

San Leandro Municipal Code[Up](#)[Previous](#)[Next](#)[Main](#)[Collapse](#)[Search](#)[Print](#)[No Frames](#)TITLE 5 STREETS AND PARKS**CHAPTER 5-3 UNDERGROUND UTILITY DISTRICTS**

Note

***Editor's Note:** Ordinance No. 85-025 repealed Ordinance Nos. 1089.N.S., 70-24, 73-44, 78-28 and 78-54.

ARTICLE 1. DEFINITIONS

5-3-100 DEFINITIONS.

Unless the context otherwise requires, the definitions contained in this section shall govern the construction of this Chapter.

- (a) **COMMISSION.** "Commission" shall mean the Public Utilities Commission of the State of California.
- (b) **PERSON.** "Person" shall mean and include any individual, firm, corporation, partnership, association and their agents and employees.
- (c) **POLES, OVERHEAD WIRES AND ASSOCIATED OVERHEAD STRUCTURES.** "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 services.
- (d) **UNDERGROUND UTILITY DISTRICT OR DISTRICT.** "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 5-3-205 of this Chapter.
- (e) **UTILITY.** "Utility" shall include all persons or entities supplying electric, communication or similar or associated service by means of electrical materials or devices.

(Legislative History: Ordinance No. 85-025, 8/5/85)

ARTICLE 2. ESTABLISHMENT OF UNDERGROUND DISTRICTS

5-3-200 PUBLIC HEARING BY COUNCIL.

The City Council may, from time to time, call public hearings to ascertain whether the public necessity, 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, television, or similar 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) calendar nays prior to the date hereof and shall provide said owners with a summary description of the proposed underground utility district.

5-3-205 COUNCIL MAY DESIGNATE UNDERGROUND UTILITY DISTRICT BY RESOLUTION.

If after any such public hearing the City Council finds that the public necessity, health, safety or welfare requires removal and such underground installation within a designated area, the City 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. The City Council shall allow a reasonable time 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.

5-3-210 UNLAWFUL TO MAINTAIN OVERHEAD WIRES.

Whenever the City Council creates an Underground Utility District and orders the removal of poles, overhead wires and associated overhead structures therein as provided in this Chapter, 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 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 5-3-235 hereof, and for such reasonable time required to remove said facilities after said work has been performed, and except as otherwise provided in this Chapter.

5-3-215 OVERHEAD WIRES--EXCEPTION BY SPECIAL PERMISSION.

The Community Development Director may grant special permission, on such terms as the Director may deem appropriate, in cases of emergency or unusual circumstances, to erect, construct, install, maintain, use or operate, poles and overhead wires, and associated overhead structures, notwithstanding any other provisions of this Chapter. The Community Development Director may establish administrative regulations specifying such emergency or unusual circumstances.

5-3-220 OVERHEAD WIRES, POLES, STRUCTURES, EXCEPTIONS.

This Chapter and any resolution adopted pursuant to Section 5-3-205 hereof shall, unless otherwise provided in such resolution, not apply to the following types of facilities:

- (a) Any municipal facilities or equipment installed under the supervision and to the satisfaction of the Community Development Director.
- (b) Poles or electroliers used exclusively for street lighting, fire alarm boxes or emergency services.
- (c) 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.
- (d) Poles, overhead wires and associated overhead structures used for the transmission of electric energy at nominal voltages in excess of thirty-four thousand five hundred (34,500) volts.
- (e) 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.
- (f) Antennae, associated equipment and supporting structures, used by a utility for furnishing communication services.
- (g) Equipment appurtenant to underground facilities, such as surface mounted transformers, pedestal mounted terminal boxes and meter cabinets, and concealed ducts.

(h) Temporary poles, overhead wires and associated overhead structures used or to be used in conjunction with construction projects.

5-3-225 NOTICE TO PROPERTY OWNERS AND UTILITY COMPANIES.

Within ten (10) days after the effective date of a resolution adopted pursuant to Section 5-3-205 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. The City Clerk shall further notify such affected property owners of the necessity that, if they or any other person occupying such property desire to continue to receive electric, communication, television, 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 5-3-205, together with a copy of this Chapter, to affected property owners as such are shown on the last equalized assessment roll and to the affected utilities.

5-3-230 RESPONSIBILITY OF UTILITY COMPANIES.

If underground construction is necessary to provide utility service within a District created by any resolution adopted pursuant to Section 5-3-205 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.

5-3-235 RESPONSIBILITY OF PROPERTY OWNERS.

(a) Every person owning a building or structure, and every applicant for a zoning approval or other entitlement as specified in Section 5-3-325 herein, the applicant whether 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 5-3-230 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.

(b) In the event any person described in subsection (a) above does not comply with the provisions of subsection (a) within the time provided for in the resolution enacted pursuant to Section 5-3-205 hereof, the Community Development Director shall post written notice on the property being served and thirty (30) calendar days thereafter shall have the authority to request the disconnection and removal of any and all overhead service wires and associated facilities supplying utility service to said property, or

(c) In the alternative, if the above described work is not accomplished by any person described in subsection (a) above within the time provided for in the resolution enacted pursuant to Section 5-3-205 hereof, the Community Development Director 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) calendar days after receipt of such notice.

(1) 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 envelope 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 roll, and when no address appears, to General Delivery, City of San Leandro. 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. The Community Development Director shall also cause a copy thereof, printed on a card not less than eight (8) inches by ten (10) inches in size, to be posted in a conspicuous place on said premises.

(2) The notice given by the Community Development Director to provide the required underground facilities shall particularly specify what work is required to be done and that the work shall be accomplished in conformance with relevant City requirements, and shall state that if said work is not completed within thirty (30) calendar days after receipt of such notice, the Community Development Director will provide such required underground facilities, in which case the cost and expense thereof will be assessed against the property and become a lien upon such property.

(3) If upon the expiration of the thirty (30) day period, the said required underground facilities have not been provided, the Community Development Director shall forthwith proceed to do the work; provided, however, if such premises are unoccupied and no electric or communications services are being furnished thereto, the Community Development Director 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 Community Development Director, 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) calendar days thereafter.

(4) The Community Development Director 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 thereof 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.

(5) 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.

(6) If any assessment is not paid within five (5) calendar 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 Community Development Director, and the Community Development Director is directed to 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 maximum rate permitted by law.

5-3-240 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 or such poles to remove the same within the time specified in the resolution enacted pursuant to Section 5-3-205 hereof.

5-3-245 EXTENSION OF TIME.

In the event that any act required by this Chapter or by a resolution adopted pursuant to Section 5-3-205 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.

(Legislative History: Ordinance No. 85-025, 8/5/85)

ARTICLE 3. MASTER PLAN

5-3-300 UNDERGROUND UTILITY DISTRICT MASTER PLAN.

To carry out the purposes of this Chapter to provide a planning basis for the equitable allocation of costs associated with the conversion of existing overhead utilities; and to insure that adequate funds are available to complete proposed underground utility conversion projects, the City Council may adopt by resolution an Underground Utility District Master Plan.

5-3-305 FINDINGS.

The City Council hereby finds and declares that the undergrounding of utility services is a benefit that inures to property within an Underground Utility District. It is appropriate and necessary for the preservation of the health, safety and welfare of and for the furtherance of the purposes of this Chapter that a portion of the cost for such undergrounding be paid by the, property owners in accordance with the benefits received.

It is the further finding of the Council that payment of assessments in accordance with the benefits received will be used to reimburse such revolving funds or accounts as contemplated herein and shall be expended only for expansion of, maintenance of or construction of Underground Utility Districts and facilities.

It is the further finding of the Council that the primary benefit of underground utilities conversion inures to property being redeveloped for a higher and better use. Consequently, it is equitable to impose assessments for such work on the basis of benefits which accrue at the time that such property liable for assessment is rezoned or is granted entitlements of use.

It is the further finding of the Council that redevelopment of property for a higher and better use necessarily intensifies utility use beyond the capacity of existing aerial utility service facilities to provide safe, adequate and beneficial service to the redeveloped property. Therefore, conversion of such service is necessary and appropriate to serve such new uses and to regulate the design and improvement of such uses.

5-3-310 RESOLUTION OF INTENTION--NOTICE.

Prior to adoption of a Master Plan the City Council shall by resolution indicate its intention to adopt such a Master Plan. The City Clerk, when directed to do so by the City Council, shall publish such Resolution of Intention once in the official newspaper of the City. The Resolution of Intention shall contain a map or maps depicting the underground utility districts proposed in the Master Plan. Following a public hearing at the time and place specified in the Resolution of Intention (or as the same may thereafter be continued) the City Council may adopt the Master Plan.

5-3-315 CONTENTS OF MASTER PLAN.

The Master Plan shall contain the following elements:

- (a) A depiction of all real property within each proposed underground utility district.
- (b) A proposed and tentative schedule for commencement and completion of work in such proposed underground utility districts.
- (c) An estimate of the cost of the underground utility conversion project in current dollars.
- (d) An allocation of such costs to the affected utilities in accordance with their tariff on file with the Commission, the City and the real property within the proposed district, including any offset of such costs to real

property as a result of prior payments.

(e) Special regulations relating to the development of property within the proposed underground utility district.

(f) Such other matters which will accomplish the purposes of this Chapter, including procedure for the administration hereof.

(g) Such rules as may be required by the Finance Director to account for the funds deposited pursuant to this Chapter and the Master Plan.

5-3-320 MASTER PLAN CONSTITUTES A SPECIFIC PLAN.

It is the intention of the City Council that the Master Plan is necessary and convenient for the implementation of the General Plan of the City. For such purposes and for purposes of the Subdivision Map Act, the Master Plan shall be and is hereby deemed a specific plan of the City of San Leandro.

5-3-325 IMPOSITION OF FEES FOR DEVELOPMENT WITHIN PROPOSED UNDERGROUND UTILITY DISTRICT.

(a) Notwithstanding the provisions of Chapters 1 and 5 of Title VII of this Code and the Zoning Code of the City of San Leandro to the contrary, no property shall be reclassified; no subdivision map or parcel map approved; no conditional use permit, variance, general development plan or precise development plan approved; and no building permit for construction of multi-family residential, commercial, industrial or other uses shall be issued unless and until the applicant therefor deposits with the Finance Director such fees for underground utility conversion as are specified in or pursuant to the Master Plan.

(b) If such fees are paid following the completion of the underground utility conversion project then such fee shall represent the pro rata allocation of actual costs attributable to the property assessed on a front foot basis or such other basis as in the opinion of the City is fair, just and equitable. If such fees are paid prior to the underground utility conversion project then such fees shall represent, the pro rata allocation of estimated costs in current dollars attributable to the property assessed on a front foot basis or such other basis as the opinion of the City is fair, just and equitable.

5-3-330 PAYMENT AND DEPOSIT OF UNDERGROUND UTILITY CONVERSION FEES.

Fees payable under the terms of this Chapter and the Master Plan shall be paid in cash to the Finance Director. The Finance Director shall deposit such funds received pursuant to this Chapter in a separate fund or account for underground utility conversion projects. All earnings on such sums deposited shall be credited to such fund or account. Any refunds granted shall be paid only from such fund or account.

5-3-335 MODIFICATION OF OBLIGATION.

If upon a determination by the City Council, the Planning Commission, the BZA, or any City official or employee authorized by the City Council to grant a zoning approval or other entitlement as specified in Section 5-3-325(a), feels that an undue hardship would result from the imposition of the fees in the manner set forth in Section 5-3-325, or that utility improvements to be made by the developer or owner of property subject to the payment of a fee as provided in Section 5-3-325, will reduce the cost of and be usable as a part of an underground utility conversion project, the Community Development Director may authorize a modification in the amount or manner of payment of the obligation. If utility improvements in lieu of all or a portion of the fee are to be approved, the fee shall be reduced by the cost of said utility improvements, as estimated by the serving utility companies. If deferred payment or improvements are approved, such approval shall be by written agreement with adequate security therefor executed by the property owner or authorized representative of property owner, to undertake such improvements or make such payments at the time that the underground utility

conversion project is commenced. Standards for modification of obligations in accordance with this section shall be set forth in detail in the Master Plan.

5-3-340 CONDITIONS OF APPROVAL UNAFFECTED.

Nothing contained in this Article shall be construed to prohibit or limit the attachment of conditions to any subdivision or parcel map or entitlement of use otherwise provided by law.

(Legislative History: Ordinance No. 85-025, 8/5/85)

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