

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

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| AGENDA TITLE: | Adoption of Ordinance No. 340 Amending Regulations for Undergrounding Utilities and Designation of North City and Aurora Projects for a \$10,000 Service Connection Credit. |
| DEPARTMENT: | City Attorney's Office; Public Works Department |
| PRESENTED BY: | Ian Sievers, City Attorney; Paul Haines, Public Works Director |

PROBLEMS/ISSUES STATEMENT:

Proposed Ordinance No. 340 refines the City's policy for undergrounding aerial utility lines. The current policy requires undergrounding using three approaches. When road projects require the relocation of overhead facilities utilities must convert the aerial lines to underground conduit and vaults with certain exception where the conversion would be impractical. Second, when one utility opens a trench for its utilities, aerial utilities in the same right-of-way are responsible for coordinating an underground conversion with the trenching project. Finally, private property redevelopment or new development is required to underground facilities adjacent to the development. There is an additional deadline for all overhead lines not exempted by the ordinance to be converted in non-residential areas by 2011, fifteen years after adoption of Ordinance No 82.

The proposed amendments make some corrections needed since the 1996 enactment of Chapter 13. Included are updates to nonresidential zones (.050), limiting conversion of telecommunication lines at utility expense as has been mandated by the Telecommunications Act passed in 2000, codified at chapter 35.99 RCW (.080), and removal of detailed installation specifications which are more appropriately located in the Engineering Guide authorized by Ordinance No. 230 (.090) .

The amending ordinance also proposes modification of the obligation for private property owners adjacent to a utility conversion to pay for service connections to the new underground facilities (.140). It is proposed that the City Council may designate certain road projects that are primarily of citywide benefit to use project funds to pay for the replacement service connection to buildings to converted utilities.

If Ordinance No. 340 is passed, it is also proposed that Council designate the North City Project and the Aurora Project 145th to 165th as eligible for private service connection costs up to \$10,000 per property owner.

RECOMMENDATION

Staff recommends that Council move to

- 1) Adopt Ordinance No. 340 amending regulations affecting underground utilities;
and

- 2) Designate the North City Project and the Aurora Project 145th to 165th as eligible for projects for reimbursement of adjacent property owners up to \$10,000 for the cost of service connections to converted utilities in the projects.

Approved By: City Manager  City Attorney ____

INTRODUCTION

As stated in section 13.20. 010, this chapter was adopted in 1996 to promote an orderly program requiring the underground installation of all electrical and communication facilities, and the conversion of aerial lines to underground facilities of all existing overhead wires including, telephone, telegraph, cable television, and electrical power "as soon as practicable." The Council found that undergrounding removes potential hazards from the right-of-way, thus benefiting the safety 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.

The underlying policy remains unchanged: new facilities must be installed underground and undergrounding of existing residential and nonresidential aerial facilities will occur over time with the City's capital projects that cause relocation of facilities, as utilities implement their own projects requiring coordinated conversion, and as frontage improvement are required for new development. The deadline of June 6, 2011 for all overhead facilities in nonresidential zones is left unchanged pending further study of cost allocation.

Certain amendments are needed to correct the program to reflect changes in state law and other city adopted ordinances. The policy of requiring private connections has been modified to allow some City project funding for private service connections.

DISCUSSION

A. Housekeeping Amendments.

Amendments to chapter 13.20 reflect changes since its 1996 adoption. The following is a brief analysis by section:

Section 13.20.030 broadens the class of entities subject to the ordinance from "franchisees" to "utilities." Some telecommunications companies with statewide franchisees have not obtained city franchises but are still subject to the ordinance obligations under the Telecommunication Act of 2000.

Section 13.20.050 corrects the reference to the Development Code, which has been recodified as Title 20 from 21A, and adds the current list of nonresidential land use districts.

Section 13.20.080 details reimbursement costs that must be paid to the service provider by the City, as required by state law. Specifically, the City must reimburse providers for conversion costs if they paid for a City-requested relocation within the last five years. Also, the City must reimburse service providers who own aerial supporting structures for the incremental costs of underground versus aerial relocation.

Section 13.20.090 removes installation specifications to the Engineering Development Guide which was adopted with Title 20 for engineering specifications for all

improvements in the right-of-way, including dimensions, street and pedestrian improvements, street trees and stormwater facilities.

Section 13.20.120 replaces "Development Services Coordinator," a position no longer in the city classification plan, with the Public Works Director who is responsible for administration of right-of-way and this chapter.

Section 13.20.140 [see discussion of service connections under B below

B. Service Connection Policy

Section .140 and a reference in .090 are amended to allow the City Council to designate specific road projects by motion or resolution when the associated undergrounding of utilities will primarily benefit road users in terms of traffic safety and aesthetics. These might include the Green Streets identified in the Comprehensive Plan or major arterials like Aurora. Other projects' utility conversions will primarily be of special benefit to the abutting owners by improving the neighborhood environment and views which should increase their property values. Where the project is of citywide benefit these amended sections allow the Council to designate the project and fix a level of project funding that may be used to pay for connections to the converted utility line.

It is also proposed that Council designate the North City Project and the Aurora Project 145th to 165th as eligible for private service connection costs up to \$10,000 per property owner, as a companion action to adoption of Ordinance No. 340.

C. Changes to Title 20.

Certain provisions of the Development Code that duplicated the provisions controlling use of the right-of-way by utilities have been repealed. These include 20.70.450, 20.70.460 and subsection 20.70.470 (A)(1) and (4) and (B). See Attachment B for repealed sections. Title 20 has been narrowed by Ordinance No. 339 (use of right-of-way) and this ordinance to focus on development of zoned property rather than right-of-way use.

Section .460 contains facilities subject to undergrounding and exemptions set forth in 13.20.020 except .460 (B) (5) and (6), upgrades to service facilities outside the right-of-way, and .450 (B)(4), wireless antennas and satellite systems. .460(B)(5) and (6) are recodified with .470 which addresses requirement for undergrounding with property development. 460 (b)(4) is eliminate. All wireless antennas which have been co-located on existing utility poles have an obligation to relocate if the pole is removed as a condition of their right-of-way site permit.

Section 20.70.470 is appropriately included in the development code and forms the third approach to removing aerial lines over time, that is, as part of the cost of new development or major redevelopment of adjacent property. Exempt overhead facilities are included by reference to 13.20.050 and exemptions from the threshold for redevelopment for replacement of electrical or communication facilities are added. Section .470 (B) requiring the property owner to pay for an additional conduit for City use is stricken. This may have borrowed from terms and conditions for utilities subject to

franchise fees, such as Global Crossings conduit and extra city conduit placed in Aurora pursuant to its franchise. The Telecommunication Act also requires communication companies that convert facilities in the right-of-way to install conduit for the City if requested, but the City must pay. There is no direct impact of development which is being mitigated by this extra conduit and the requirement would be an unlawful development fee under Chapter 82.02 RCW as recently interpreted by *Camas v. Isla Verde*.

RECOMMENDATION

Staff recommends that Council move to

- 3) Adopt Ordinance No. 340 amending regulations affecting underground utilities;
and
- 4) Designate the North City Project and the Aurora Project 145th to 165th as eligible for projects for reimbursement of adjacent property owners up to \$10,000 for the cost of service connections to converted utilities in the projects.

ATTACHMENTS

- A. Proposed Ordinance 340
- B. Repealed Shoreline Municipal Code 20.70.450 and .460

ORDINANCE NO. 340

AN ORDINANCE AMENDING REQUIREMENTS FOR UNDERGROUNDING ELECTRICAL AND TELECOMMUNICATION UTILITIES AND PROVIDING SERVICE CONNECTIONS TO CONVERTED FACILITIES AS A PUBLIC WORKS EXPENSE UNDER CERTAIN CONDITIONS; AND AMENDING CHAPTER 13.20 AND SECTIONS 20.70.450-.470 OF THE SHORELINE MUNICIPAL CODE.

Section 1. Amendment. Shoreline Municipal Code chapter 13.20.010 *Electrical and Communication Facilities* is amended to read as follows:

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, cable television, and electrical power, and to require the underground installation of all electrical and communication facilities, 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 as soon as practicable in accordance with the requirements included in this ordinance, and that all new facilities specified in this ordinance be installed underground, in that among other things, the undergrounding removes potential hazards from the right-of-way, thus benefiting the safety 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.

13.20.020 Scope. Subject to the excepted facilities listed in Section 4, this ordinance shall apply to all electric facilities, to all communication facilities, and to all facilities that are currently attached, or that may in the future be attached, above ground to poles, including but not limited to electrical, telephone, telegraph, and cable television facilities.

13.20.030. Definitions. The following terms as used in this ordinance shall be defined as follows:

- (a) Entity - shall include, but shall not be limited to, any of the following: ~~Franchisees-Utilities of the City of Shoreline~~, the City of Shoreline, Local Improvement District (LID), ~~Road and Road~~ Improvement District (RID).
- (b) Facilities - shall include, but shall not be limited to, wires of any gauge or material, poles or other structures to support wires, transformers or other equipment with the purpose of amplifying, converting, or otherwise acting on the current or signal carried by wires.
- (c) Owner of Record - shall mean the person or entity listed as the owner of the property in the records of the King County Auditor.

13.20.040 Exemptions Facilities excepted from chapter requirements.
This ordinance shall not apply to the following facilities:

- (a) Freestanding ~~street lights~~ streetlights;
- (b) Police and fire sirens, or any similar municipal equipment, including traffic control equipment;

- (c) Electrical carrying facilities of a voltage over 35-kV; (This exemption only applies to physical structures strictly necessary for the conveyance of an electrical charge in excess of 35-kV. Other facilities attached to these structures are not exempted by this paragraph.)
- (d) Communication facilities relying on a carrying source other than that which could be installed above ground on poles and which cannot function underground as designed including, but not limited to, antennas and satellite communication systems.

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 Title 21A-20 as RB (Regional Business), CB (Community Business), Neighborhood business (NB), Office (O) and Special Overlay (SO), North City Business District (NCBD) and I (Industrial):

- (a) Overhead facilities, with the exceptions previously noted in Section .040, existing on the effective date of this ordinance or for which a permit has been granted within 15 days of the effective date, will be allowed to remain above ground until one of the following events:
 - (1) 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 fifteen (15) years from the effective date of this ordinance.
 - (3) An entity instigates a joint trenching project, as defined in Section .120 hereof, that could reasonably serve to replace existing overhead facilities.
- (b) All extensions, additions, duplications, or rebuilds (excluding repair of casualty damage) of existing overhead facilities or any new facilities shall be installed underground from and after the effective date of this ordinance.
- (c) All areas rezoned, after the effective date of this ordinance, 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.

13.20.060 Undergrounding of Existing Facilities in Residential Areas - When Required. The following requirements apply to all areas which carry zoning classifications other than those to which Section 5 applies:

- (a) Overhead facilities, with the exceptions previously noted in Section .0430, existing on the effective date of this ordinance ~~or for which a permit has been granted within 15 days of the effective date,~~ will be allowed to remain above ground until one of the following events:
 - (1) 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) An entity instigates a joint trenching project, as defined in Section .120 hereof, that could reasonably serve to replace existing overhead facilities.
- (b) All extensions, additions, duplications, or rebuilds (excluding repair of casualty damage) of existing overhead facilities, or any new facilities, shall be installed underground from and after the effective date of this ordinance.
 - (1) Entities may avoid the mandate of paragraph (b) in areas serviced by overhead facilities on the effective date of this ordinance by entering into an Undergrounding Cooperation Agreement with the City

or other contractual agreement which contains substantially the same terms as an Undergrounding Cooperation Agreement and by its terms exempts the parties from this paragraph. Nothing in this paragraph shall remove an entity's obligation to comply with paragraph (a) of this Section.

- (c) All areas rezoned, after the effective date of this ordinance, 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, however, in no case shall the installation of overhead facilities be allowed in an area which has previously been undergrounded.

13.20.070 City Projects - Pole Removal Required. All capital improvement projects proposed by the City of Shoreline that disturb existing overhead facilities in the public right-of-way shall be designed to include the removal of utility poles and the undergrounding of overhead facilities in that right-of-way in accord with the requirements of this ordinance. The mandate of this Section may be waived if the City Manager or designee specifically finds that the proposed project is inappropriate for undergrounding. Nothing in this paragraph shall be read to require the City to bear the costs associated with such removal or undergrounding.

13.20.080 Cost. The cost and expense of relocating existing overhead facilities, or installing new facilities underground, shall be borne by the serving utilities to the extent allowed by State and Federal regulations, except that disconnection from existing overhead facilities and connection of the undergrounding facilities from the edge of the right-of-way to the abutting land owners shall be borne by the abutting land owners, except as provided in section .140. Telecommunication service providers as defined in chapter 35.99 RCW shall be reimbursed for conversion expenses if the provider had paid for relocation within the last five years at the request of the City, or where the service provider is an owner of the aerial supporting structures, it shall be reimbursed for the additional incremental cost of underground compared to aerial relocation. ~~provided, however, that n~~ Nothing in this section shall preclude a contractual agreement governing who is to bear the cost of undergrounding as agreed upon between the utility, the City and affected parties.

13.20.090. Design standards. The design standards contained in the City of Shoreline's Engineering Development Guide ~~Development Code~~ shall apply once adopted to construction of Electrical and Telecommunication Facilities in the right of way. ~~The following standards shall apply during the interim period:~~

- (a) ~~All conductors, switches, transformers, and regulating devices shall be installed in accordance with the applicable national, State, and local safety standards. All structural devices shall be designed in accordance with the provisions of the latest edition of the Uniform Building Code.~~
- (b) ~~All vaults, handholds, ventilation gratings and access covers and conduit in public rights of way shall be strong enough to withstand a 10,000 pound wheel load.~~
- (c) ~~Any equipment excepted from these underground requirements or otherwise permitted to be installed above ground shall be:~~
- ~~(1) Placed within an enclosure or part of the building being served; or~~
 - ~~(2) Suitably screened with masonry or other decorative panels and/or evergreen trees, shrubs, and landscaping planted in sufficient depth to form an effective and actual sight barrier within five years. Where shrubbery is~~

~~the primary screening element, minimum shrub height shall be seven feet (except for equipment not exceeding such height) for the bulk of the screen, with lower shrubs in foreground to eliminate any gaps in screening.~~

~~—The utility shall be responsible for the installation, maintenance, repair, or replacement of the aforementioned screening materials when the real property on which the above ground facility is located is owned by the utility. When said above ground facility is located on non utility owned real property, the expense of installation, maintenance, repair, or replacement of the screening materials outlined above shall be allocated between the owner of the property and the utility as established by contract between the parties.~~

~~(d) —Space frames and structural arrangements for holding equipment shall be designed to have an uncluttered and neat appearance;~~

~~(e) —Plans for all above ground installations shall be submitted to the planning commission for approval of site screening prior to the issuance of a permit by the building official.~~

13.20.120. Joint Trenches Required. Any entity planning a trenching project, as defined herein, shall receive preliminary approval of the project from the appropriate permitting authority and then within ten (10) days notify all entities maintaining overhead transmission facilities in the same corridor of the scope and nature of the project. Such notification shall include a full description of the requirements of this ordinance and shall identify all facilities in danger of being removed by the operation of this ordinance. Uncertainty as to which facilities are in danger of being removed by operation of this ordinance shall be clarified by the ~~Development Services Coordinator~~Public Works Director or designee on a case by case basis. The final approval of permits for such project will not be provided before 60 days after the appropriate permitting authority has been provided evidence that all entities have been notified as required herein. The above ground systems of all entities so notified will be removed by the owner thereof no later than 90 days following the completion of the project.

(a) “Trenching Project” is defined as any project initiated by an entity for the purpose of undergrounding some portion of the overhead transmission system, or any project designed to include the disruption of road improvements or the digging of a trench in the public right-of-way for a distance greater than 500 feet in length that would reasonably reduce the cost of undergrounding facilities that could reasonably serve to replace existing overhead facilities.

(b) The following activities are exempt from the requirements of this section:

(1) Those activities in areas that do not have existing overhead facilities;

(2) Those activities by water, wastewater, or natural gas franchisees that, in the opinion of the ~~Development Services Coordinator~~ Public Works Director or designee, due to design standards or the nature of the proposed project, any potential efficiencies gained by a joint project would be outweighed by the additional disruption to the community caused by requiring the undergrounding of existing overhead facilities.

13.20.130. Enforcement. Any violation of any provision, or failure to comply with any of the requirements of this ordinance, shall be a civil violation subjecting the offender to a civil penalty of up to \$100.00 for each of the first five days

that a violation exists and up to \$500.00 for each subsequent day that a violation exists. Notice and Order and hearing procedures shall correspond to those established for the enforcement of land use regulations. Payment of any such monetary penalty shall not relieve any person of the duty to correct the violation as set forth in the applicable Notice and Order.

13.20.140. ~~Notice to owners to convert~~ Converting Service Connections.

A. Except as provided in subsection B, wWhen an underground utility installation, as provided for in this ordinance, 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:

A.(1) Service from the underground facilities is available;

B.(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;

C.(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;

D.(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.

B.- The City Council may designate 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 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:—

(1) 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.

13.20.150 Order to disconnect. If the owner of any structure or improvement served from existing overhead electric and communication facilities shall fail to convert to the available underground service within 90 days after the notice to do so was mailed, the City shall order the electric and communications utilities to disconnect and remove all such service lines; provided, that if the owner has filed written objection to such disconnection and removal within 30 days after the mailing of the notice, the City shall not order such disconnection and removal until after the hearing on such objection.

13.20.160. Objection to disconnection - Hearing. Upon the owner's timely filing of written objections to disconnection and removal of service lines, the City

Council shall conduct a hearing to determine whether the removal of all or any part of the service lines is in the public benefit. The hearing shall be held at such time as the City Council may establish and shall be in accordance with its regularly established procedures. The determination reached by the City Council shall be final.

13.20.170. Implementation. This ordinance shall be prospective in application and shall not apply to any CIP project for which the design has been completed by the effective date of this ordinance, or for which the Shoreline City Council has specifically found its application to be inappropriate. This ordinance shall be implemented in accord with Shoreline's Comprehensive Plan.

Section 2. Repeal. Sections 20.70.450 through 20.70.460 are repealed in their entirety.

Section 3. Amendment. Section 20.70.470 is amended as follows:

20.70.470 Undergrounding of electric and communication facilities – When required.

A. Undergrounding of electrical and telecommunication facilities defined in SMC 13.20.030 shall be required with new development requirements are applicable to the as following unless the facility is exempt under SMC 13.20.030:

~~1. All capital improvement projects proposed by the City of Shoreline that disturb existing overhead facilities in the public right-of-way shall be designed to include the removal of utility poles and the undergrounding of overhead facilities in that right-of-way in accordance with the requirements of this subchapter. Nothing in this section shall be read to require the City to bear the costs associated with such removal or undergrounding. The mandate of this section may be waived if the City manager specifically finds that the proposed project is inappropriate for undergrounding.~~

~~12. All new nonresidential construction, including remodels and additions where the total value of the project exceeds 50 percent of the assessed valuation of the site at the time of application and/or involves the relocation of service.~~

~~23. All new residential construction and new accessory structures, the creation of new residential lots, and residential remodels and additions where the total value of the project exceeds 50 percent of the assessed valuation of the site at the time of application and/or involves the relocation of service. Residential projects may be exempted from some or all of the undergrounding provisions at the request of the applicant if the project involves the construction, remodel, or addition to only one new house or accessory structure and a street crossing would be necessary.~~

~~4. An entity instigates a joint trenching project that could reasonably serve to replace existing overhead facilities. All extensions, additions, duplications, or rebuilds (excluding repair of casualty damage) of existing overhead facilities or any new facilities that are not exempted by this subchapter shall be installed underground. When an entity instigates a trenching project for the purpose of undergrounding facilities, the entity shall notify all other entities maintaining overhead facilities in the project area. The applicant must either:~~

~~a. Wait 60 days for response from the notices and provide sufficient time for coordinating utilities to design and install their facilities; or~~

~~b. Install extra conduit line for additional utility use as determined by the City.~~

~~B. In addition to conduit lines required above, one additional conduit line shall be installed to be owned by the City.~~

~~B. 5-Conversion of facilities shall not be required- with:~~

- ~~1. The upgrade or change of location of electrical panel, service, or meter for existing structures not associated with a development application; and~~
- ~~2. New or replacement phone lines, cable lines, or any communication lines for existing structures not associated with a development application.~~

Section 4. Effective Date and Publication. A summary of this ordinance consisting of its title shall be published in the official newspaper of the City and the ordinance shall take effect and be in full force five (5) days after the date of publication.

PASSED BY THE CITY COUNCIL ON NOVEMBER 17, 2003.

Mayor Scott Jepsen

ATTEST:

APPROVED AS TO FORM:

Sharon Mattioli, CMC
City Clerk

Ian Sievers
City Attorney

Date of Publication: November 20, 2003
Effective Date: November 25, 2003