

## City of Garden Grove

### INTER-DEPARTMENT MEMORANDUM

To: Matthew Fertal  
From: Susan Emery  
Dept: City Manager  
Dept: Community Development  
Subject: CONSIDERATION OF AMENDMENT  
NO. A-154-10, AN AMENDMENT TO  
TITLE 9 OF THE GARDEN GROVE  
MUNICIPAL CODE FOR THE  
UNDERGROUNDING OF UTILITIES  
Date: April 13, 2010

#### OBJECTIVE

To transmit a recommendation from the Planning Commission amending Title 9 (Zoning Ordinance) of the Garden Grove Municipal Code to add Chapter 9.48 (Undergrounding of Utilities) throughout the City of Garden Grove and to make conforming revisions to the existing provisions in Chapter 9.40 (Subdivisions), undergrounding of utilities in subdivisions.

The undergrounding of utilities provides numerous aesthetic and safety benefits to the property being developed and the community as a whole. The City of Garden Grove currently requires the undergrounding of utilities for new developments that involve the subdivision of land as required in Chapter 9.40 (Subdivisions) of the Title 9, Zoning Ordinance, of the Municipal Code. Existing Section 9.40.160 requires subdividers of property to place all proposed and existing utility facilities underground prior to City Council acceptance and approval of the final map. To convert a multiple-family residential development to condominiums also requires that overhead utility distribution lines within the boundaries of a project be fully converted to underground. These requirements for underground utilities may be wholly or partially waived by the City Council if topographical, soil, or other conditions make the undergrounding unreasonable or impracticable.

The proposed Amendment (A-154-10) will promote the reasonable and orderly undergrounding of utilities on public and private property throughout the City, while providing a viable alternative to developers. The Amendment will address concerns particular to developers of smaller projects, for which the cost to underground off-site utilities is disproportionately high in comparison to the overall project construction cost; and where it would be more cost-effective and efficient for off-site utilities serving a property to be constructed as part of a larger undergrounding project.

The Planning Commission considered the proposed amendment at their Public Hearing held on March 4, 2010. The Commission recommended approval of the

Amendment with a 5-0 vote (with one absence and one vacancy). No one spoke in favor of, or in opposition to the proposed Amendment.

### DISCUSSION

Developers are currently required to underground proposed and existing utilities in conjunction with projects involving subdivisions of property, unless the City Council wholly or partially waives the requirement. The proposed Amendment uniformly requires undergrounding of proposed and existing on-site and off-site utilities in conjunction with most development, redevelopment, or subdivision of property in the City and significantly clarifies the scope of undergrounding requirements. The utility facilities that must be undergrounded are defined in detail, and a specific list of exceptions is included. These clarifications about undergrounding should help developers to determine and evaluate the likely cost, while also helping to ensure consistent application of the requirements by the City.

The undergrounding requirement does not apply to utility facilities that do not provide service to the subject property or structure. Developers will not be required to underground overhead electric lines of 66,000 volts or more where it is not technically or economically feasible. The proposed code provisions do not require undergrounding of existing overhead utilities for projects involving (1) only one single-family dwelling or (2) the enlargement, alteration or rehabilitation of other buildings or structures where the enclosed floor area is not increased by more than twenty-five percent (25%).

The Amendment also provides developers the option of voluntarily paying an objectively calculated fee in lieu of undergrounding existing off-site utilities. The amount of the "in-lieu" fee would be objectively determined based on the lesser of (1) the developer's proportionate share of what it would cost the City to underground the off-site utilities or (2) 1% of the total estimated construction cost of the developer's project. All "in-lieu" fees collected would be deposited in a special account to be used solely for future undergrounding of utilities in the City.

### FINANCIAL IMPACT

None.

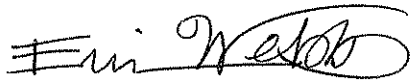
RECOMMENDATION

The Planning Commission recommends that the City Council:

- Hold a public hearing and introduce the attached ordinance approving Amendment No. A-154-10 to add provisions for the Undergrounding of Utilities in new Chapter 9.48 to Title 9 and to revise the existing code sections regarding undergrounding in Chapter 9.40, Subdivisions.




SUSAN EMERY  
Community Development Director



By: Erin Webb  
Senior Planner

**Approved for Agenda Listing**



**Matthew Fertal**  
City Manager

- Attachment 1: Planning Commission Staff Report dated March 4, 2010  
Attachment 2: Planning Commission Resolution No. 5710  
Attachment 3: Draft Minute Excerpt of March 4, 2010 Planning Commission Meeting  
Attachment 4: Draft Ordinance for Amendment No. A-154-10

# COMMUNITY DEVELOPMENT DEPARTMENT PLANNING STAFF REPORT

<b>AGENDA ITEM NO:</b> C.3	<b>SITE LOCATION:</b> Citywide
<b>HEARING DATE:</b> March 4, 2010	<b>GENERAL PLAN:</b> N/A
<b>CASE NO:</b> Amendment No. A-154-10	<b>ZONE:</b> N/A
<b>APPLICANT:</b> City of Garden Grove	<b>CEQA DETERMINATION:</b> Exempt

## **REQUEST:**

A request for the Planning Commission to recommend to the City Council approval of an Amendment to Title 9 of the Garden Grove Municipal Code (Zoning Ordinance) to add Chapter 9.48 (Undergrounding of Utilities) regarding the undergrounding of utilities and to make conforming revisions to the existing provisions in Chapter 9.40 (Subdivisions) regarding undergrounding of utilities in subdivisions.

## **SUMMARY:**

Developers are currently required to underground proposed and existing utilities in conjunction with projects involving subdivisions of property, unless the City Council wholly or partially waives the requirement. The proposed Amendment would uniformly require undergrounding of proposed and existing on-site and off-site utilities in conjunction with most development, redevelopment, or subdivision of property in the City, would clarify the scope of undergrounding requirements for project applicants and City staff, and would allow developers the option of voluntarily paying an objectively calculated fee in lieu of undergrounding. All "in-lieu" fees collected would be deposited in a special account to be used solely for future undergrounding of utilities in the City. The proposed Amendment promotes the reasonable and orderly undergrounding of utilities in the City, while providing a viable alternative to developers of smaller projects for which the cost to underground off-site utilities is disproportionately high in comparison to the overall construction cost of their projects. City staff recommends that the Planning Commission recommend approval of the proposed Amendment to the City Council.

## **BACKGROUND:**

Undergrounding of utilities in conjunction with new development and redevelopment provides numerous aesthetic and safety benefits to the property being developed and the community as a whole. Utility undergrounding requirements are currently located in Chapter 9.40 (Subdivisions) of the Land Use Code. Existing Section 9.40.160 requires subdividers of property to place all proposed and existing utility facilities underground prior to City Council acceptance

and approval of the final map. To convert an existing multiple-family residential development into condominiums also requires that overhead utility distribution lines, within the boundaries of a project, be fully converted to underground. Undergrounding requirements may be wholly or partially waived by the City Council if topographical, soil, or other conditions make the undergrounding unreasonable or impracticable.

Project applicants have complained that the existing provisions do not clearly define which utilities must be undergrounded and do not provide a fair and objective alternative for cases in which the cost to underground off-site utilities is disproportionately high compared to the size of the project or where undergrounding would be more cost-effective and efficient for off-site utilities serving the property to be constructed in conjunction with a larger undergrounding project.

**DISCUSSION:**

The proposed Amendment adds a separate new Chapter 9.48 to the recently reorganized Zoning Ordinance relating to the undergrounding of utilities. The purpose of Chapter 9.48 is to provide for the reasonable and orderly removal of existing overhead utility facilities and the construction of new underground utility facilities on both public and private property. These measures will promote and preserve the health, safety, and general welfare of the public, and help to assure the orderly and desirable development of the City. The new Chapter 9.48 would apply to all development, redevelopment, or subdivision of property in the City. The proposed Amendment significantly clarifies undergrounding requirements for developers and allows a developer the option of paying a fee in lieu of undergrounding existing off-site utilities. Conforming amendments are also proposed to make the current language of Section 9.40.160 (Subdivisions) consistent with the new Chapter 9.48.

Pursuant to the proposed new Chapter 9.48, any person developing, redeveloping, or subdividing property in the City will generally be required to underground all existing and proposed on-site and off-site utility facilities associated with the project property, with certain specified exceptions. This change expands the existing undergrounding requirement to include development and redevelopment projects that do not necessarily involve a subdivision of property.

The scope of the undergrounding requirements is also significantly clarified, making it easier for developers to determine and evaluate the likely cost, while also helping to ensure consistent application of the requirements by the City. Those utility facilities that must be undergrounded are defined in detail, and a specific list of exceptions is included.

The undergrounding requirement does not apply to utility facilities that do not provide service to the subject property or structure. Developers will not be required to underground overhead electric lines of 66,000 volts or more where not technically or economically feasible. Also, those utility facilities that the City

Engineer determines would be impractical or technically infeasible to underground due to physical constraints such as topography, soil, or other existing conditions, would also be exempt from the undergrounding requirement.

In addition, the proposed code provisions do not require undergrounding of existing overhead utilities for projects involving (1) only one single-family dwelling or (2) the enlargement, alteration or rehabilitation of other buildings or structures where the enclosed floor area is not increased by more than twenty-five percent (25%).

Under the proposed new Chapter 9.48, a developer may voluntarily elect, instead of undergrounding existing off-site utilities, to pay the City an "in-lieu" fee to offset the developer's fair share of the costs for such undergrounding. The amount of the fee would be objectively determined based on the lesser of (1) the developer's proportionate share of what it would cost the City to underground the utilities or (2) 1% of the total estimated construction cost of the developer's project. This cost structure is intended to provide a fair and evenly-applied alternative to developers and to facilitate desirable smaller development projects for which the cost to underground off-site utilities is disproportionately high compared to the overall project cost.

All "in-lieu" fees collected would be deposited in a special account to be used solely for future undergrounding of utilities in the City.

The proposed Amendment also makes conforming revisions to the current language of Section 9.40.160 (Subdivisions) to reference the new code in Chapter 9.48 (Undergrounding of Utilities) and to clarify that the waiver process available to other subdivision improvements does not apply to the undergrounding of utilities.

#### **REQUIRED FINDINGS:**

Pursuant to Municipal Code Section 9.32.030.D.1, the Planning Commission must make two (2) findings in order to approve an application for an amendment to the Land Use Code. The Planning Commission must find that an amendment is internally consistent with the goals, objectives and elements of the City's General Plan and that it promotes the public interest, health, safety and welfare.

The Amendment is internally consistent with the goals, objectives and elements of the City's General Plan. The City's General Plan does not specifically address the undergrounding of utilities; however, undergrounding utilities is consistent with and promotes the general goals and objectives reflected in the Land Use Element relating to preservation of neighborhoods along with the redevelopment and revitalization of aging areas and properties in the City, the general goals and objectives reflected in the Community Design Element relating to the attractive design of structures and corridors, and the goals and objectives reflected in the Safety Element relating to protecting residents and development from risks associated with seismic activity and natural disasters. Therefore, the proposed

Amendment is internally consistent with the goals, objectives and elements of the City's General Plan.

Also, the amendment is deemed to promote the public interest, health, safety and welfare. Undergrounding of utilities in conjunction with new development and redevelopment provides numerous aesthetic and safety benefits to the property being developed and the community as a whole. The proposed Amendment will promote the reasonable and orderly undergrounding of utilities in the City, while providing a viable alternative to developers of smaller projects for which the cost to underground off-site utilities is disproportionately high in comparison to the overall project construction cost. Therefore, the proposed Amendment will promote the public interest, health, safety and welfare.

**CEQA:**

The proposed amendments to the Land Use Code would not be considered a project under the California Environmental Quality Act ("CEQA"), pursuant to Section 21065 of the Public Resources Code, because code revisions are not an action which have the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. The proposed Amendment does not commit the City to any definite course of action and all future undergrounding projects shall be reviewed for potential environmental impacts pursuant to CEQA. And furthermore, the Amendment would be exempt under Class 5/Section 15305 (the project constitutes a minor alteration in land use limitations in areas, with an average slope of less than 20%, which do not result in any changes in land use or density).

**RECOMMENDATION:**

Staff recommends that the Planning Commission:

- Recommend approval of Amendment No. A-154-10 to the City Council.

Karl Hill  
Planning Services Manager

By: Erin Webb  
Senior Planner

## RESOLUTION NO. 5710

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF GARDEN GROVE RECOMMENDING APPROVAL OF AMENDMENT NO. A-154-10 TO THE CITY COUNCIL.

BE IT RESOLVED that the Planning Commission of the City of Garden Grove in regular session assembled on March 4, 2010, considered the Amendment to Title 9 of the Garden Grove Municipal Code, to add a new Chapter 9.48 pertaining to the undergrounding of utilities and amending Chapter 9.40, Section 160, pertaining to required subdivision improvements. The Planning Commission does hereby recommend approval of Amendment No. A-154-10 to the City Council. Upon consideration of the item, pursuant to the below report and findings, the Planning Commission does hereby find that the Amendment is not a project pursuant to CEQA as it is not an action which has the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. The proposed Amendment does not commit the City to any definite course of action and all future undergrounding projects shall be reviewed for potential environmental impacts pursuant to CEQA. Furthermore, the Amendment would be exempt under Class 5/Section 15305 (the project constitutes a minor alteration in land use limitations in areas, with an average slope of less than 20%, which do not result in any changes in land use or density).

BE IT FURTHER RESOLVED in the matter of Amendment No. A-154-10 the Planning Commission of the City of Garden Grove does hereby report as follows:

1. The subject case was initiated by the City of Garden Grove.
2. The City of Garden is proposing to amend Title 9 of the Garden Grove Municipal Code to add the new Chapter 9.48 pertaining to the undergrounding of utilities and to amend Section 9.40.160 of Chapter 9.40 pertaining to required subdivision improvements, with changes shown in underline/strikeout format, as attached to the City Council Ordinance.
3. The proposed new Chapter 9.48 (Undergrounding of Utilities) will require the undergrounding of proposed and existing on-site and off-site utilities in conjunction with the development, redevelopment, or subdivision of property in the City and will allow a developer to voluntarily pay a fee in lieu of undergrounding existing off-site utilities, which will be deposited in a fund used solely for future undergrounding of utilities in the City.
4. Chapter 9.48 will provide for the reasonable and orderly removal of existing overhead utility facilities and the construction of new underground utility facilities on both public and private property, in order



to promote and preserve the health, safety, and general welfare of the public and to assure the orderly and desirable development of the City.

5. The proposed amendments to Chapter 9.40 (Subdivisions) will revise existing provisions pertaining to the required undergrounding of utilities in conjunction with subdivisions to be consistent with the new Chapter 9.48 (Undergrounding of Utilities).
6. The Community Development Department has determined that (i) the Amendment would not be considered a project under the California Environmental Quality Act ("CEQA"), pursuant to Section 21065 of the Public Resources Code, as it is not an action which has the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. The proposed Amendment does not commit the City to any definite course of action and all future undergrounding projects shall be reviewed for potential environmental impacts pursuant to CEQA. Furthermore, the Amendment would be exempt under Class 5/Section 15305 (the project constitutes a minor alteration in land use limitations in areas, with an average slope of less than 20%, which do not result in any changes in land use or density).
7. Report submitted by City Staff was reviewed.
8. Pursuant to a legal notice, a public hearing was held on March 4, 2010, and all interested persons were given an opportunity to be heard.
9. The Planning Commission gave due and careful consideration to the matter at its meeting on March 4, 2010; and

BE IT FURTHER RESOLVED, FOUND AND DETERMINED that the facts and reasons supporting the conclusion of the Planning Commission, as required under Municipal Code Section 9.32.030, are as follows:

FACTS:

Undergrounding of utilities in conjunction with new development and redevelopment provides numerous aesthetic and safety benefits to the property being developed and the community as a whole.

The proposed Amendment would add a separate new Chapter 9.48 to the recently reorganized Land Use Code relating to the undergrounding of utilities. Pursuant to the new Chapter 9.48, any person developing, redeveloping, or subdividing property in the City will generally be required to underground all existing and proposed on-site and off-site utility facilities associated with the property, with certain specified exceptions. Also, the Amendment expands the existing undergrounding requirement to include those development and redevelopment projects that do not necessarily

involve a subdivision of property. The utility facilities that must be undergrounded are defined in detail, and a specific list of exceptions is included.

Exceptions to the undergrounding requirement established in Chapter 9.48 (Undergrounding of Utilities) include, but are not limited to the following: utility facilities that do not provide service to the subject property or structure; overhead electric lines of 66,000 volts or more where not technically or economically feasible; utility facilities which the City Engineer determines would be impractical or technically infeasible to underground due to physical constraints such as topography, soil, or other existing conditions; existing above-ground utility facilities, where the project is limited to the construction, enlargement, alteration or rehabilitation of one (1) single family dwelling; and existing above-ground utility facilities, where the project is limited to the enlargement, alteration or rehabilitation of buildings or structures other than a single-family dwelling where the enclosed floor area is not increased by more than twenty-five percent (25%).

Under proposed new Chapter 9.48 (Undergrounding of Utilities), in lieu of undergrounding existing off-site utilities, a developer may voluntarily elect to instead pay the City an in-lieu fee to offset the developer's fair share of the costs of undergrounding the off-site utilities. The amount of the fee will be determined based on the lesser of (1) the developer's proportionate share of what it would cost the City to underground the utilities or (2) 1% of the total estimated construction cost of the developer's project. All "in-lieu" fees collected would be deposited in a special account to be used solely for future undergrounding of utilities in the City.

The proposed Amendment would also make conforming revisions to the existing language of Section 9.40.160 (Subdivisions) to reference the new code in Chapter 9.48 (Undergrounding of Utilities) and to clarify that the waiver process available to other subdivision improvements does not apply to the undergrounding of utilities.

FINDINGS AND REASONS:

1. The Amendment is internally consistent with the goals, objectives and elements of the City's general plan.

The requested Amendment is internally consistent with the goals, objectives and the elements of the General Plan. The undergrounding of utilities is consistent with and promotes the general goals and objectives reflected in the Land Use Element relating to preservation of neighborhoods and redevelopment and revitalization of aging areas and properties in the City, the general goals and objectives reflected in the Community Design Element relating to the attractive design of structures and corridors, and the goals and objectives reflected in the

Safety Element relating to protecting residents and development from risks associated with seismic activity and natural disasters.

2. The Amendment is deemed to promote the public interest, health, safety and welfare.

Undergrounding of utilities in conjunction with new development and redevelopment provides numerous aesthetic and safety benefits to the property being developed and the community as a whole. The proposed Amendment will promote the reasonable and orderly undergrounding of utilities in the City, while providing a viable alternative to developers of smaller projects for which the cost to underground off-site utilities is disproportionately high in comparison to the overall construction cost of their project.

INCORPORATION OF FACTS AND FINDINGS SET FORTH IN STAFF REPORT:

In addition to the foregoing, the Planning Commission incorporates herein by this reference, the facts and findings set forth in the staff report.

BE IT FURTHER RESOLVED that the Planning Commission does conclude:

1. Amendment No. A-154-10 possesses characteristics that would indicate justification of the request in accordance with Municipal Code Section 9.32.030.D.1 (Code Amendment).
2. The Planning Commission recommends the approval of Amendment No. A-154-10, to amend and add utility undergrounding provisions to Title 9 as set forth in the attached draft of the City Council Ordinance.

ADOPTED this 4th day of March, 2010

/s/ KRIS BEARD  
CHAIR

I HEREBY CERTIFY that the foregoing resolution was duly adopted at the regular meeting of the Planning Commission of the City of Garden Grove, State of California, held on March 4, 2010, by the following votes:

AYES:	COMMISSIONERS:	BEARD, BONIKOWSKI, BUI, CABRAL, TRAN
NOES:	COMMISSIONERS:	NONE
ABSENT:	COMMISSIONERS:	ELLSWORTH
VACANCY:	COMMISSIONERS:	ONE

/s/ JUDITH MOORE  
SECRETARY

PLEASE NOTE: Any request for court review of this decision must be filed within 90 days of the date this decision was final (See Code of Civil Procedure Section 1094.6).

A decision becomes final if it is not timely appealed to the City Council. Appeal deadline is March 25, 2010.

DRAFT MINUTE EXCERPT

GARDEN GROVE PLANNING COMMISSION

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PUBLIC HEARING: AMENDMENT NO. A-154-10  
APPLICANT: CITY OF GARDEN GROVE  
LOCATION: CITYWIDE  
DATE: MARCH 4, 2010

REQUEST: Planning Commission to recommend to City Council, approval of an Amendment to Title 9 of the Municipal Code (Land Use Code) to add Chapter 9.48 pertaining to the undergrounding of utilities, and to make conforming revisions to the existing provisions in Chapter 9.40 pertaining to the required undergrounding in subdivisions.

Staff report was read and recommended approval.

Commissioner Bonikowski asked Staff if Southern California Edison (SCE) was involved with undergrounding utility poles. Staff responded that SCE sets the limits and has the expertise for undergrounding; that undergrounding is always an issue; and that it would be advantageous to the developer, if time was an issue, to pay an "in-lieu" fee for off-site undergrounding instead of being involved with SCE directly.

Commissioner Bui asked if this ordinance would apply to single-family homes. Staff replied that every project requires undergrounding to prevent the single wire running from the pole to the house; and that the proposed ordinance has an exception for single-family residential dwellings as noted in Item 10 on Page 5 of the ordinance.

Chair Beard asked why this ordinance was proposed. Staff explained that there is a conscious effort by the City to improve the development process; that funds collected would be used for the greater good; that if SCE would be an impediment toward a project, the developer could pay the "in-lieu" fee and the City would deal with the delay thereby eliminating the SCE barrier.

Commissioner Cabral commented that other cities she spoke to did not have a similar ordinance, and that the idea was creative.

Chair Beard asked for clarification of the funds dispersal. Staff responded that there is a City undergrounding priority list handled by Traffic Staff; and that with regard to undergrounding, people view overhead lines as a blight; and, that safety is also an issue as power poles are designed to withstand heavy winds and do not typically break away upon impact.

Chair Beard opened the public hearing to receive testimony in favor of or in opposition to the request.

There being no further comments, the public portion of the hearing was closed.

Commissioner Tran moved to recommend approval of Amendment No. A-154-10 to City Council, seconded by Commissioner Cabral, pursuant to the facts and reasons contained in Resolution No. 5710. The motion received the following vote:

AYES:	COMMISSIONERS: BEARD, BONIKOWSKI, BUI, CABRAL, TRAN
NOES:	COMMISSIONERS: NONE
ABSENT:	COMMISSIONERS: ELLSWORTH
VACANCY:	COMMISSIONERS: ONE

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE APPROVING  
CODE AMENDMENT NO. A-154-10 TO ADD CHAPTER 9.48 TO TITLE 9 OF THE  
GARDEN GROVE MUNICIPAL CODE PERTAINING TO UNDERGROUNDING OF  
UTILITIES AND AMENDING TITLE 9, CHAPTER 9.40, SECTION 160, PERTAINING TO  
REQUIRED SUBDIVISION IMPROVEMENTS

City Attorney's Summary

This Ordinance adds Chapter 9.48 to Title 9 of the Garden Grove Municipal Code to require the undergrounding of proposed and existing on-site and off-site utilities in conjunction with the development, redevelopment or subdivision of property in the city, and to allow a developer to voluntarily pay a fee in-lieu of undergrounding existing off-site utilities, which will be deposited in a fund used solely for future undergrounding of utilities in the city. This Ordinance also amends existing provisions of the Municipal Code pertaining to the required undergrounding of utilities in conjunction with subdivisions to be consistent with new Chapter 9.48.

WHEREAS, the case, initiated by City of Garden Grove, proposes amending Title 9 (Zoning Ordinance) of the Municipal Code to incorporate requirements for the undergrounding of utilities into Title 9 in a new Chapter 9.48, Undergrounding of Utilities, and to make conforming revisions to the existing provisions in Chapter 9.40, Subdivisions;

WHEREAS, the Planning Commission, at a Public Hearing held on March 4, 2010, determined that this Amendment is exempt from the California Environmental Quality Act (CEQA) based on the proposed amendments not being considered a project under Section 21065 of the Public Resources Code as these code revisions are not an action which have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect change in the environment. The proposed amendment does not commit the City to any definite course of action and all future undergrounding projects shall be reviewed for potential environmental impacts pursuant to CEQA. And furthermore, the Amendment would be exempt under Class 5/Section 15305 (the project constitutes a minor alteration in land use limitations in areas, with an average slope of less than 20%, which do not result in any changes in land use or density);

WHEREAS, pursuant to Resolution No. 5710, the Planning Commission, at a Public Hearing held on March 4, 2010, recommended approval of Amendment No. A-154-10;

WHEREAS, pursuant to a legal notice, a Public Hearing was held by the City Council on April 13, 2010, and all interested persons were given an opportunity to be heard;

WHEREAS, the City Council of the City of Garden Grove in Regular Session assembled on April 13, 2010, does hereby determine that this project is exempt pursuant to the Sections listed above of the CEQA;

WHEREAS, the City Council of the City of Garden Grove has considered the proposed Code Amendment to add Chapter 9.48 to Title 9 of the Garden Grove Municipal Code to require the undergrounding of proposed and existing on-site and off-site utilities in conjunction with the development, redevelopment, or subdivision of property in the City, and to allow a developer to voluntarily pay a fee in-lieu of undergrounding existing off-site utilities, which will be deposited in a fund used solely for future undergrounding of utilities in the city, along with revisions to the existing provisions of the Municipal Code pertaining to the required undergrounding of utilities in conjunction with subdivisions, as provided and attached to this Ordinance, together with comments received during the public review process. The record of proceedings on which the City Council of the City of Garden Grove decision is based is located in the Community Development Department at the City of Garden Grove, 11222 Acacia Parkway, Garden Grove, California. The custodian of record of proceedings is the Director of Community Development. The City Council of the City of Garden Grove finds, based upon the exercise of its independent judgment, on the basis of the whole record before it, including comments received, that the project is categorically exempt; and

WHEREAS, the City hereby finds that: (1) the Amendment is consistent with and promotes the general goals and objectives from the General Plan, in the Land Use Element relating to the preservation of neighborhoods and the redevelopment or revitalization of aging areas and properties, in the Community Design Element relating to the attractive design of structures and corridors, and in the Safety Element relating to protecting residents and development from risks associated with seismic activity and natural disasters; and (2) the Amendment promotes the public interest, health, safety, and welfare through the benefits of undergrounding utilities, providing aesthetic and safety benefits to individual properties and the community as a whole as well as providing a viable alternative to developers who would pay a disproportionately high cost to underground off-site utilities in comparison to the cost of their development project.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GARDEN GROVE DOES ORDAIN AS FOLLOWS:

Section 1. Amendment No. A-154-10 is hereby approved, and Title 9 of the Garden Grove Municipal Code, is hereby amended as provided in this Ordinance, pursuant to the facts and reasons stated in Planning Commission Resolution No. 5710, a copy of which is on file in the Office of the City Clerk and incorporated herein by reference with the same force and effect as if set forth in full. Chapter 9.48 is hereby added as Division IV of Title 9 of the Garden Grove Municipal Code to read as follows:



## CHAPTER 48

### UNDERGROUNDING OF UTILITIES

**SECTION 9.48.010: Purpose**

**SECTION 9.48.020: Definitions**

**SECTION 9.48.030: Requirements**

**SECTION 9.48.040: Exceptions to Undergrounding Requirement**

**SECTION 9.48.050: Voluntary Payment of Fee In-Lieu of  
Undergrounding Existing Off-Site Utilities**

**SECTION 9.48.060: Relationship to Underground Utility Districts**

**SECTION 9.48.010: Purpose**

The purpose of this Chapter is to provide for the reasonable and orderly removal of existing overhead utility facilities and the construction of new underground utility facilities on both public and private property, in order to promote and preserve the health, safety, and general welfare of the public and to assure the orderly and desirable development of the city.

**SECTION 9.48.020: Definitions**

For the purpose of this Chapter, the following words and phrases shall have the meanings set forth in this Section:

"Developer" means any property owner or other person or entity developing, redeveloping or subdividing property to which the undergrounding requirements of this Chapter applies.

"Off-site utilities" means those existing or proposed utility facilities serving the property to be developed, redeveloped, or subdivided, and which (i) are located within the public right-of-way adjacent or peripheral to the property or project, or (ii) are otherwise providing service to the property or project.

"On-site utilities" means those existing or proposed utility facilities serving the property to be developed, redeveloped, or subdivided, and which are located within the boundaries of the property or project, excluding those utility facilities located in the public right-of-way.

"Underground or undergrounding" means the location or relocation of utilities so that all of the utility facilities are located under the surface of the ground.

"Utilities or utility facilities" means, without limitation, poles, towers, supports, wires, cables, lines, conduit, guy wires, conductors, buys, stubs, platforms, braces, transformers, insulators, cutouts, switches, communication circuits, appliances, ducts, pipes and similar devices designed and/or utilized for

providing, supplying, supporting, and/or distributing electrical energy and service, communication, telecommunication, cable television, and/or video programming to a property or consumer.

**SECTION 9.48.030: Requirements**

- A. In addition to any other provisions of this Code, the developer shall, at its cost, underground all existing and proposed on-site and off-site utility facilities associated with property which the developer is developing, redeveloping or subdividing within the city. Required undergrounding shall be a condition to the approval of any final map, discretionary permit, and building, plumbing, or electrical permit issued for the development, redevelopment, or subdivision of property.
- B. All such undergrounding work, where required, shall be constructed, installed and maintained in accordance with all applicable laws, rules, regulations, and requirements of the City and other applicable agencies or entities, including, but not limited to, rules, regulations and tariffs, applicable to the affected utility, adopted or approved by the Public Utilities Commission of the State of California.
- C. The developer shall be responsible for complying with the requirements of this Chapter and shall make the necessary cost and other arrangements with the utility companies for the installation of underground utility facilities and appropriate relocation and undergrounding of existing utility facilities. It shall also be the responsibility of the developer to establish to the satisfaction of the City Manager or his designee that the necessary arrangements with the utility companies have been made for the undergrounding, construction, and installation of such utility facilities.

**SECTION 9.48.040: Exceptions to Undergrounding Requirement**

- A. Undergrounding shall not apply to:
  - 1. Poles or electroliers used exclusively for street lighting.
  - 2. Utility facilities exempted from undergrounding by the Public Utilities Commission or applicable federal, state, or local law.
  - 3. Utility facilities that do not provide service to the property or structure being developed, redeveloped, or subdivided.
  - 4. Temporary poles, overhead wires, and associated structures used, or to be used, in conjunction with construction projects.
  - 5. Existing poles, overhead wires, and associated structures used for the transmission of electrical energy at nominal voltages 66,000

volts or greater if it is determined by the City Engineer that such undergrounding is not technically or economically feasible;

6. Antennae, associated equipment, and supporting structures used by a utility company for furnishing communication services.
7. Equipment appurtenant to or associated with underground facilities, such as surface mounted transformers, meter cabinets, pedestal-mounted terminal boxes, and concealed ducts, which, in the determination of the City Engineer, should be placed above ground for technical or public safety reasons.
8. Temporary poles, overhead wires, and associated structures for emergency service installed and maintained for a period not to exceed ten (10) days, unless a longer period is approved in writing by the City Manager or his designee.
9. Utility facilities the undergrounding of which the City Engineer determines would be impractical or technically infeasible due to physical constraints such as topography, soil, or other existing conditions.
10. Existing above-ground utility facilities, where the project is limited to the construction, enlargement, alteration, or rehabilitation of one (1) single family dwelling. The developer shall underground all new utility facilities associated with the project.
11. Existing above-ground utility facilities, where the project is limited to the enlargement, alteration, or rehabilitation of buildings or structures other than a single family dwelling where the enclosed floor area is not increased by more than twenty-five percent (25%). The developer shall underground all new utility facilities associated with the project.

**SECTION 9.48.050: Voluntary Payment of Fee In-Lieu of Undergrounding Existing Off-Site Utilities**

- A. In lieu of undergrounding existing off-site utilities, the developer may elect to pay the City an in-lieu fee to offset the developer's fair share of the costs of undergrounding the off-site utilities. The amount of such an in-lieu fee shall be the lesser of the following:
  1. The developer's proportionate share of the estimated then current cost of undergrounding similarly situated above-ground utility facilities of the same type, as determined by the City Engineer.
  2. One percent (1%) of the total estimated construction cost of the developer's project. This Subdivision A.2 shall not apply in

circumstances where the developer is only processing a subdivision map without concurrently processing entitlements for a development project in conjunction with the subdivision.

- B. The developer shall be responsible for submitting all information and documentation necessary for and/or reasonably requested by the City Engineer to calculate the amount of the in-lieu fee. The submission of false or misleading information or documentation by any person pursuant to this Section shall be punishable as a misdemeanor.
- C. All in-lieu fees paid pursuant to this Section shall be deposited in a special account to be used solely for future undergrounding of utilities in the city.
- D. This Section shall not be applicable to, and undergrounding shall be required for, developments, redevelopments, or subdivisions of five (5) acres or more.

**SECTION 9.48.060: Relationship to Underground Utility Districts**

The provisions of this Chapter are in addition to, and not in substitution for or limitation of, the provisions of Chapter 24 of Title 11 of this Code.

Section 2. Section 160 of Chapter 40 or Division II of Title 9 of the Garden Grove Municipal Code is hereby amended and restated in its entirety to read as follows (new text in bold/underline; deleted text in ~~strikeout~~):

**SECTION 9.40.160: Improvements Required.**

- A. The minimum improvements that the subdivider will be required to make or enter into an agreement to make in the subdivision prior to the acceptance and approval of the final map by the City Council shall be:
  - 1. Separate and adequate distribution lines for domestic water supply to each lot;
  - 2. Sewage collecting system where main lines of an adequate disposal system are available;
  - 3. Adequate drainage of the subdivision streets, highways, ways, and alleys;
  - 4. Adequate grading and surfacing of streets, highways, ways, and alleys;
  - 5. Concrete curbs, gutters, and cross gutters;
  - 6. Concrete sidewalks;

7. Survey monuments;
  8. Fire hydrants at locations designated by the City Engineer;
  9. Street name signs, two (2) to each intersection;
  10. Traffic control devices;
  11. Necessary barricades and safety devices;
  12. Fee for the planting of parkway trees, as provided in Division I of this Title;
  13. Ornamental street signs;
  14. All street, vehicular, and pedestrian ways within a condominium project shall be improved to meet the same city standards as is required for public streets and associated improvements;
  15. ~~Utility facilities including, but not limited to all facilities, wires, cables and ducts for supplying and distributing electrical energy and service, street lighting, communication, and cable television shall be required to be placed underground in any new tract or in any revised or reactivated tract;~~ **Undergrounding of all existing and proposed on-site and off-site utility facilities shall be pursuant to Chapter 9.48. Section 9.40.160, Subsection B, below, shall not apply to the undergrounding of utilities;**
  16. Fees for, or dedication of, park and recreation facilities;
  17. Intersection widening;
  18. Highway safety lighting;
  19. Turnout bays; and
  20. Median islands.
- ~~B. For the purpose of this division, appurtenances and associated equipment, such as, but not limited to, surface mounted transformers, meter cabinets and pedestal mounted terminal boxes and concealed ducts in an underground system, may be placed above ground.~~
- ~~C. The subdivider shall make the necessary arrangements with the utility companies for the installation of such facilities. It shall also be the responsibility of the subdivider to establish, to the satisfaction of the city~~

~~engineer, that the necessary arrangements with the utility companies have been made.~~

- ~~1. These requirements may be waived by the city council if topographical, soil or other conditions make such underground installations unreasonable or impractical.~~
- ~~2. This division shall not apply to utility lines that do not provide service to the area being subdivided.~~

**BD.** **Except as provided otherwise in this Section,** the subdivider may make application for exception from the provisions of this Section in the following manner:

1. A written application shall be filed with the Public Works Department. Within thirty (30) days, the department shall file a report on the appeal to the City Council.
2. Such application shall include all information necessary to properly apprise the City Council of the circumstances existing that require such an exception.
3. Within thirty (30) days after the filing of such application, the City Council shall conduct a hearing on the application. The City Council may then grant, partially grant, or deny the application.

**Section 3. Severability.** If any section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, word, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, words or portions thereof be declared invalid or unconstitutional.

**Section 4. Effective Date.** The Mayor shall sign and the City Clerk shall certify the passage and adoption of this Ordinance and shall cause the same, or summary thereof, to be published and posted pursuant to the provisions of law and this Ordinance shall take effect thirty (30) days after adoption.