

CITY COUNCIL AGENDA ITEM

CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Discussion of Ordinance No. 594 Repealing the Requirements to Underground Overhead Utilities by May 21, 2011 and to Underground All New Facilities and Additions and Rebuilds of Existing Facilities and Adding a Requirement that Capital Projects Pay for Costs of Undergrounding Service Connections
DEPARTMENT:	City Attorney, Public Works
PRESENTED BY:	Flannary P. Collins, Assistant City Attorney Mark Relph, Public Works Director

PROBLEM/ISSUE STATEMENT:

Chapter 13.20 of the Shoreline Municipal Code regulates undergrounding of overhead utility facilities, requiring that undergrounding take place upon the following events:

1. The City engages in a capital improvement or public works project that will disturb existing facilities or will facilitate the installation of a trench for undergrounding facilities (e.g., the Aurora Corridor Project); or
2. The passage of 15 years from the effective date of Chapter 13.20, or May 21, 2011; or
3. An entity engages in a joint trenching project that could reasonably serve to replace existing overhead facilities.

In addition, Chapter 13.20 requires that all extensions, additions, duplications or rebuilds of existing overhead facilities or any new facilities be installed underground.

The requirement to underground all existing facilities by May 21, 2011, adopted by the City Council in 1996, is an aggressive, somewhat unreasonable expectation to place on utilities, the ratepayers and the City. Rather than mandate utilities be placed underground by a certain date, the proposed ordinance focuses on requiring undergrounding during road projects and joint trenches.

Additionally, the current code makes the cost of service connections to the newly established underground utilities an obligation of individual property owners with an appeal process for contesting this cost. However, the City Council can waive this charge and include a credit against this service connection cost for undergrounding "which primarily provides a citywide benefit". The owner pays the balance if the connection exceeds the city credit. If the owner doesn't pay services are disconnected. There is an appeal hearing before the city council to contest the disconnection. This process is more complicated than it needs to be; the proposed ordinance removes the private

service connection obligation and provides that the City will pay for those undergrounding connections within 100' of the right-of-way.

FINANCIAL IMPACT:

Except for telecommunication service utilities, the cost and expense to underground utility lines is borne by the utility provider (e.g., Seattle City Light for electrical utility lines, Comcast for cable television lines). Utility providers pass this cost onto ratepayers. For undergrounding of telecommunication service¹ utility lines (such as Qwest telephone lines), the City pays the additional incremental cost of undergrounding compared to aerial location.

There will be no negative financial impact to the City from removal of the mandate to underground by May 2011 and the requirement to underground all new facilities and additions. The City will be saving the incremental cost it is required to pay for undergrounding telecommunication service lines.

For City road improvement projects that involve undergrounding, service connections for private property owners can vary considerably. In the first mile of the Aurora project, the average cost per property owner was less than \$5,000. The financial impact to the City for undergrounding service connections on the average would not be expected to change under the proposed ordinance, just the process for paying the cost to connect.

RECOMMENDATION

No action is required. Staff recommends Council discuss the proposed Ordinance No. 594, for adoption on January 11, 2011.

Approved By:

City Manager 

City Attorney 

¹ Telecommunication service providers transmit information by wire, radio, optical, cable, or other similar means. Telecommunication service does not include over-the-air transmission of broadcast television or broadcast radio signals. RCW 35.99.010.

DISCUSSION

In 1996, the City adopted an aggressive and, in retrospect, unrealistic undergrounding ordinance that required all overhead utilities be placed underground within 15 years of the effective date of the ordinance. This means that all overhead utilities in the City of Shoreline be undergrounded by May 21, 2011. The City also adopted a provision requiring all new facilities and additions, rebuilds, extensions and duplications of existing facilities be placed underground. The goal was to have the City completely undergrounded by mid-2011.

While having a fully undergrounded City is a laudable goal, the reality is that undergrounding is expensive and utilities pass the undergrounding cost onto the ratepayers. Furthermore, state law protects telecommunication service providers (i.e., telephone companies such as Qwest and Verizon) from paying the full cost of undergrounding. For telecommunications utilities, the City must pay for any incremental cost above and beyond the cost for relocating the facilities. Thus, if the City kept this 2011 mandate, it would be responsible for covering this incremental undergrounding cost.

There is another strategy that could be pursued to convert overhead utilities to underground and that is through a change to the franchise agreement with Seattle City Light (SCL). If SCL begins a project to convert their facilities, the other utilities follow simply because they lease space from SCL to use the pole. Therefore, if there was a financial mechanism in place for SCL to begin a reasonable program for conversion, then the other utilities would follow as specific projects are constructed. This approach is typically accomplished through the creation of an "underground fund", where a fee is added to a customer's bill (e.g. 1% of the gross electrical sales) and then used for conversion projects over time. SCL collects and manages the funds, but the City decides which projects to pursue. This concept is perhaps more strategic and certainly more reasonable to the rate payers than simply requiring all conversion within a 15 year period. This approach could be pursued with SCL before their franchise agreement expires at the end of 2013.

The proposed ordinance removes the 2011 mandate for undergrounding as well as the requirement to underground new facilities and additions where there are existing aerial utilities that would remain. The revised ordinance requires that undergrounding still occur during road improvement projects that disrupt utilities (for example, the Aurora Corridor Project and North City). Undergrounding is also required in the event an entity instigates a joint trenching project, which is a project that undergrounds some portion of the overhead transmission system or the digging of a trench in the right-of-way for a distance of greater than 500 feet that could reasonably serve to underground existing overhead utilities. Finally, undergrounding is required for private development as part of new development frontage improvements. SMC 20.70.470.

The current code also requires that property owners abutting a new undergrounding project pay the cost of connecting to the new underground utility lines from any structure or improvement. If the owner fail to pay the city will order the service lines disconnected. The owner can protest and request an appeal hearing to the City Council to determine whether "all or part of the removal of the service lines is in the public interest." This

provision requiring private payment has never been utilized because there is a pre-construction waiver process whereby the City Council can establish a city credit for a particular CIP project with underground conversion "which primarily provides a citywide benefit by improving the safety and aesthetics for users of these streets." For the two CIP projects that have converted aerial utilities, North City and Aurora, both have received prior Council waivers for the cost of service connections.

The amendments remove the private obligation to reconnect to the converted utility lines. Staff believes this process is difficult to administer and poses possible hardships on some property owners. In addition, if property owners do not agree to pay the difference, their service connection is not undergrounded and their service is disconnected.

There was considerable dissatisfaction expressed by some property owners during the first mile of Aurora, since the cost per service varied significantly from property to property. Eventually, the City Council authorized the project to pay for all costs when it was demonstrated the cost for all service conversions divided by the total number of property owners was still less than \$5,000 credit approved per property. It would be more equitable that any CIP project that has been approved by Council to include undergrounding of aerial utilities be presumed to be primarily for public benefit without requiring a second determination by Council; in fact, the purpose section of the chapter makes it clear that undergrounding promotes the general welfare in a variety of ways. Leaving a property without essential electrical service as well as telecom utilities as the result of a public project could be considered a compensable damage to the property. The appeal hearing before Council is burdensome in terms of Council and staff resources and potential delays in project construction. The appeal criteria – "whether the removal of all or any part of the service lines in the public benefit" – appears to return to the question of public benefit which, if sustained in an individual's appeal, could create further inequities for those owners within the same project that have paid.

As proposed, the City will pay for the cost of all underground connections located within 100' of the right-of-way. Connections outside of the 100' limit may be paid for at the discretion of the Public Works Director. This 100' distance measurement has been added to ensure that property owners are given underground service connections at public expense which is justified by the public benefit of the project. The City will not be required to extend underground connections to peripheral buildings not located within the undergrounding area, since this additional expense primarily benefits the property owner and not the public.

RECOMMENDATION

No action is required. Staff recommends Council discuss the proposed Ordinance No. 594, for adoption on January 11, 2011.

ATTACHMENT

Attachment A: Proposed Ordinance No. 594

ORDINANCE NO. 594

AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON REPEALING THE REQUIREMENT TO UNDERGROUND OVERHEAD UTILITY FACILITIES BY MAY 21, 2011 AND TO UNDERGROUND ALL NEW FACILITIES AND EXTENSIONS, ADDITIONS, DUPLICATIONS, OR REBUILDS OF EXISTING OVERHEAD FACILITIES AND ADD A REQUIREMENT THAT CAPITAL PROJECTS PAY FOR THE COSTS OF UNDERGROUNDING SERVICE CONNECTIONS

WHEREAS, Ordinance No. 82, codified in Chapter 13.20 of the Shoreline Municipal Code, became effective on May 21, 1996; and

WHEREAS, SMC 13.20.050 and 13.20.060 require that all overhead utility facilities be placed underground fifteen years from the effective date of the passage of Ordinance No. 82, or May 21, 2011; and

WHEREAS, SMC 13.20.050 and 13.20.060 also require that all extensions, additions, duplications, or rebuilds of existing overhead utilities, and any new facilities, be placed underground even if wires in the same area are located aboveground; and

WHEREAS, these undergrounding mandates are not reasonable expectations to place on the utilities, the ratepayers and the City; and

WHEREAS, to be equitable, capital projects should pay for the undergrounding service connection costs caused by capital projects;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SHORELINE, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. Amendment. SMC 13.20.010 is amended to read as follows:

SMC 13.20.010 Policy

It is the policy of the city to require compliance with the following orderly program pertaining to the relocation of all ~~existing~~ overhead wires including, but not limited to, telephone, telegraph fiber optic, cable television, and electrical power, and to require the underground installation of all electrical and communication facilities when the city engages in a capital improvement or public works project which will facilitate undergrounding or an entity instigates a joint trenching program, or in areas where no overhead wires exist, with certain exceptions noted hereinafter. The health, safety, and general welfare of the residents of the community require that all ~~such existing overhead facilities be relocated underground in such instances as soon as practicable in accordance with the requirements included in this chapter, and that all new facilities specified in this~~

chapter be installed underground, in that among other things, the undergrounding removes potential hazards and blockages from the right-of-way, thus benefiting the safety and mobility of the motoring public, passengers and pedestrians and further promotes the general welfare in achieving a more aesthetically pleasing community, improving property values, and decreasing the vulnerability of service delivery due to the effects of natural disasters and storm events.

Section 2. Amendment. SMC 13.20.050 is amended to read as follows:

SMC 13.20.050 Undergrounding of existing facilities in commercial and industrial areas – When required.

The following requirements apply to all areas which are zoned in SMC Title 20 as MUZ (Mixed Use Zone), CB (Community Business), Neighborhood Business (NB), Office (O), Special Overlay (SO), North City Business District (NCBD) and I (Industrial):

~~Existing Overhead facilities, with the exceptions previously noted in SMC 13.20.040, existing on the effective date of the ordinance codified in this chapter, or for which a permit has been granted within 15 days of the effective date, will be allowed to remain aboveground until one of the following events:~~

- ~~1. A. The city desires to engage in any capital improvement or public works project which will disturb existing facilities or will facilitate the installation of a trench for underground facilities.~~
- ~~2. The passage of 15 years from the effective date of the ordinance codified in this chapter.~~
- ~~3. B. An entity instigates a joint trenching project, as defined in SMC 13.20.0120, that could reasonably serve to replace existing overhead facilities.~~
- ~~A.C. All extensions, additions, duplications, or rebuilds (excluding repair of casualty damage) of existing overhead facilities or any new facilities shall be installed underground in those areas where no overhead wires exist. from and after the effective date of the ordinance codified in this chapter.~~
- ~~B.D. All areas rezoned, after the effective date of the ordinance codified in this chapter, to zoning classifications substantially similar to those to which this section applies shall become subject to the provisions of this section upon the effective date of such rezoning.~~

Section 3. Repeal. SMC 13.20.060, *Undergrounding of existing facilities in residential areas – When required*, is hereby repealed.

Section 4. Amendment. SMC 13.20.140 is amended to read as follows:

13.20.140 Converting service connections.

~~A. Except as provided in subsection B of this section, when an underground utility installation, as provided for in this chapter, is completed and service therefrom is available, the city clerk shall mail a notice to the owners of record of all structures or improvements to which service from the underground installation is available. The notice shall state that:~~

- ~~1. Service from the underground facilities is available;~~

~~2. All electric and communication service lines from existing overhead facilities within the area to any structure or improvement must be disconnected and removed within 90 days after the date of mailing the notice;~~

~~3. Should the owner fail to convert such service lines from overhead to underground within said 90 days, the city will order the electric and communication utilities to disconnect and remove the service lines;~~

~~4. Should the owner object to the ordered disconnection and removal of the service lines, the owner may file written objections thereto with the city clerk within 30 days after the mailing of the notice. Failure to object within the 30 days will constitute a waiver of the owner's right to object to such disconnection and removal.~~

~~BA. The city council may designate For city capital projects that include conversion of aerial to underground facilities, which primarily provides a citywide benefit by improving the safety and aesthetics of the roadway for users of these streets. The project shall pay for the cost of underground connections that are located within 100' of the right-of-way owners of record of properties served by a converted telecommunication or electrical installation within these designated capital projects shall receive a credit established by the council against the cost of the service connection if the following conditions are met:: provided, the owner shall execute an agreement to allow the connection to be permitted and performed by the city including temporary access to the owner's property in a form acceptable to the city. If the owner does not execute the agreement, the service connection shall be the responsibility of the owner.~~

~~1B. Additional connections located outside this 100' limit may be paid for at the Director's discretion. The owner shall execute an agreement to allow the connection to be permitted and performed by the city including temporary access to the owner's property in a form acceptable to the city; and~~

~~2. The owner shall pay the city's cost of the connection in excess of the city's credit as determined by the bid received from the city's contractor, or shall provide an executed contract from a licensed contractor to make the connection at the owner's cost to be reimbursed by the city up to the amount of the credit.~~

~~If the conditions for city contribution are not met the service connection shall be the responsibility of the owner as set forth in subsection A of this section.~~

Section 5. Repeal. SMC 13.20.150 *Order to disconnect*, 13.20.160 *Objection to disconnection-Hearing*, and 13.20.170, *Implementation*, are hereby repealed.

Section 6. Publication, Effective Date. This ordinance shall go into effect five days after passage and publication of the title as a summary of this ordinance.

PASSED BY THE CITY COUNCIL ON January 11, 2010.

Keith McGlashan, Mayor

ATTEST:

APPROVED AS TO FORM:

Scott Passey
City Clerk

Ian Sievers
City Attorney

Date of Publication:
Effective Date: