

ORDINANCE NO. 1460

AN ORDINANCE OF THE CITY OF CHULA VISTA AMENDING ARTICLE 3 OF CHAPTER 34 OF THE CHULA VISTA CITY CODE ESTABLISHING REGULATIONS AND PROCEDURES FOR THE REMOVAL OF OVERHEAD UTILITY FACILITIES AND THE INSTALLATION OF UNDERGROUNDING FACILITIES IN UNDERGROUND UTILITY DISTRICTS TO ALLOW THE FORMATION OF UNDERGROUND UTILITY DISTRICTS WITHOUT SETTING SPECIFIC DATES FOR THE ACCOMPLISHMENT OF THE WORK UNTIL A TIME CLOSER TO THE CONSTRUCTION PERIOD AND REVISING SAID ARTICLE 3 TO PROVIDE MORE COMPREHENSIVE PROCEDURES BY REPEALING EXISTING SECTIONS 34.301 THROUGH 34.311 AND ADDING AS A NEW ARTICLE 3 SECTIONS 34.301 THROUGH 34.317

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

SECTION I: That Sections 34.301 through 34.311 of the Chula Vista City Code be, and the same are hereby repealed.

SECTION II: That Article 3 of Chapter 34 of the Chula Vista City Code be, and the same is hereby amended by adding thereto Sections 34.301 through 34.317 to be and to read as follows:

ARTICLE 3. UNDERGROUND UTILITIES PROCEDURAL ORDINANCE.

Sec. 34.301. Citation of Ordinance.

This ordinance may be cited as the Chula Vista Underground Utilities Procedural Ordinance.

Sec. 34.302. Rules of Construction.

This ordinance 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 ordinance which does not directly affect the jurisdiction of the Council to order the work and improvement shall avoid or invalidate such proceeding.

Sec. 34.303. Purpose and Intent.

It is the purpose and intent of this ordinance to provide for the creation of underground utility districts in the City of Chula Vista in which poles, overhead wires and associated overhead structures, as hereinafter defined, shall not be permitted.

Sec. 34.304. Definitions.

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

(a) "City" shall mean The City of Chula Vista, a municipal corporation in the State of California.

(b) "Commission" shall mean the Public Utilities Commission of the State of California.

(c) "Council" shall mean the City Council of the City of Chula Vista.

(d) "Underground Utility District" or "District" shall mean that area in 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 34.308 of this Code.

(e) "Poles, Overhead Wires and Associated Overhead Structures" shall mean 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.

Sec. 34.305.        Exceptions.

Unless otherwise provided in the resolution creating the District, this ordinance and any resolution adopted pursuant thereto 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.

(d) Electric transmission lines of 60,000 volts phase-to-phase and above.

(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 34.310 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.

Sec. 34.306. 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.

Sec. 34.307. 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 (15) days prior to the date thereof.

(b) Notices given under this section 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 (48) hours after the mailing thereof.

(c) The City Clerk shall cause the resolution calling a public hearing as set forth in Section 34.306 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 (5) days prior to the date of the public hearing stated in said resolution.

Sec. 34.308. Council May Designate Underground Utility Districts by Resolution

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. It shall also provide that the Council shall by subsequent resolution fix the time within which:

(i) property in the District must be ready to receive underground service, and

(ii) 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 as may be occasioned thereby.

Sec. 34.309. 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 34.308 of this Code, it shall be unlawful for any person or utility company 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 ordinance. 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.

Sec. 34.310. Exception by Special Permission and  
Emergency Situations.

Notwithstanding the provisions of this ordinance, overhead facilities may be installed and maintained for a period not to exceed thirty (30) 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.

Sec. 34.311. Notification of Affected Persons and  
Utilities.

(a) Within fifteen (15) days after the effective date of a resolution adopted pursuant to Section 34.308 of this Code, the City Clerk of City shall notify all affected utility companies and all affected persons of the provisions of the resolution. The City Clerk 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 (15) days of adoption by the Council of the resolution fixing the time within which conversions on private property and pole removal must be accomplished, the City Clerk shall further notify all affected utilities and affected persons that the work required to change the facilities on the premises so as 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 forth in the resolution. This notice shall also state the date all poles and related overhead structures are to be removed from within the District.

(c) Notices given under this section may be given either by personal service or by mail and in accordance with the provisions of Section 34.307 of this Code.

(d) Within fifteen (15) days of adoption of the resolution fixing the conversion and pole removal times of the District, the Director of Public Works shall cause copies of the notice, 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, to be posted conspicuously on every pole to be removed within the District.

Sec. 34.312. Responsibility of Utility Companies.

If underground construction is necessary to provide utility service within a District created by any resolution adopted pursuant to Section 34.308 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.

Sec. 34.313. 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 34.312 of the 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.

Sec. 34.314. Authority to Discontinue Overhead Service.

(a) In the event the owner or owners of real property within a District do not comply with the provisions of Section 34.308 of this Code, the respective utility companies concerned shall advise the Director of Public Works in writing of the location of such property and thereupon the Director of Public Works shall cause to be posted on such property a written notice on the property being served.

(b) The notice required by Section 34.314(a) shall include the statement that thirty (30) 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) 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.

Sec. 34.315. 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 34.308 of this Code.

Sec. 34.316.            Extension of Time.


In the event that any act required by this ordinance or by a resolution adopted pursuant to Section 34.308 of this Code 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.

Sec. 34.317.            Constitutionality.

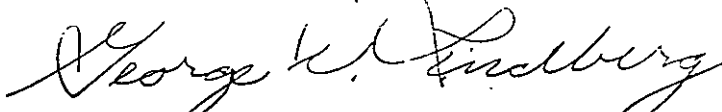
If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Council hereby declares that it would have adopted the ordinance and each section, subsection, sentence,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

SECTION III: This ordinance shall take effect and be in full force and effect on the thirty-first day from and after its adoption.

Presented by

  
George D. Lindberg, City Attorney

Approved as to form by

  
George D. Lindberg, City Attorney

ADOPTED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF CHULA VISTA, CALIFORNIA, this 17th day of April, 1973, by the following vote, to-wit:

AYES: Councilmen Hyde, Egdahl, Scott, Hobel, Hamilton

NAYES: Councilmen None

ABSENT: Councilmen None

*Thomas D. Hamilton Jr.*  
Mayor of the City of Chula Vista

ATTEST *Jennie M. Fulasz*  
City Clerk

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

I, JENNIE M. FULASZ, City Clerk of the City of Chula Vista, California, DO HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of \_\_\_\_\_ and that the same has not been amended or repealed.

DATED: \_\_\_\_\_

\_\_\_\_\_  
City Clerk