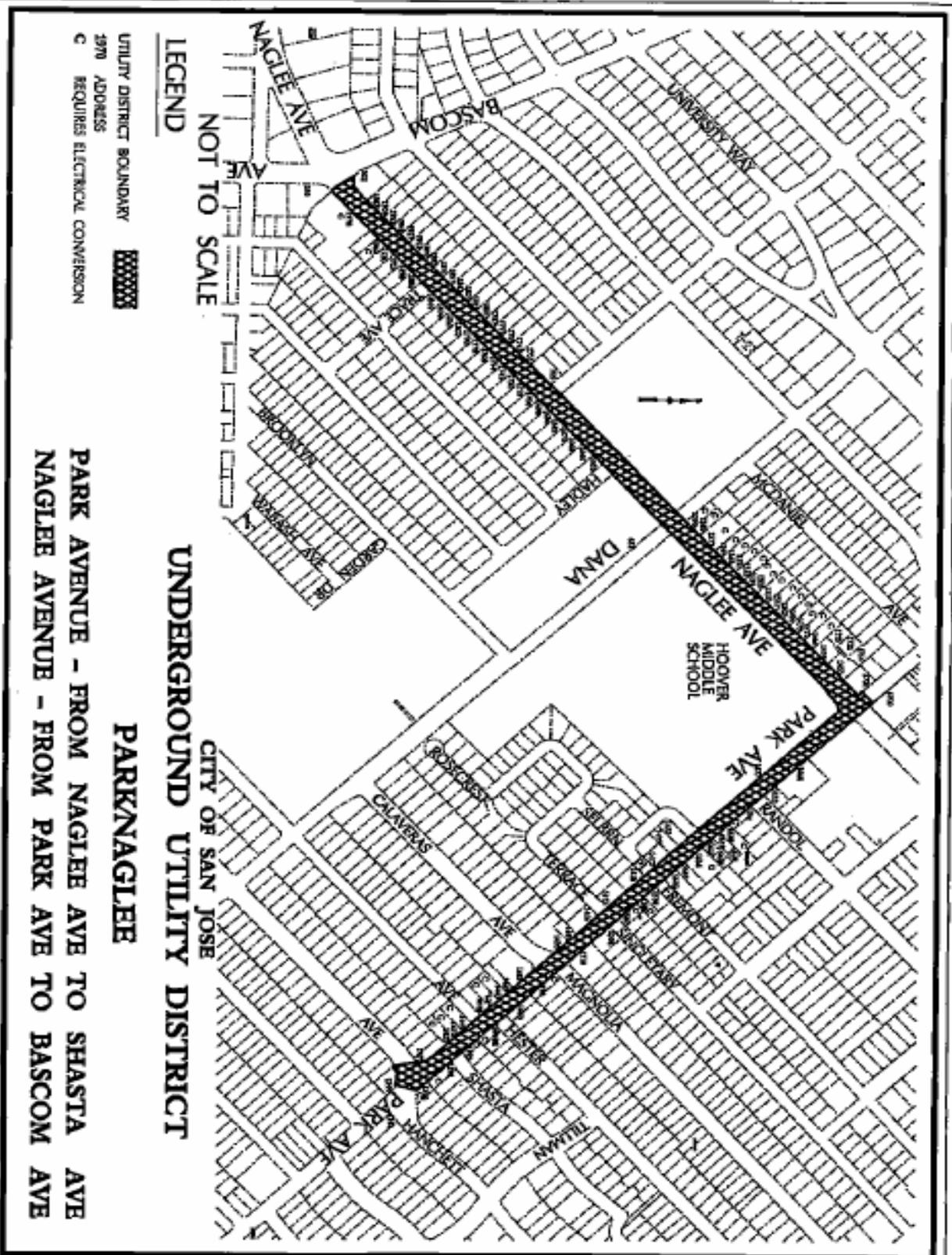
Exempt, PP06-002.

KATY ALLEN
Director, Public Works Department

MO:CM:SK:LR:hla
lr022306cm-ParkNaglee
Attachments

EXHIBIT A-3

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NOT TO SCALE

LEGEND

- UTILITY DISTRICT BOUNDARY 
- 39th ADDRESS
- C REQUIRES ELECTRICAL CONVERSION

UNDERGROUND UTILITY DISTRICT

PARKNAGLEE

PARK AVENUE - FROM NAGLEE AVE TO SHASTA AVE
NAGLEE AVENUE - FROM PARK AVE TO BASCOM AVE

EXHIBIT A-3

ATTACHMENT B

UNDERGROUND UTILITY DISTRICT AT PARK/NAGLEE

Establishment Schedule

- | | |
|----------------|--|
| March 7, 2006 | City Council adopts a resolution setting a time and place for a Public Hearing. |
| March 8, 2006 | Director of Public Works mails a notice of Public Hearing to all adjacent property owners. |
| March 27, 2006 | Director of Public Works transmits a report of comments and/or protests received for consideration at the Public Hearing. |
| March 28, 2006 | City Council conducts a Public Hearing and at its conclusion approves an Ordinance establishing an Underground Utility District on Park Avenue between Naglee Avenue and Shasta Avenue and on Naglee Avenue between Park Avenue and Bascom Avenue. |

Project Implementation Schedule

- | | |
|---------------|---|
| April 2006 | Utility companies begin design of substructure, conduit, vaults, electric and cable facilities. |
| June 2006 | Utilities obtain environmental clearances. |
| November 2007 | Construction starts |
| December 2008 | Utility companies complete connections and remove overhead wires and poles. |