

ORDINANCE NO. 1128

AN ORDINANCE OF THE CITY OF CHULA VISTA, AMENDING THE CHULA VISTA CITY CODE BY ADDING THERETO A NEW CHAPTER 34, ENTITLED "UTILITIES", RELATING TO THE REQUIREMENTS FOR THE UNDERGROUNDING OF UTILITIES, AND REPEALING SECTION 28.6.1 OF SAID CODE.

The City Council of the City of Chula Vista does ordain as follows:

SECTION I: That the City Code of the City of Chula Vista be, and the same is hereby amended by adding thereto a new chapter, designated as Chapter 34, entitled "Utilities", to read as follows:

CHAPTER 34. UTILITIES.

ARTICLE I. UNDERGROUNDING UTILITIES: SUBDIVISIONS.

Sec. 34.1.1. Purpose and Intent.

It is the purpose and intent of this Article to require the undergrounding of all future distribution utility installations and all present distribution installations within new subdivisions in the City of Chula Vista except where a tentative subdivision map has been previously accepted by the Council or sewer and water utilities have been installed or in those circumstances where such undergrounding would be infeasible or impractical as set forth herein.

Sec. 34.1.2. Undergrounding Requirements.

All privately owned public distribution utility systems and service facilities within the boundaries of any subdivision shall henceforth be placed underground. Transformers, terminal boxes, meter cabinets, pedestals, concealed ducts and other facilities necessarily appurtenant to such underground utilities and street lighting systems may be placed above ground.

Sec. 34.1.3. Responsibility of Subdivider.

The subdivider shall be responsible for the requirements of this Article and shall make the necessary arrangements with each of the public utility companies for the installation of underground facilities and the relocation of existing facilities. The subdivider shall provide the City of Chula Vista with letters indicating that said arrangements have been made with the public utility companies stipulating the undergrounding of said utility facilities concurrent with the filing of the final map of any subdivision as required by this chapter and the State Subdivision Map Act, and subject to the approval of the City of Chula Vista. Said arrangements between the subdivider and the public utility companies as a condition of approval of the final map may be waived as provided herein.

1. The provisions of this section shall not require the undergrounding of power transmission lines of 60,000 volts or more.
2. Ornamental street lighting will be required as recommended by the City Engineer and approved by the City Council.
3. Television and radio reception should be provided by concealed antennae, or by an underground or otherwise concealed cable and one central antenna as shown on the approved plot plan.

Sec. 34.1.4. Suspension of Requirements.

A subdivider or public utility company may request that the City Council vary from or suspend the requirements of this Article. The

applicant for such variance or suspension shall pay the sum of FIFTY DOLLARS (\$50) at the time said application is submitted, to cover the cost of the public hearing as required herein. After conducting a public hearing, the Council may waive the requirements of this Article if the Council finds from the evidence presented at the hearing that all of the following facts exist:

1. That extraordinary conditions exist to the extent that enforcement of this subsection would result in unnecessary hardship to the subdivider or the utility company.
2. That such waiver will not, under the circumstances of the particular case, be detrimental to the health, safety or general welfare of the neighborhood.

ARTICLE II. UNDERGROUNDING UTILITIES: NEW STRUCTURES.

Sec. 34.2.1. Undergrounding Requirements.

All structures built in residential (R) zones, and all structures built in a commercial (C) zone shall, within the exterior boundary lines of such property, have all electrical, communication, C.A.T.V. and similar distribution, service wires, and/or cables placed underground. The owner is responsible for complying with the requirements of this Article, and shall make the necessary arrangements with each of the serving utilities for the installation of such facilities.

Sec. 34.2.2. Above Ground Structures.

Transformers, terminal boxes, meter cabinets, pedestals, concealed ducts and other facilities may be placed above ground. Water and sewer distribution facilities shall be installed in conformance with specifications of the City Engineer.

Sec. 34.2.3. Suspension of Requirements.

The Planning Commission may waive the requirements of this section in a particular case where it is shown, and the Planning Commission so finds, that topography, soil or other conditions make such underground installation unreasonable or impractical. The provisions of this section shall not apply to existing utility facilities or to the installation and maintenance of overhead electric transmission lines and overhead communication long distance, trunk and feeder lines.

ARTICLE III. REGULATIONS AND PROCEDURES FOR THE REMOVAL OF OVERHEAD UTILITY FACILITIES AND THE INSTALLATION OF UNDERGROUND FACILITIES IN UNDERGROUND UTILITY DISTRICTS.

Sec. 34.3.1. Definitions.

Whenever in this ordinance the words or phrases hereinafter in this section defined are used, they shall have the respective meanings assigned to them in the following definitions:

"Commission" shall mean the Public Utilities Commission of the State of California.

"Underground Utility District" or "District" shall mean that area in the City within which poles, overhead wires, and associated overhead structures are prohibited as such area is described in a resolution adopted pursuant to the provisions of Section 3 of this ordinance.

"Person" shall mean and include individuals, firms, corporations, partnerships, and their agents and employees.

"Poles, overhead wires and associated overhead structures" shall mean poles, towers, supports, wires, conductors, guys, stubs, platforms, crossarms, braces, transformers, insulators, cutouts, switches, communication circuits, appliances, attachments and appurtenances located above ground within a District and used or useful in supplying electric, communication or similar or associated service.

"Utility" shall include all persons or entities supplying electric, communication, television or radio reception or similar or associated service by means of electric materials or devices.

Sec. 34.3.2. Public Hearing by Council.

The Council may, from time to time, call public hearings to ascertain whether the public health, safety or 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, or similar or associated service. The City Clerk shall notify all affected property owners as shown on the last equalized assessment roll and utilities concerned by mail of the time and place of such hearings at least ten (10) days prior to the date thereof. Each such hearing shall be open to the public and may be continued from time to time. At each such hearing all persons interested shall be given an opportunity to be heard. The decision of the Council shall be final and conclusive.

Sec. 34.3.3. Underground Utility Districts; Council May Designate by Resolution.

If, after any such public hearing, the Council finds that the public health, safety or welfare requires such removal and such underground installation within a designated area, the Council shall, by resolution, declare such designated area an Underground Utility District and order such removal and underground installation. Such resolution shall include a description of the area comprising such district and shall fix the time within which such removal and underground installation shall be accomplished and within which affected property owners must be ready to receive underground service. A reasonable time shall be allowed for such 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 as may be occasioned thereby. Immediately following its adoption, the City Clerk shall cause a certified copy of such resolution to be recorded in the Office of the County Recorder.

Sec. 34.3.4. Unlawful Acts.

Whenever the Council creates an Underground Utility District and orders the removal of poles, overhead wires and associated overhead structures therein as provided in Section 3 hereof, it shall be unlawful for any person or utility to erect, construct, place, keep, maintain, continue, employ or operate poles, overhead wires and associated overhead structures in the District after the date when said overhead facilities are required to be removed by such resolution, except as said overhead facilities may be required to furnish service to an owner or occupant of property prior to the performance by such owner or occupant of the underground work necessary for such owner or occupant to continue to receive utility service as provided in Section 9 hereof, and for such reasonable time required to remove said facilities after said work has been performed and except as otherwise provided in this Article.

Sec. 34.3.5. Exception, Emergency or Unusual Circumstances.

Notwithstanding the provisions of this ordinance, overhead facilities may be installed and maintained for a period, not to exceed ten (10) days, without authority of the Council in order to provide emergency service. The Council may grant special permission, on such terms as the Council may deem appropriate, in cases of unusual circumstances,

without discrimination as to any person or utility, to erect, construct, install, maintain, use or operate poles, overhead wires and associated overhead structures.

Sec. 34.3.6. Other Exceptions.

This ordinance and any resolution adopted pursuant to Section 34.3.3 hereof, unless otherwise provided in such resolution, shall not apply to the following types of facilities:

1. Any municipal facility or equipment installed under the supervision and to the satisfaction of the City Engineer.
2. Poles or electroliers used exclusively for street lighting.
3. Overhead wires (exclusive of supporting structures) crossing any portion of a District within which overhead wires have been prohibited, or 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.
4. Poles, overhead wires and associated overhead structures used for the transmission of electric energy at nominal voltages in excess of 60,000 volts.
5. 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 of the same building or to an adjacent building without crossing any public street.
6. Antennae, associated equipment and supporting structures used by a utility for furnishing communication services.
7. Equipment appurtenant to underground facilities, such as surface mounted transformers, pedestal mounted terminal boxes and meter cabinets, and concealed ducts.
8. Temporary poles, overhead wires and associated overhead structures used or to be used in conjunction with construction projects.

Sec. 34.3.7. Notice to Property Owners and Utility Companies.

Within ten (10) days after the effective date of a resolution adopted pursuant to Section 34.3.3 hereof, the City Clerk shall notify all affected utilities and all persons owning real property within the District created by said resolution of the adoption thereof. Said City Clerk shall further notify such affected property owners of the necessity that, if they or any person occupying such property desire to continue to receive electric, communication or similar or associated service, they or such occupant shall provide all necessary facility changes on their premises so as to receive such service from the lines of the supplying utility or utilities at a new location, subject to applicable rules, regulations and tariffs of the respective utility or utilities on file with the Commission. Notification by the City Clerk shall be made by mailing a copy of the resolution adopted pursuant to Section 34.3.3, together with a copy of this ordinance, to affected property owners as such are shown on the last equalized assessment roll and to the affected utilities.

Sec. 34.3.8. Responsibility of Utility Companies.

If underground construction is necessary to provide utility service within a District created by any resolution adopted pursuant to Section 34.3.3 hereof, the supplying utility shall furnish that portion

of the conduits, conductors and associated equipment required to be furnished by it under its applicable rules, regulations and tariffs on file with the Commission.

Sec. 34.3.9. Responsibility of Property Owner.

Every person owning, operating, leasing, occupying or renting a building or structure within a District shall perform construction and provide that portion of the service connection on his property between the facilities referred to in Section 34.3.8, and the termination facility on or within said building or structure being served, all in accordance with applicable rules, regulations and tariffs of the respective utility or utilities on file with the Commission.

Sec. 34.3.10. Responsibility of Property Owner; Enforcement.

In the event any person owning, operating, leasing, occupying or renting said property does not comply with the provisions of Section 34.3.9 within the time provided for in the resolution enacted pursuant to the provisions of Section 34.3.3 hereof, the Director of Public Works shall post written notice on the property being served and thirty (30) days thereafter shall have the authority to order the disconnecting and removal of any and all overhead service wires and associated facilities supplying utility service to said property.

Sec. 34.3.11. Responsibility of Property Owner; Enforcement; Council Hearing.

If the requirements of Section 34.3.9 are not accomplished in accordance with said provisions and within the time provided for in the resolution enacted pursuant to Section 34.3.3 hereof, the Director of Public Works may determine that the method of enforcement provided in Section 34.3.10 hereof is not an efficient or effective method of enforcement, and may pursue the following procedure for enforcement of the responsibility of property owners set forth in Section 34.3.9.:

1. The Director of Public Works shall give notice in writing to the person in possession of such premises, and a notice in writing to the owner thereof as shown on the last equalized assessment roll, to provide the required underground facilities within ten (10) days after receipt of such notice.

2. The notice to provide the required underground facilities may be given either by personal service or by mail. In case of service by mail on either of such persons, the notice must be deposited in the United States mail in a sealed envelop with postage prepaid, addressed to the person in possession of such premises at such premises, and the notice must be addressed to the owner thereof as such owner's name appears, and must be addressed to such owner's last known address as the same appears on the last equalized assessment, and when no address appears, to General Delivery, City of Chula Vista. If notice is given by mail, such notice shall be deemed to have been received by the person to whom it has been sent within forty-eight (48) hours after the mailing thereof. If notice is given by mail to either the owner or occupant of such premises, the Director of Public Works shall, within forty-eight (48) hours after the mailing thereof, cause a copy thereof, printed on a card not less than eight inches (8") by ten inches (10") in size to be posted in a conspicuous place on said premises.

3. The notice given by the Director of Public Works to provide the required underground facilities shall particularly specify what work is required to be done, and shall state that if said work is not completed within thirty (30) days after receipt of such notice, the Director of Public

Works will provide such required underground facilities, in which case the cost and expense thereof, including engineering, legal, advertising and all incidental expenses, will be assessed against the property benefited and become a lien upon such property.

4. If, upon the expiration of the thirty (30) day period, the said required underground facilities have not been provided, the Director of Public Works shall forthwith proceed to do the work, provided, however, if such premises are unoccupied and no electric or communication services are being furnished thereto, the Director of Public Works shall, in lieu of providing the required underground facilities, have the authority to order the disconnection and removal of any and all overhead service wires and associated facilities supplying utility service to said property. Upon completion of the work by the Director of Public Works, he shall file a written report with the City Council, setting forth the fact that the required underground facilities have been provided and the cost thereof, together with a legal description of the property against which such cost is to be assessed. The Council shall thereupon fix a time and place for hearing protests against the assessment of the cost of such work upon such premises, which said time shall not be less than ten (10) days thereafter.

5. The Director of Public Works shall forthwith, upon the time for hearing such protests having been fixed, give a notice in writing to the person in possession of such premises, and a notice in writing to the owner thereof, in the manner hereinabove provided for the giving of the notice to provide the required underground facilities, of the time and place that the Council will pass upon such report and will hear protests against such assessment. Such notice shall also set forth the amount of the proposed assessment.

6. Upon the date and hour set for the hearing of protests, the Council shall hear and consider the report and all protests, if there be any, and then proceed to affirm, modify or reject the assessment.

7. If any assessment is not paid within five (5) days after its confirmation by the Council, the amount of the assessment shall become a lien upon the property against which the assessment is made by the Director of Public Works, and said Director shall turn over to the Assessor and Tax Collector a notice of lien on each of said properties on which the assessment has not been paid, and said Assessor and Tax Collector shall add the amount of said assessment to the next regular bill for taxes levied against the premises upon which said assessment was not paid. Said assessment shall be due and payable at the same time as said property taxes are due and payable, and if not paid when due and payable, shall bear interest at the rate of eight percent (8%) per annum.

Sec. 34.3.12. Responsibility of City.

City shall remove at its own expense all City-owned equipment from all poles required to be removed hereunder in ample time to enable the owner or user of such poles to remove the same within the time specified in the resolution enacted pursuant to Section 34.3.3 hereof.

Sec. 34.3.13. Extension of Time.

In the event that any act required by this ordinance or by a resolution adopted pursuant to Section 34.3.3 hereof 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.

SECTION II: That Section 28.6.1 of the Chula Vista City Code be, and the same is hereby repealed.

SECTION III: It shall be unlawful for any person to violate any provision or to fail to comply with any of the requirements of this ordinance. Any person violating any provision of this ordinance or failing to comply with any of its requirements shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding FIVE HUNDRED DOLLARS (\$500.00) or by imprisonment not exceeding six (6) months, or by both such fine and imprisonment. Each such person shall be deemed guilty of a separate offense for each day during any portion of which any violation of any of the provisions of this ordinance is committed, continued or permitted by such person, and shall be punishable therefor as provided for in this ordinance.

SECTION IV. This ordinance shall take effect and be in full force on the thirty-first day from and after its passage and approval.

Presented by

Lane F. Cole
Lane F. Cole, Director of Public Works

Approved as to form by

George D. Lindberg
George D. Lindberg, City Attorney

ADOPTED AND APPROVED by the CITY COUNCIL of the CITY OF CHULA VISTA, CALIFORNIA, this 18th day of June, 1968, by the following vote, to-wit:

AYES: Councilmen Sylvester, Hamilton, McCorquodale, McAllister, Scott

NAYES: Councilmen None

ABSENT: Councilmen None

Donald A. McCorquodale
Mayor of the City of Chula Vista

ATTEST Karen Campbell
City Clerk

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO) ss.
CITY OF CHULA VISTA)

I, _____, City Clerk of the City of Chula Vista, California, DO HEREBY CERTIFY that the above is a full, true and correct copy of Ordinance No. _____, and that the same has not been amended or repealed. DATED _____.

City Clerk