

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Adoption of Ordinance No. 966 – Amending Shoreline Municipal Code Chapter 13.20 to Add a New Section SMC 13.20.060 – Deferred Underground Facilities
DEPARTMENT:	City Manager’s Office Public Works
PRESENTED BY:	John Norris, Assistant City Manager Tricia Juhnke, City Engineer
ACTION:	<input checked="" type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input type="checkbox"/> Motion <input type="checkbox"/> Discussion <input type="checkbox"/> Public Hearing

PROBLEM/ISSUE STATEMENT:

On February 28, 2022, the City Council discussed required electrical utility undergrounding in the South Shoreline/148th Light Rail Station Area and the impact on the Sound Transit Lynnwood Link Extension (LLE) Project and MUR-70 Development. Given the delay of Seattle City Light’s (SCL’s) 5th Avenue Duct Bank Project and the impact on the LLE Project and some private development projects in the 148th Station Subarea, the need for both overhead 3-phase temporary construction power and interim operational power until the first 10 blocks of the Duct Bank Project is complete was identified.

On May 23, 2022, the City Council discussed the proposed solution to allow for interim overhead power in the 148th Station Subarea. Council discussed proposed Ordinance No. 966 (**Attachment A**), which provides for a new Section 13.20.060 of the SMC (**Attachment A, Exhibit A**) which would allow interim overhead power within a limited area if certain conditions are met. Proposed Section 13.20.060 SMC, titled Deferred Underground Facilities, allows for overhead electrical facilities (utility poles, wires, etc.) on an interim basis if a property owner needing new overhead electricity enters into a Deferred Underground Facilities Agreement with the City. This proposed Code section also codifies requirements for SCL related to the interim overhead electrical facilities. Tonight, Council is scheduled to take action on proposed Ordinance No. 966.

RESOURCE/FINANCIAL IMPACT

There is no direct financial impact to the City if the Chapter 13.20 SMC is amended to allow for interim overhead power and deferred underground facilities. If Chapter 13.20 SMC is not amended and interim overhead power is not allowed, there may be significant indirect financial impacts if the LLE Project is delayed or if other development projects are delayed or are not constructed. It is difficult to quantify what this lost investment and housing in Shoreline would be, but it is clear that development would be delayed if not severely curtailed for several years if connection to existing underground

electrical power is not financially feasible for electrification of core development in the 148th Street Station Subarea.

RECOMMENDATION

Staff recommends that the City Council adopt proposed Ordinance No. 966.

Approved By: City Manager ***DT*** City Attorney ***JA-T***

BACKGROUND

On February 28, 2022, the City Council discussed required electrical utility undergrounding in the South Shoreline/148th Light Rail Station Area and the impact on the Sound Transit Lynnwood Link Extension (LLE) Project and MUR-70 Development. At this meeting, staff shared the challenges of the LLE Project and private development meeting the City's underground electrification code requirements given Seattle City Light's (SCL's) delay in their 5th Avenue Duct Bank Project. SCL currently has direct-buried three-phase (3-phase) underground power running down 5th Avenue NE, in front of the future Shoreline South/148th Light Rail Station. Constructing new connections to this existing direct buried line is not viable for most development, including the LLE Project, due to its age and the inability to replace or upgrade the cables without digging it up. Given that the 5th Avenue NE 3-phase line has reached the end of its useful life and is in danger of failing, SCL has planned for its replacement with new 3-phase power in a duct bank project (multiple conduits put together) within 5th Avenue.

More robust 3-phase power with thicker wires is needed to run light rail due to its significant power load, rather than the less robust single-phase power or the existing direct buried 3-phase power in 5th Avenue NE. As is noted above, connection to the 5th Avenue NE 3-phase direct buried line is not allowed and would not provide adequate power for construction and ongoing operation of either the Shoreline South/148th Station site or Sound Transit's Traction Power Substation (TPSS) at NE 151st Street, which provides power to the light rail system. Given these constraints, starting in 2016, Sound Transit and SCL worked to coordinate on the Duct Bank Project, so that new 3-phase power would be installed within 5th Avenue and ready for Sound Transit's use.

However, in early 2021, SCL informed Sound Transit and the City that it was pushing back the timing of the first 10 blocks of this replacement project until 2027 as it does not have the capital funding to complete the Duct Bank Project in coordination with the LLE Project timeline. Given this delay, the LLE Project and some private developers in the 148th Station Subarea expressed to the City and SCL their need for both temporary construction 3-phase power to construct their large projects, and interim operational power to energize their projects for occupancy until the first 10 blocks of the SCL 5th Avenue Duct Bank Project is complete and underground 3-phase power is available. During the Council discussion on February 28th, the Council supported this course of action and directed staff to allow overhead temporary construction power and provide for interim overhead power in the 148th Station Subarea until the Duct Bank Project is complete.

To address the need for temporary construction power, on March 7, 2022, the City Council adopted Ordinance No. 958 which allows for temporary electrical service for construction in the MUR-70' zone. On May 23, 2022, the City Council discussed the proposed solution to allow for interim overhead power in the 148th Station Subarea. Council discussed proposed Ordinance No. 966 (**Attachment A**), which provides for a new Section 13.20.060 of the SMC (**Attachment A, Exhibit A**) which would allow interim overhead power within a limited area if certain conditions are met. The staff report for this May 23rd Council discussion can be found at the following link: <http://cosweb.ci.shoreline.wa.us/uploads/attachments/cck/council/staffreports/2022/staffreport052322-9a.pdf>.

DISCUSSION

As was discussed with Council on May 23rd, the new proposed Section 13.20.060 SMC provides for the following regulations:

- **DUFA Required** – Entering into a DUFA with the City provides a property owner requesting interim overhead power the ability to connect their development to overhead power until SCL’s “pending underground capital project” is operational.
- **DUFA Designated Area** - The Public Works Director and Planning and Community Development Director would be authorized to designate areas where the City would permit a DUFA. An initial DUFA Designated Area map was shared with the Council during the May 23rd Council discussion.
- **DUFA Duration** – A property owner would be able to enter into a DUFA with the City that would allow for interim overhead electrical facilities for five (5) years from the date of the issuance of their development permit (i.e., building permit(s)). For projects that have already been issued their development permits, such as the Sound Transit Project, the five-year time frame would start upon the adoption of this Code section, which is scheduled for tonight. This would mean the initial term of the DUFA in this case would expire in June 2027. The proposed Code also allows for one extension of the term of the DUFA for up to two (2) years if, through no fault of the applicant, the SCL undergrounding project is not operational within the first five years. The Code also allows for additional extensions of the DUFA, but they would be at the discretion of the City.
- **DUFA Runs with the Land** – The DUFA would be recorded with King County and would be assigned to any future property owner if the property/development site is sold in the future.
- **Applicant/Property Owner Requirements in the DUFA** – The property owner/applicant requesting the interim overhead power would be required to do the following under a DUFA:
 - Design and construct their underground electrical utility infrastructure for the future permanent underground service connection to SCL’s underground project.
 - Submit permit application(s) to SCL to initiate the permanent underground service connection within sixty (60) calendar days if SCL does not make an automatic connection on the development’s behalf.
- **SCL Requirements** – Proposed Section 13.20.060 SMC also requires SCL to coordinate and perform work on the interim overhead facilities as follows:
 - SCL will ensure that the interim overhead electrical facilities will be designed and constructed in a way so that minimum clearance requirements for the overhead poles and electrical wires do not preclude future development.
 - SCL will also remove the interim overhead poles and wires within the identified timeframes of the proposed Code, as the interim infrastructure will be deemed abandoned by the City upon the completion of SCL’s undergrounding project. However, the City may grant an exemption to the removal of the interim overhead facilities if those facilities are necessary to serve existing development. As part of this discussion on May 23rd, staff provided updated timeframes for this aspect of the regulations based on SCL’s input regarding the removal of telecommunication or other fiber

optic “pole attachers” who will utilize SCL interim overhead poles. As these pole attachers remove their own overhead wires, the proposed Code now provides for a sequenced approach and timeline that allows for an overall 10-month process for interim pole removal. Sequentially, SCL is first provided 60 days to remove their overhead electrical wires and infrastructure, followed by 180 days for the potential pole attachers to remove their telecommunication/fiber/cable wires, and finally followed by 60 more days for SCL to remove the poles themselves. This updated Code language has been included in **Attachment A, Exhibit A** (SMC Section 13.20.060(l)(2)) as directed by Council.

A Councilmember also questioned whether the proposed Code language was consistent and that all of the ‘trigger points’ for action/notification in the Code were congruent with another. Staff has re-reviewed the proposed Code language in proposed Ordinance No. 966 and feels that the language is consistent.

COUNCIL GOAL(S) ADDRESSED

This issue corresponds with City Council Goal 1: Strengthen Shoreline’s economic climate and opportunities, and specifically Action Step #14 under this Goal: Work with Seattle City Light to ensure electric infrastructure supports Shoreline’s planned growth by sharing information and seeking to align timelines of private developments, City projects, and utility capacity expansion projects; and City Council Goal 3: Continue preparation for regional mass transit in Shoreline, and specifically Action Step #2 under this Goal: Work collaboratively with Sound Transit on the Lynnwood Link Extension Project, including coordination of project construction, inspection, and ongoing permitting.

RESOURCE/FINANCIAL IMPACT

There is no direct financial impact to the City if the Chapter 13.20 SMC is amended to allow for interim overhead power and deferred underground facilities. If Chapter 13.20 SMC is not amended and interim overhead power is not allowed, there may be significant indirect financial impacts if the LLE Project is delayed or if other development projects are delayed or are not constructed. It is difficult to quantify what this lost investment in Shoreline would be, but it is clear that development would be delayed if not severely curtailed for several years if connection to existing underground electrical power is not financially feasible for electrification of core development in the 148th Street Station Subarea.

RECOMMENDATION

Staff recommends that the City Council adopt proposed Ordinance No. 966.

ATTACHMENTS

Attachment A: Proposed Ordinance No. 966

Attachment A, Exhibit A: Proposed SMC 13.20.060 – Deferred Underground Facilities

ORDINANCE NO. 966

AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON, ADDING A NEW SECTION TO SHORELINE MUNICIPAL CODE CHAPTER 13.20 ELECTRICAL AND COMMUNICATION FACILITIES TO ESTABLISH A PROCESS FOR DEFERRING INSTALLATION OF UNDERGROUND ELECTRICAL FACILITIES.

WHEREAS, Shoreline Municipal Code (SMC) Section 20.70.340 requires new development to install electrical facilities underground so as to, among other things, promote the general welfare by decreasing dangerous conflicts with overhead electrical lines, improving ADA access, and achieving a more aesthetically pleasing community; and

WHEREAS, SMC Chapter 13.20 Electrical and Communication Facilities provides for the relocation of overhead facilities due to a City capital project so as to remove potential hazards and blockages from the right-of-way, thus increasing accessibility and benefiting the overall safety and mobility of the motoring public, passengers and pedestrians and also, to promote 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; and

WHEREAS, electrical services for the City of Shoreline are currently provided by the City of Seattle, through Seattle City Light (SCL); and

WHEREAS, on February 28, 2022, the City Council discussed challenges faced by Sound Transit's Lynnwood Link Extension Project and private development projects in meeting the City's underground electrification code requirements due to SCL's delay in its 5th Avenue Duct Bank Project (aka capital project), which was to have been in place to serve the area and is necessary in order to replace existing infrastructure that has exceeded its useful life; and

WHEREAS, public and private projects both need temporary construction 3-phase power, to construct their large projects, and interim operational power to energize their projects for occupancy until an electrical utility provider's capital project is complete and underground power is available; and

WHEREAS, on March 7, 2022, the City Council adopted Ordinance No. 958 which allows for temporary electrical service for construction in the MUR-70 zone by providing an additional exception to the requirement in SMC Chapter 13.20 that all new overhead electrical facilities or extensions, additions or rebuilds of existing overhead facilities must be put underground; and

WHEREAS, the proposed amendments allow interim overhead power within designated areas of the City upon the satisfaction of certain conditions, specifically a requirement for the property owner to enter into a Deferred Underground Facilities Agreement with the City; and

WHEREAS, the proposed amendments also require the electrical utility provider to not only coordinate and perform work on the interim overhead facilities but also to ensure removal of

those facilities once its capital project has been completed; and

WHEREAS, on May 23, 2022, the City Council held a study session on the proposed amendments; and

WHEREAS, the proposed amendments will establish a new SMC Section 13.20.060, which section was previously repealed by Ordinance No. 594; and

WHEREAS, the City Council has considered all relevant information in the public record and all public comments, written and oral, and finds that the proposed amendments to SMC Chapter 13.20 bear a substantial relationship to, and are necessary for, the public health, safety, and general welfare of the City and its residents; and

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

Section 1. Amendment – Chapter 13.20 Electrical and Communication Facilities. SMC Chapter 13.20 Electrical and Communication Facilities is amended as set forth in Exhibit A to this Ordinance.

Section 2. Corrections by City Clerk or Code Reviser. Upon approval of the City Attorney, the City Clerk and/or the Code Reviser are authorized to make necessary corrections to this Ordinance, including the corrections of scrivener or clerical errors; references to other local, state, or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering and references.

Section 3. Severability. Should any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance or its application to any person or situation be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this Ordinance or its application to any person or situation.

Section 4. Publication and Effective Date. A summary of this Ordinance consisting of the title shall be published in the official newspaper. This Ordinance shall take effect five (5) days after publication.

PASSED BY THE CITY COUNCIL ON JUNE 6, 2022.

Mayor Keith Scully

ATTEST:

APPROVED AS TO FORM:

Jessica Simulcik Smith
City Clerk

Julie Ainsworth-Taylor, Assistant City Attorney, on
behalf of Margaret King, City Attorney

Date of Publication: _____, 2022

Effective Date: _____, 2022

SMC 13.20.060 - Deferred Underground Facilities

- A. The provision of electrical service required to be undergrounded by this chapter and SMC 20.70.430 may be located overhead on an interim basis pursuant to the execution of a Deferred Underground Facilities Agreement (DUFA) in accordance with this section.
- B. A DUFA provides the ability to connect a development to overhead electrical facilities for a limited period of time in certain designated areas of the City. Such facilities would provide interim electrical service to the development in situations where an electrical utility provider's pending underground capital project precludes the provision of permanent underground electrical service to the development site until the capital project is operational. Operational means that the electrical utility provider's capital project is extended to a location that provides access to the development site as defined in the DUFA.
- C. A DUFA is allowed when the electrical utility provider's adopted capital improvement plan has identified a project that will provide operational underground electrical facilities within the right-of-way that will provide for an underground electrical service connection to the development within five (5) consecutive years of: (1) the date of the issuance of the development permit requiring underground installation; or (2) the date of the adoption of this subsection for developments with permits already issued.
- D. The City may enter into a DUFA with a property owner, herein referred to as the Applicant, if the following terms and conditions are met:
 1. All or a portion of the development site is located within an area designated by the City as eligible for a DUFA and the development site is anticipated to be served by the pending capital project.
 2. The Applicant executes and records a DUFA that shall require and include the following obligations and terms:
 - a. Design and construction of underground electrical utility infrastructure for a permanent underground service connection to the electrical utility provider's pending capital project as part of the Applicant's development project.
 - b. If the utility provider does not automatically connect the development project's underground electrical utility infrastructure to the completed capital project, the Applicant shall submit permit application(s) to the utility provider for a permanent underground service connection to the electrical utility provider's infrastructure within sixty (60) calendar days from the date the electrical utility provider provides written notice that the underground electrical facilities are installed.
 - c. The DUFA shall bind the Applicant and all successors and assigns.
 - d. The City shall allow for one extension of the term of the DUFA for up to two years if, through no fault of the Applicant, the electrical utility provider's pending capital project cannot become operational within the five (5) year time frame. If the electrical utility provider's pending capital project cannot become operational

within the extended period of time, the City may, in its sole discretion, enter into an additional extension(s) of the DUFA.

- E. Except as provided herein, the DUFA shall be recorded, at the Applicant's sole cost and expense, in the property records of King County prior to issuance of the development's permit(s). For development projects that have issued permits at the time of adoption of this subsection, the DUFA shall be recorded prior to issuance of the first certificate of occupancy, either temporary or final, or finalization of the permit, whichever is applicable to the project type.
- F. The DUFA shall not relieve the Applicant of the requirement to install all electrical service infrastructure underground on the development site and/or within the adjacent right-of-way, to the maximum extent possible, to ensure minimal disruption at the time of permanent underground service connection, as provided in Chapter 13.20 SMC, SMC 20.70.430, and the Engineering Development Manual (EDM) adopted pursuant to SMC 12.10.015.
- G. The Director of Public Works and the Director of Planning and Community Development, or designees, shall designate areas of the City where a DUFA may be permitted. A map clearly delineating the boundaries of the designated areas will be posted in the GIS Map portal on the City's website and incorporated into the EDM.
- H. The Director of Public Works may approve a DUFA in a form acceptable to the City Attorney.
- I. The electrical utility provider shall:
 - 1. Ensure that the interim overhead electrical facilities installed in the right-of-way be designed and constructed so that minimum clearance requirements applicable to the electrical facilities do not preclude future development of the site up to the minimum setbacks required by Chapter 20.50 SMC, or other applicable SMC or EDM provisions, without design departures.
 - 2. Upon completion of the electrical utility provider's pending capital underground project, the interim overhead electrical facilities shall be deemed abandoned and shall be removed from the right-of-way at the electrical utility provider's sole expense, provided that the City may grant an exemption to the removal of the interim overhead facilities if those facilities are necessary to serve existing development. The electrical utility provider shall remove their interim overhead electrical wires and other electrical fixtures and equipment from the interim electrical utility poles within 60 calendar days of the completion of their capital underground project. All non-electrical facility attachers shall then remove their facilities from the interim electrical utility poles within 180 calendar days of the electrical utility provider's removal of their electrical wires and other electrical fixtures and equipment. The electrical utility provider shall then remove their interim electrical utility poles within 60 calendar days of the final non-electrical facility attacher removing their facilities.

Ordinance No. 966

Exhibit A

J. If the electrical utility provider fails to comply with subsection I, the City may engage in enforcement provisions against such utility provider as authorized by State Law, the SMC or the City's Electrical Utility System Franchise Agreement, as may be applicable. Nothing in this provision shall preclude the City from pursuing additional or other legal remedies.