

(1-2007)

Article 1: Public Improvement and Assessment Proceedings

Division 5: Underground Utilities Procedural Ordinance

*(“Underground Utilities Procedural Ordinance”
added 9–5–1968 by O–9872 N.S.)*

§61.0501 Citation of Ordinance

This Division may be cited as the San Diego Underground Utilities Procedural Ordinance.

(Amended 1–14–2002 by O–19032 N.S.)

§61.0502 Rules of Construction

This Division shall be liberally construed in order to effectuate its purposes and no error, irregularity, informality, and no neglect or omission of any officer in any procedure taken under this Division which does not directly affect the jurisdiction of the Council to order the work and improvement shall avoid or invalidate such proceeding.

(Amended 1–14–2002 by O–19032 N.S.)

§61.0503 Purpose and Intent

It is the purpose and intent of this Division to provide for the creation of underground utility *Districts* in the City of San Diego in which *Poles, Overhead Wires and Associated Overhead Structures*, as defined in this Division, shall not be permitted.

(Amended 1–14–2002 by O–19032 N.S.)

§61.0504 Definitions

Whenever in this Division the following words or phrases are used, they mean:

- (a) “*City*” means The City of San Diego, a municipal corporation in the State of California.
- (b) “*Commission*” means the Public Utilities Commission of the State of California.
- (c) “*Council*” means the City Council of City.

(1-2007)

- (d) “*Underground Utility District*” or “*District*” means that area in the City within which *Poles, Overhead Wires, and Associated Overhead Structures* are prohibited as such area is described in a resolution or resolutions adopted pursuant to the provisions of Section 61.0508 of this Code.
- (e) “*Poles, Overhead Wires, and Associated Overhead Structures*” means poles, towers, supports, wires, cables, conductors, guys, stubs, platforms, crossarms, braces, transformers, insulators, cutouts, switches, communication circuits, appliances, attachments, and appurtenances located above ground upon, along, across, or over the streets, alleys and ways of City and used or usable in supplying electric, communication, community antenna television or similar or associated service.
- (f) “*Utility Company*” shall mean and include all persons and entities supplying electric, communication, community antenna television or similar or associated service.
- (g) “*Affected Persons*” shall mean the owners of real property located within the District, or proposed District, as shown on the last equalized San Diego County assessment roll and each occupant of real property located within the District, or proposed District.

(Amended 1-14-2002 by O-19032 N.S.)

§61.0505 Exceptions

Unless otherwise provided in the resolution creating the *District*, this Division and any resolution adopted pursuant to it shall not apply to the following types of facilities:

- (a) *Poles, and Associated Overhead Structures*, used exclusively for street lighting or signalization.
- (b) *Overhead Wires* (exclusive of supporting structures) connecting to buildings on the perimeter of a District when such wires originate in an area from which poles, overhead wires and associated overhead structures are not prohibited.
- (c) *Overhead Wires* attached to the exterior surface of a building by means of a bracket or other fixture and extending from one location on the building to another location on the same building or to an adjacent building without crossing any public street.

(1-2007)

- (d) Electric transmission lines of 60,000 volts phase-to-phase and above, except when transmission lines are within a 12 kv conversion district.
- (e) Radio antennae, associated equipment and supporting structures for such antennae, used by a Utility Company for furnishing communication services.
- (f) Pad mounted transformers, junction boxes, and service terminals on pedestals aboveground used to distribute electrical, communication and community antenna television or similar or associated service, in the underground systems.
- (g) Temporary poles, overhead wires and associated overhead structures located on private property, used solely during the course of construction on that private property.
- (h) Overhead wires to provide temporary or emergency service installed subject to the provisions of Section 61.0510 of this Code.
- (i) New or existing pole-to-anchor guy wires within the District necessary to support overhead facilities outside the boundary of the District or poles within the District which have been specifically excepted in the resolution creating the District.
- (j) Poles, supports, wires and associated overhead structures necessary for the operation of electrically driven mass transit systems.

(Amended 1-14-2002 by O-19032 N.S.)

(Amended 9-20-2004 by O-19318 N.S.)

§61.0506 Public Hearing by Council

By appropriate resolution the Council may from time to time call public hearings to ascertain whether the public health, safety or general welfare requires the removal of poles, overhead wires and associated overhead structures within designated areas of the City and the underground installation of wires and facilities for supplying electric, communication, community antenna television or similar or associated service. Each hearing shall be open to the public and may be continued from time to time. At each hearing all persons interested shall be given an opportunity to be heard. The decision of the Council shall be final and conclusive.

(“Public Hearing by Council” added 9-5-1968 by O-9872 N.S.)

(1-2007)

§61.0507 Notice

- (a) The City Clerk shall notify all affected persons and each *Utility Company* concerned of the time and place of the hearings at least fifteen days prior to the date thereof.
- (b) Notices given under Section 61.0507 may be given either by personal service or by mail. In case of service by mail, each notice must be deposited in the United States mail in a sealed envelope with postage prepaid. Each notice to an owner of real property in *District*, or proposed *District*, shall be addressed as such owner's name appears, and at the address listed for such owner, on the last equalized assessment roll of the County of San Diego. Each notice to an occupant of real property in *District*, or proposed *District*, shall be addressed to occupant at the street address or addresses located on the real property. Notice given by mail shall be deemed to have been received by the person to whom it has been sent within forty-eight hours after the mailing thereof.
- (c) The City Clerk shall cause the resolution calling a public hearing as set forth in Section 61.0506 of this Code to be published in a newspaper of general circulation as defined in Section 6000 of the California Government Code. Publication of the resolution shall be for one time, not less than five days prior to the date of the public hearing stated in said resolution.

(Amended 1-14-2002 by O-19032 N.S.)

§61.0508 Council May Designate Underground Utility Districts by Resolution

- (a) If, after the public hearing, the Council finds that the public health, safety or general welfare requires removal of *Poles, Overhead Wires, and Associated Overhead Structures* and underground installation of wires and facilities for supplying electric, communication, community antenna television or similar or associated service within a designated area, the Council shall by resolution declare the designated area an *Underground Utility District* and order the removal and underground installation. Immediately following its adoption, the City Clerk shall cause a certified copy of the resolution to be recorded in the office of the County Recorder. The resolution shall include a description and map of the area comprising the *District*.
- (b) A newly undergrounded route shall follow the existing aerial route to the greatest extent possible. Any variations from the existing aerial route, including the undergrounding of lines outside of the boundaries of an underground utility district, shall be the minimum variations necessary to make possible the removal of poles and overhead facilities, which removal is required for the public health, safety, and general welfare.

(1-2007)

- (c) To facilitate the City Council's long term planning of *Underground Utility Districts*, each *Utility Company* within the City with *Overhead Poles, Wires, and Associated Overhead Structures* shall provide the City Manager with a complete list of the locations of all of its overhead facilities within the City. The list shall be updated annually not later than January 31 of each year, and shall be in a form prescribed by the City Manager. Any *Utility Company* failing to comply with Section 61.0508 shall be subject to a fine not to exceed \$1,000 per day for each day the annual updated list remains overdue.

(Amended 1-14-2002 by O-19032 N.S.)

(Amended 1-17-2007 by O-19562 N.S.; effective 2-16-2007.)

§61.0509 Establishment of Underground Utility District Joint Trench Requirements, Schedules, and Deadlines

- (a) Upon adoption of a resolution creating a *Utility Underground District* by the City Council, the City Manager, in consultation with all affected *Utility Companies*, shall establish a schedule for the underground conversion of all *Poles, Overhead Wires, and Associated Structures* within the *District*. Upon adoption of such schedule by the City Manager, all affected *Utility Companies* and *Affected Persons* shall be subject to performing their respective underground conversion obligations in a timely and efficient manner in accordance with the schedule. *Poles, Overhead Wires, and Associated Overhead Structures* shall be removed. A reasonable time shall be allowed for removal and underground installation, having due regard for the availability of labor, materials, and equipment necessary for such removal and for the installation of such underground facilities.
- (b) The City Manager may require that affected *Utility Companies* jointly locate their facilities in uniform trenches. All affected *Utility Companies* within the *District* shall coordinate joint trenches for the conversion of their *Poles, Overhead Wires, and Associated Structures*, and shall comply with any reasonable schedule established by the City Manager for joint trenches, except as provided by Section 61.0510.
- (b) Unless otherwise specified by the City Manager or agreed between affected *Utility Companies*, the *Utility Company* providing electric service shall be responsible for the coordination of joint trench requirements with other *Utility Companies*, provided, however, that no *Utility Company* shall be responsible for the enforcement of this Division, for the failure of other affected *Utility Companies* or *Affected Persons* to comply with the requirements of this Division, or for delays caused solely by the City. Any *Utility Company* or *Affected Person* failing to meet the requirements of this Division due to its own action or inaction shall be subject to the penalties and other remedies specified in Section 61.0511.

(1-2007)

- (c) The *District* schedule established under Section 61.0509(a) may provide for project interim and final deadlines. Except as provided by Section 61.0510, the schedule shall be binding upon all *Affected Persons* and *Utility Companies* regardless of the nature of utility business. Notice of the schedule shall be served upon all *Utility Companies* and all *Affected Persons* in the manner prescribed by Section 61.0513(b). The schedule shall require final completion of the underground conversion of all *Poles, Overhead Wires, and Associated Structures* owned by *Utility Companies* and *Affected Persons* no earlier than eighteen months and no later than twenty-four months from the date of service of the schedule by the City Manager. The deadline for final completion of the underground conversion of all utilities shall not be adjusted except by written extension issued by the City Manager to any *Utility Company* or *Affected Person* not responsible for delay. Fires, floods, earthquakes, strikes, or similar uncontrollable events or changed conditions may constitute basis for such exception by the City Manager.
- (d) The *District* schedule established by the City Manager may include one or more of the following conditions and interim deadlines:
- (1) The latest date upon which the electric *Utility Company* must provide a final design for joint trenches to all affected *Utility Companies* within the *District*.
 - (2) The latest date upon which all affected *Utility Companies* must provide joint trench proposals to the electric *Utility Company*.
 - (3) The latest date upon which all affected *Utility Companies* must agree to a final joint trench program providing for the relocation work to be performed in compliance with the *District* schedule established by the City Manager.
 - (4) The latest date upon which all affected *Utility Companies* must complete all trenching, conduit, and substructure construction work.
 - (5) The latest date upon which the electric *Utility Company* must submit complete as-built drawings to all affected *Utility Companies* and to the City Manager.
 - (6) The latest date by which all *Affected Persons* must complete conversion of their service laterals for all utilities.
 - (7) The latest date by which all *Poles, Overhead Wires, and Associated Overhead Structures* must be removed by all *Utility Companies* and *Affected Persons*, except as provided by Sections 61.0505 or 61.0510. (“Unlawful Acts” renumbered to Sec. 61.0511; “Establishment of Underground Utility District Joint Trench Requirements, Schedules, and Deadlines” added 1-14-2002 by O-19032 N.S.)

(1-2007)

§61.0510 Variance From Underground District Requirements; Application, Standards, and Procedure

- (a) Any *Utility Company* which maintains that the joint trench requirements of an *Underground Utility District* are not feasible may file an application for a variance with the City Manager within thirty days from the date that the *District* schedule is issued pursuant to Section 61.0509(d) or after an uncontrollable event or changed condition. The term “feasible” means technical feasibility only, as it relates to joint trench or other physical requirements. Cost or schedule constraints shall not be a basis for variance. Possibility of future street or utility conversion shall not constitute a basis for variance.
- (b) The City Manager shall issue a written decision on any application for variance. The decision of the City Manager shall be final and binding on the applicant.

(“*Exception by Special Permission and Emergency Situations*” renumbered to Sec. 61.0512; “*Variance From Underground District Requirements; Application, Standards, and Procedure*” added 1-14-2002 by O-19032 N.S.)

§61.0511 Unlawful Acts

- (a) Whenever the Council creates an *Underground Utility District* and orders the removal of *Poles, Overhead Wires, and Associated Overhead Structures* as provided in Section 61.0508 of this Code, and whenever the City Manager establishes a schedule for such removal as provided by Section 61.0509, it shall be unlawful for any person or utility company to fail to meet any of the interim or final deadlines of such removal schedule or to erect, construct, place, keep, maintain, continue, own, employ or operate *Poles, Overhead Wires, and Associated Overhead Structures* in the *District* on and after the date when overhead facilities are required to be removed by the resolution, except as otherwise provided in this Division. Commencing upon the date when the overhead facilities are required to be removed, the continued existence, presence or maintenance of *Poles, Overhead Wires, and Associated Overhead Structures* in the *District* shall be and the same is hereby declared to be contrary to the health, safety and general welfare of the public and unlawful, and the same may be abated summarily or as otherwise provided by law, including without limitation the remedies provided in Chapter 1 of this Code and administrative fines as provided by Section 61.0511(b).
- (b) Any *Utility Company* or *Affected Person* who fails to meet any interim or final deadline of an *Underground Utility District* schedule established pursuant to Section 61.0509 shall be subject to a fine in an amount not to exceed \$1,000 per day per deadline not met. Fines provided under Section

(1-2007)

61.0511(b) shall be in addition to and not exclusive of all other remedies provided by law, including without limitation those provided by Chapter 1 of this Code. The administrative procedures provided by Chapter 1, Article 2, of this Code shall apply to Section 61.0511(b).

(“Unlawful Acts” renumbered from Sec. 61.0509 and amended 1–14–2002 by O–19032 N.S.)

§61.0512 Exception by Special Permission and Emergency Situations

Notwithstanding the provisions of this Division, overhead facilities may be installed and maintained for a period not to exceed thirty days, without authority of the Council, in order to provide emergency service. The Council may grant special permission, on such terms and for such durations as the Council may deem appropriate, in cases of unusual circumstances, and where not detrimental to the public health, safety and general welfare and without discrimination as to any person or utility company, to erect, construct, install, maintain, use or operate *Poles, Overhead Wires and Associated Overhead Structures* within the *District*.

(“Exception by Special Permission and Emergency Situations” renumbered from Sec. 61.0510 and amended 1–14–2002 by O–19032 N.S.)

§61.0513 Notification of Affected Persons and Utilities

- (a) Within fifteen calendar days after the effective date of a District schedule adopted pursuant to Section 61.0509 of this Code, the City Manager shall notify all affected *Utility Companies* and all *Affected Persons* of the provisions of the schedule. The City Manager specifically shall notify the affected persons that, if they desire to continue to receive electric, communication, community antenna television or similar or associated service, they shall provide, at their own expense, all necessary facility changes on their premises so as to receive underground service from the lines relocated underground of the supplying *Utility Company* subject to applicable rules, regulations, and tariffs of the respective *Utility Company* on file with the Commission and to all other applicable requirements of State laws and City ordinances.
- (b) Within fifteen calendar days of the date the City Manager fixes the time within which conversions on private property and pole removal must be accomplished, the City Manager shall notify all affected *Utility Companies* and *Affected Persons* that the work required to change the facilities on the premises to enable them to receive electric, communication, or community antenna television or similar or associated service provided or to be provided by the *Utility Company* shall be accomplished on or before the applicable date set by the City Manager. This notice shall also state the date all poles and related overhead structures are to be removed from the District.

(1-2007)

- (c) Notices given under Section 61.0513 may be given either by personal service or by mail and in accordance with the provisions of Section 61.0507 of this Code.
- (d) Within fifteen calendar days of the date the City Manager fixes for the conversion and pole removal, the City Manager shall cause copies of the notice to be posted conspicuously on every pole to be removed within the *District*. The notice shall be printed on a card not less than eight (8) inches by ten (10) inches in size and headed "Notice of Pole Removal" in letters of not less than one (1) inch in height.

("Notice of Affected Persons and Utilities" renumbered from Sec. 61.0511 and amended 1-14-2002 by O-19032 N.S.)

§61.0514 Responsibility of Utility Companies

If underground construction is necessary to provide utility service within a District created by any resolution adopted pursuant to Section 61.0508 of this Code, any utility company engaging in such underground construction shall furnish that portion of the conduits, conductors and associated equipment required to be furnished by it under the applicable orders, rules, regulations and tariffs on file with the Commission.

("Responsibility of Utility Companies" renumbered from Sec. 61.0512 on 1-14-2002 by O-19032 N.S.)

§61.0515 Responsibility of Property Owners

The owner or owners of real property within a District shall be obligated to and shall be responsible for the commencement and completion of work as may be necessary to provide for the continuance of electric, communication, community antenna television or similar or associated service to the premises between the facilities referred to in Section 61.0512 of this Code and the termination of service connection facilities on or within the building or structure being serviced, all in accordance with applicable orders, rules, regulations and tariffs of the respective utility companies on file with the Commission as of the effective date of the resolution creating the District, and in accordance with the applicable requirements of State laws and City ordinances.

("Responsibility of Property Owners" renumbered from Sec. 61.0513 on 1-14-2002 by O-19032 N.S.)

§61.0516 Authority to Discontinue Overhead Service

- (a) In the event the owners of real property within a District do not comply with the provisions of Section 61.0513 of this Code within the time established by the City Manager pursuant to Section 61.0508 of this Code, the respective

(1-2007)

utility companies concerned shall advise the City Manager in writing of the location of such property and thereupon the City Manager shall cause to be posted on such property a written notice on the property being served.

- (b) The notice required by Section 61.0514(a) shall include the statement that thirty (30) calendar days after posting of the notice all utility companies are authorized to discontinue electric, communication, community antenna television or similar or associated service from poles, overhead wires and associated overhead structures.
- (c) Thirty (30) calendar days after such posting, all utility companies are hereby authorized to discontinue electric, communication, community antenna television or similar or associated service from poles, overhead wires, and associated overhead structures.

(“Authority to Discontinue Overhead Service” renumbered from Sec. 61.0514 on 1-14-2002 by O-19032 N.S.)

§61.0517 Responsibility of City

City shall remove at its own expense all City–owned equipment from all poles, overhead wires and associated overhead structures required to be removed hereunder in ample time to enable the owner of the poles, overhead wires and associated overhead structures to remove them within the time specified in the resolution enacted pursuant to Section 61.0508 of this Code.

(“Responsibility of City” renumbered from Sec. 61.0515 on 1-14-2002 by O–19032 N.S.)

§61.0518 Extension of Time

In the event that any act required by this division cannot be performed within the time provided on account of shortage of materials, war, restraint by public authorities, strikes, labor disturbances, civil disobedience, or any other circumstances beyond the control of the actor, then the time within which such act will be accomplished shall be extended for a period equivalent to the time of such limitation.

(“Extension of Time” renumbered from Sec. 61.0516 on 1-14-2002 by O-19032 N.S.)

§61.0519 Constitutionality

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Council hereby declares that it would have adopted the ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

(“Constitutionality” renumbered from Sec. 61.0517 on 1-14-2002 by O–19032 N.S.)