

ORDINANCE NO. 28750

**AN ORDINANCE OF THE CITY OF SAN JOSE ESTABLISHING
RULE 20A UNDERGROUND UTILITY DISTRICT ALONG LINCOLN
AVENUE FROM WEST SAN CARLOS STREET TO
APPROXIMATELY 160 FEET NORTHWEST OF COE AVENUE,
AUZERAIS AVENUE APPROXIMATELY 190 FEET WEST OF
LINCOLN AVENUE, NORTHRUP STREET FROM LINCOLN
AVENUE TO HIGHWAY 280, PARKMOOR AVENUE FROM
LINCOLN AVENUE TO APPROXIMATELY 280 FEET WEST OF
NORTHRUP STREET, AND PAULA STREET APPROXIMATELY
210 FEET WEST OF LINCOLN AVENUE**

WHEREAS, by Resolution No. 75355, the City Council of San José set a Public Hearing on June 08, 2010 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 "LINCOLN 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 8, 2010, 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 8, 2010, this Ordinance was found to be adequately covered by the Addendum to a Mitigated Negative Declaration project file number PP10-002;

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 "LINCOLN 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 August 31, 2013.

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 August 31, 2013. 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 August 31, 2013.

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.

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.

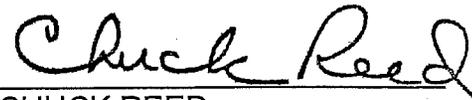
PASSED FOR PUBLICATION of title this 8th day of June, 2010, by the following vote:

AYES: CHIRCO, CHU, CONSTANT, HERRERA, KALRA,
LICCARDO, NGUYEN, OLIVERIO, PYLE; REED.

NOES: NONE.

ABSENT: CAMPOS.

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

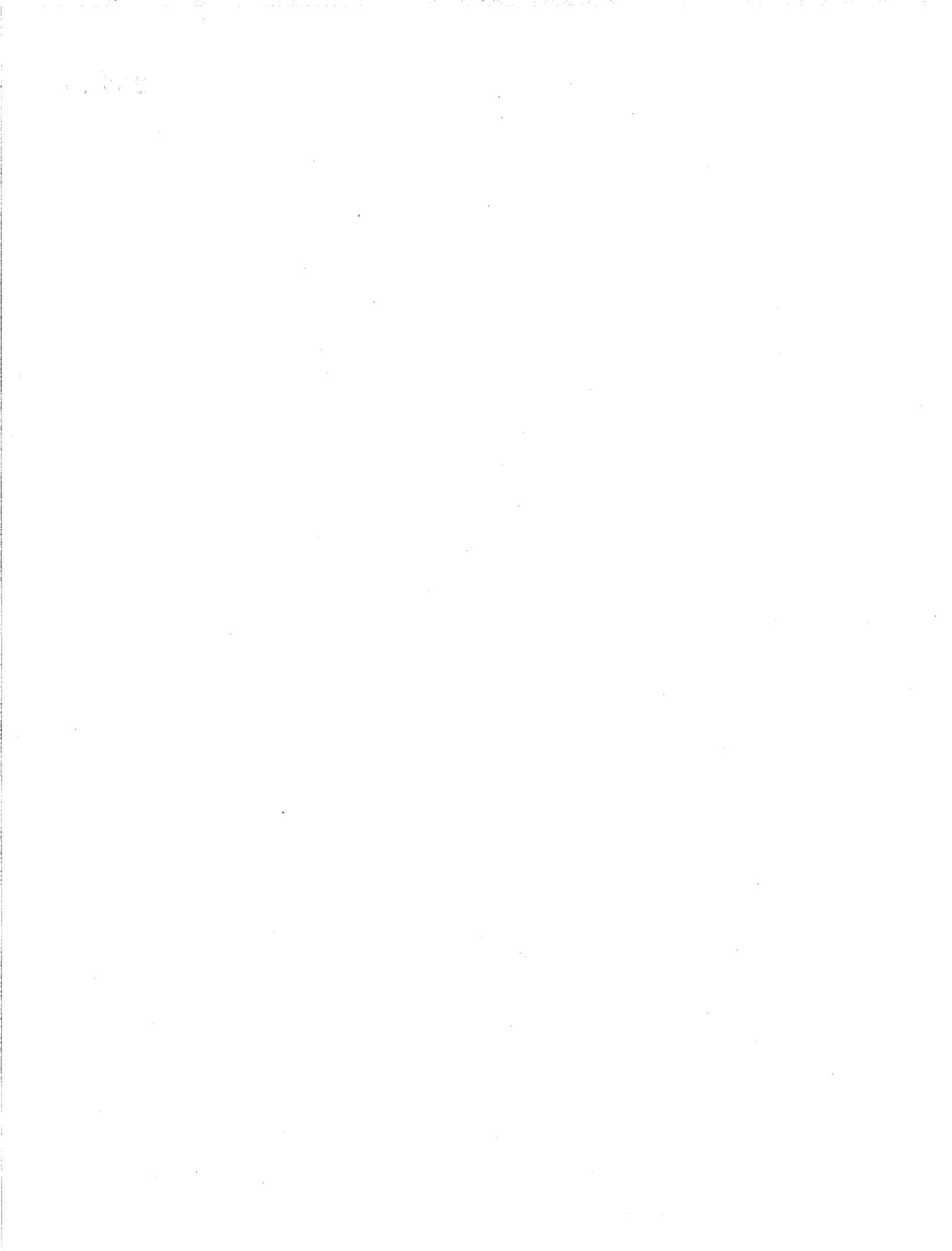


EXHIBIT A-2

The maps delineating the boundaries of said district are attached hereto as Exhibit "A-1" and incorporated herein as if set forth in full.

Electric, communication, or similar or associated services shall be installed underground and the poles, overhead wires and associated overhead structures now existing within the area and properties described below, except as noted on the map for the purpose of this project, shall be removed.

The following properties (APN's as of February 23, 2010), along Lincoln Avenue from West San Carlos Street to approximately 160 feet northwest of Coe Avenue, Auzerais Avenue approximately 190 feet west of Lincoln Avenue, Northrup Street from Lincoln Avenue to Highway 280, Parkmoor Avenue from Lincoln Avenue to approximately 280 feet west of Northrup Street, and Paula Street approximately 210 feet west of Lincoln Avenue, will be included within the Underground Utility District:

264-04-024	264-06-094	264-10-069	264-14-071
264-05-015	264-09-020	264-11-002	264-14-072
264-05-016	264-09-042	264-11-051	264-14-073
264-05-017	264-09-043	264-11-052	264-14-077
264-05-018	264-09-051	264-11-064	264-14-078
264-05-026	264-09-052	264-11-065	264-14-084
264-05-027	264-09-056	264-11-080	264-14-087
264-05-028	264-10-001	264-11-083	264-14-093
264-05-029	264-10-002	264-11-087	264-14-100
264-05-030	264-10-003	264-12-021	264-14-102
264-05-031	264-10-031	264-12-033	264-14-109
264-05-050	264-10-032	264-12-034	264-14-123
264-05-058	264-10-033	264-14-058	264-14-124
264-05-059	264-10-034	264-14-059	264-14-125
264-05-070	264-10-039	264-14-060	264-14-126
264-05-071	264-10-040	264-14-061	
264-05-078	264-10-060	264-14-062	
264-05-079	264-10-065	264-14-070	



COUNCIL AGENDA: 04-27-10
ITEM: 2.10

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Katy Allen

SUBJECT: LINCOLN AVENUE RULE 20A
UNDERGROUND UTILITY
DISTRICT

DATE: 04-05-10

Approved

Date

4/15/10

COUNCIL DISTRICT: 6

RECOMMENDATION

Adoption of a resolution to consider the establishment of a Rule 20A Underground Utility District along Lincoln Avenue from West San Carlos Street to approximately 160 feet northwest of Coe Avenue, Auzerais Avenue approximately 190 feet west of Lincoln Avenue, Northrup Street from Lincoln Avenue to Highway 280, Parkmoor Avenue from Lincoln Avenue to approximately 280 feet west of Northrup Street, and Paula Street approximately 210 feet west of Lincoln Avenue, and setting a Public Hearing on June 8, 2010, at 1:30 p.m.

OUTCOME

Approval of this resolution will enable the Council to hold a public hearing resulting in the establishment of the Lincoln Avenue Underground Utility District. Establishment of this District will improve the appearance, improve pedestrian mobility and ease utility equipment maintenance within the area described above.

EXECUTIVE SUMMARY

The proposed underground utility district, as described above and depicted in Attachment A, will require utility companies to remove utility poles and aerial cables from the public right-of-way and install a new improved underground system. The proposed underground utility district is located along a portion of Lincoln Avenue, Auzerais Avenue, Northrup Street, Parkmoor Avenue, and Paula Street as shown in Attachment A. The project will be funded by utility company funds pursuant to Rules 20A and 32 of the California Public Utilities Commission (CPUC), and the City's franchise agreement with Comcast.

HONORABLE MAYOR AND CITY COUNCIL

04-05-10

Subject: Lincoln Avenue Rule 20A Underground Utility District

Page 2

BACKGROUND

Through Rule 20A, the CPUC 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. AT&T and Comcast are also required to set aside funds for these projects.

The proposed Lincoln Avenue Rule 20A Underground Utility District (District) is included in the 2008/2009 – 2013/14 Workplan for the Rule 20A and Rule 20B (In-Lieu Fee) Underground Utility Program, approved by Council in June 2009. It meets criteria approved by the CPUC and the criteria established by the City in 1978 to complete projects that front City facilities such as parks, libraries and fire stations.

ANALYSIS

The provisions and procedures to establish underground utility districts are defined in Chapter 15.24 of the San José Municipal Code. The Code requires the Council to conduct a public hearing and adopt an ordinance prior to the establishment of an underground utility district. The proposed District also meets the following California Public Utilities Commission and Municipal Code criteria for establishing underground utility districts namely that:

- Such removal and replacement will eliminate, and such prohibition will avoid, an unusually heavy concentration of poles and overhead wires within said area.
- The public streets or right-of-way within said area are extensively used by the general public and carry a heavy volume of pedestrian or vehicular traffic.
- The public streets or right-of-way within said area adjoin or pass through a civic area or public recreation area, or an area of unusual scenic interest to the general public.

Within the limits of this project, the majority of the facilities will be placed in underground vaults. Utility companies may need to install aboveground structures (cabinets) for equipment that cannot be placed in underground vaults. These cabinets may be placed in public right-of-way or on private properties. The size, quantity and actual location of the cabinets will be determined during the design phase of the project. Establishment of the proposed District, as shown on Attachment A, will require the conversion of approximately 3,400 linear feet of aerial facilities to underground facilities. At PG&E's request the proposed project boundary includes entire parcels, as well as the public right-of-way. Certain properties, utility poles, wires, and backyard facilities will be exempted from the District to minimize impacts to properties outside the District and are also indicated on Attachment A.

Overall, the removal of aerial wires and utility poles will provide a significant visual benefit to the public.

HONORABLE MAYOR AND CITY COUNCIL

04-05-10

Subject: Lincoln Avenue Rule 20A Underground Utility District

Page 3

There are approximately sixty-nine properties included in the proposed District. Forty-eight of the sixty-nine properties currently receiving overhead service will require electrical service conversion work in order to receive electrical power from the underground system. This will require either private property owners to perform electrical service panel conversion work on their properties or PG&E to perform the work.

The cost of conversion for a single-family residential dwelling is typically \$800 to \$2,500. The cost for commercial buildings and multi-family residences service conversion is typically \$2,000 to \$5,000 or possibly higher. The estimate is based on current projects and may change due to the economy at the time of construction. The Public Utilities Commission provides that Rule 20A funds may be utilized to reimburse private property owners' expenses for conversion work up to \$1,500 per service entrance.

Additionally, PG&E, Comcast, and AT&T will provide up to 100 feet of trenching and conduit installation for properties requiring conversion within the District, from the front property line to the building structure. Any properties inside the proposed District which receive utility service from outside the proposed District boundaries or are already receiving service from another underground system will not be affected by this project.

Construction is scheduled to start in August 2012, and is to be completed in August 2013. A more detailed schedule for the establishment and implementation of the proposed District is presented in Attachment B.

EVALUATION AND FOLLOW-UP

Council will conduct a public hearing at the June 8, 2010 City Council meeting and staff will recommend the adoption of an ordinance establishing the underground utility district. Any comments received by staff from the residents, property owners and other stakeholders will be conveyed to Council at the hearing.

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)**

HONORABLE MAYOR AND CITY COUNCIL

04-05-10

Subject: Lincoln Avenue Rule 20A Underground Utility District

Page 4

The action requested by Council does not meet any of the three criteria listed above, but the following outreach will be conducted as part of Section 15.24 of the Municipal Code for the purposes of establishing underground districts.

A community meeting was held on July 8, 2009 to inform the public of this undergrounding project. A second follow-up community meeting was held on January 20, 2010 to provide additional information about commercial building electrical conversion. Staff provided information on options to minimize cost of conversions and explained the PG&E policy and procedure for the \$1,500 service conversion reimbursement. Property owners were informed that staff would provide contact information and deadlines to ensure upgrades would be appropriately incorporated into the undergrounding design. Upgrades to existing panels and electrical service, if desired by the property owner, would require additional non-reimbursable costs.

Property owners were assured that the utility companies would minimize impacts of service interruptions and provide an approximately one-month notification of service interruptions. It was explained that power interruptions typically last 3 to 4 hours and other utility interruptions are shorter duration. In addition, property owners were assured that PG&E construction crews would provide access to their properties at all times during construction.

Upon Council's adoption of a resolution setting a public hearing, staff will send notices of the public hearing to all utility companies and owners and occupants of properties adjoining the proposed District. A Notice of Public Hearing will be posted at City Hall and on the City Council Agenda website.

Should the District be legislated, a Notice of Establishment will be mailed within 20 days of the effective date of the ordinance. Additional correspondence will occur with property owners requiring electrical panel service conversions throughout the proposed project. Prior to the start of construction activities, PG&E will place "Door Hanger" construction notices on adjacent properties.

This memorandum will be posted on the City's website for the April 27, 2010 City Council meeting.

COORDINATION

The establishments of the proposed District and project schedule have been coordinated with the City Manager's Budget Office and Planning, Building and Code Enforcement Department. In addition, the project has been coordinated with PG&E, AT&T, and Comcast. This memo and the proposed resolution to set the public hearing have been reviewed by the City Attorney's Office.

HONORABLE MAYOR AND CITY COUNCIL

04-05-10

Subject: Lincoln Avenue Rule 20A Underground Utility District

Page 5

FISCAL/POLICY ALIGNMENT

This project is consistent with the Council-approved Budget Strategy to continue with capital investments that spur construction spending in the local economy. Most importantly, this Underground Utility District is part of the approved 2008/09 – 2013/14 Workplan for the Rule 20A and Rule 20B (In-Lieu Fee) Underground Utility Program.

COST SUMMARY/IMPLICATIONS

1. AMOUNT OF RECOMMENDATION/COST OF PROJECT: None

COST TO UTILITIES:	
PG&E Rule 20A Allocation	\$2,100,000
AT&T Rule 32A.1	1,200,000
Comcast	700,000
Total Cost to Utility Companies	4,000,000
COST TO CITY:	
Project Development, Administration and Construction Inspection (Fund 416)	100,000
City Facilities Conversion (20A) (Fund 429)	60,000
Total Cost to City	160,000
TOTAL PROJECT COSTS (ESTIMATED):	\$4,160,000
2. COST ELEMENTS OF AGREEMENT/CONTRACT: 0
3. SOURCE OF FUNDING: Fund 416 - Underground Utility Fund
Fund 429 - Building and Structure Construction Tax Fund
4. OPERATING COST: This project has no significant impact on the General Fund operating budget.

HONORABLE MAYOR AND CITY COUNCIL

04-05-10

Subject: Lincoln Avenue Rule 20A Underground Utility District

Page 6

BUDGET REFERENCE

The table below identifies the funds and appropriations proposed to fund the contract recommended as part of this memorandum and remaining project costs, including project delivery, construction, and contingency costs.

Fund #	Appn. #	Appn. Name	Total Appn.	Amt. for Contract	2009-2010 Adopted Capital Budget (Page)	Last Budget Action (Date, Ord. No.)
416	4786	Underground Utility Admin. (20A)	\$355,000	N/A	V-22	N/A
429	5063	Underground Utilities-City Conversions	\$1,376,000	N/A	V-1004	10/20/09 Ord. No. 28653
Total Current Funding Available			\$1,731,000			

CEQA

CEQA: Addendum to a Mitigated Negative Declaration, PP10-002.

Planning has issued an Addendum to a Mitigated Negative Declaration for this project. The Mitigated Negative Declaration identifies a number of mitigation measures that need to be implemented in order to address environmental impacts. These measures and their manner of implementation are identified in the Mitigated Negative Declaration, File No. PP08-257. These measures will be incorporated into the project design and the encroachment permit. As required by Mitigated Negative Declaration PP08-257, the utility companies will provide monitoring in archaeological sensitive areas when applicable.

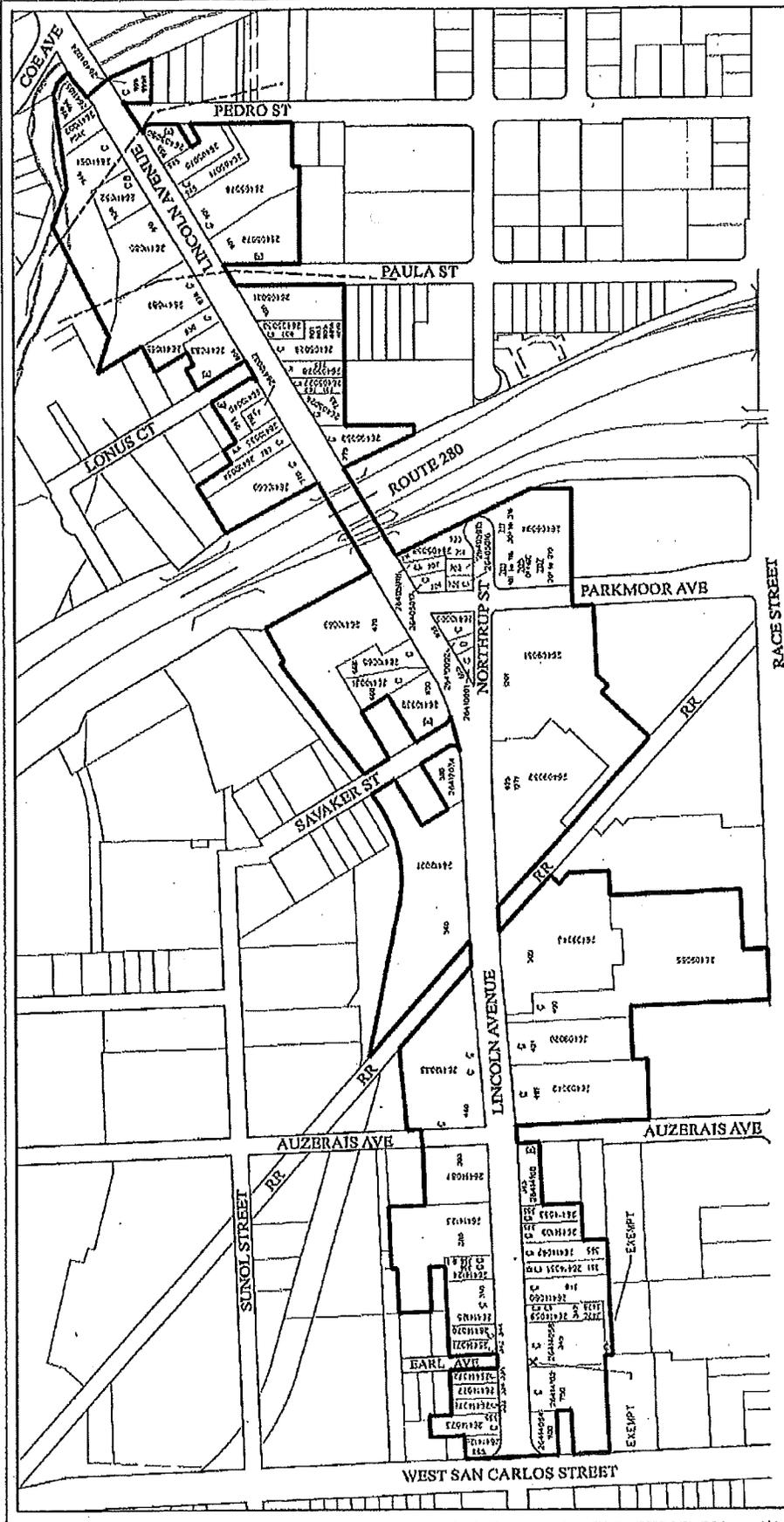
/s/

KATY ALLEN
Director, Public Works Department

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

Attachments
JTC:SK:LR
3_30_10#1-lincoln

ATTACHMENT A



LEGEND

- RULE 20A BOUNDARY
- TRANSMISSION LINE
- ELECTRICAL CONVERSION (46 on 42 properties)
- ELECTRICAL CONVERSION TO BE EXEMPTED (6)
- BILLBOARD CONVERSION (3)
- EX POWER POLE TO BE EXEMPTED (1)
- NEW POWER POLE TO BE EXEMPTED (1)
- APN
- ADDRESS

CITY OF SAN JOSE

LINCOLN AVE
UNDERGROUND UTILITY DISTRICT

NOTES
EXCLUDES POLES AND/OR OVERHEAD WIRES IDENTIFIED ON THIS MAP AS EXEMPT
EXCLUDES FACILITIES SERVED OUTSIDE THE DISTRICT OR SERVING PARCELS
OUTSIDE THE DISTRICT AND ALL PRIVATE (NON-UTILITY OWNED) POLES AND/OR
OVERHEAD WIRES

NOT TO SCALE

ATTACHMENT B

UNDERGROUND UTILITY DISTRICT along Lincoln Avenue from West San Carlos Street to approximately 160 feet northwest of Coe Avenue, Auzerais Avenue approximately 190 feet west of Lincoln Avenue, Northrup Street from Lincoln Avenue to Highway 280, Parkmoor Avenue from Lincoln Avenue to approximately 280 feet west of Northrup Street, and Paula Street approximately 210 feet west of Lincoln Avenue.

Establishment Schedule

- | | |
|----------------|---|
| April 27, 2010 | City Council adopts a resolution setting a time and place for a Public Hearing. |
| April 28, 2010 | Director of Public Works mails a Notice of Public Hearing to all adjacent property owners. |
| June 1, 2010 | Director of Public Works transmits a report of comments and/or protests received for consideration at the Public Hearing. |
| June 8, 2010 | City Council conducts a Public Hearing and at its conclusion approves an Ordinance establishing Lincoln Avenue Rule 20A Underground Utility District. |

Project Implementation Schedule

- | | |
|---------------|---|
| June 2011 | Utility companies begin design of substructure, conduit, vaults, electric and cable facilities. |
| December 2011 | Utilities obtain environmental clearances. |
| August 2012 | Construction starts. |
| August 2013 | Utility companies complete connections and remove overhead wires and poles. |