

REPORT TO CITY COUNCIL

DATE: NOVEMBER 10, 2010

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: GREG RAMIREZ, CITY MANAGER

BY: RAMIRO ADEVA, CITY ENGINEER

SUBJECT: INTRODUCTION AND FIRST READING OF ORDINANCE NO. 10-380, AMENDING DIVISION 3 OF PART 1 OF CHAPTER 6 OF ARTICLE IX OF THE AGOURA HILLS MUNICIPAL CODE, TO ALLOW FOR THE OPTION OF AN IN-LIEU FEE FOR DEVELOPMENTS WITHIN UNDERGROUNDING UTILITY DISTRICTS

At a meeting with the Economic Development Committee and staff on February 24, 2010, a request was made to review the utility undergrounding requirement. During that meeting, various property owners voiced their concern surrounding the exorbitant costs of undergrounding overhead facilities as required by the current Municipal Code. They inquired as to the possibility of having the City consider the option of an in-lieu fee. The Economic Development Committee felt the request was fair, and directed staff to analyze the viability of an in-lieu fee option in relation to the Agoura Village and existing Underground Utility District No. 1.

Tonight, the Council is being asked to consider an amendment to the existing undergrounding ordinance in the Municipal Code to allow for an in-lieu fee option. Furthermore, Council approval would only apply an in-lieu fee option to those developments within established undergrounding utility districts. Currently, the City Council has established only one undergrounding utility district: Underground Utility District No. 1.

As a recap, in May 2008, the City Council approved Resolution No. 08-1481, establishing Underground Utility District No. 1, spanning along Roadside Drive, between Kanan Road and Lewis Road. In doing so, funds allocated as part of Southern California Edison's (SCE) "Rule 20A" program were preserved and could be used towards the eventual undergrounding of overhead utility lines within the district. Since Underground Utility District No. 1 is the only one of its kind in the City, this ordinance will only pertain to developments within that established district at this time.

In April 2010, staff issued a Notice to Proceed to PMC to conduct the analysis and prepare the study to establish the methodology for calculating the in-lieu fee. After several iterations, multiple meetings with commercial property owners, and a meeting with the Public Works committee to review the results of the analysis, the methodology for calculating the in-lieu fee was finalized. This fee is not being presented to the City Council for consideration tonight. The proposed in-lieu fee study and the corresponding City Council resolution that establishes the methodology for calculating the amount of the in-lieu fee will instead be formally presented to the City Council for its consideration at the December 8, 2010 City Council meeting.

With estimated costs of \$3-5 million dollars per mile to underground overhead utilities, it is understandable why commercial property owners find it difficult to make projects balance financially when required to complete undergrounding across an entire property's frontage. Allowing the in-lieu fee consistent with the findings of the forthcoming utility undergrounding in-lieu fee study will allow for the share of a development's undergrounding in-lieu-fee to be proportional to the size of the development. Basically, the amount of in-lieu fee will be determined by a two-step process. First, a percentage is calculated based on the size of a proposed development in relation to the total developable square footage of a particular parcel. Second, that calculated percentage is correlated to a tiered payment structure that requires the developer to pay a percentage of the total cost to underground the overhead utilities across their particular parcel frontage.

As a consequence for allowing an in-lieu fee, the City has to make up the difference between what it would have cost the commercial property owner had they undergrounded the utilities across their entire frontage, and the in-lieu fee cost that is actually paid, instead of having to underground the utilities across the entire frontage. This difference would be covered through the usage of the City's Rule 20A funds, totaling approximately \$1.2 million dollars, which can only be used within Underground Utility District No. 1. It should also be noted that if additional funds are needed above what is available in Rule 20A funds, staff will need to return back to the Council to discuss additional funding options.

Thus, the Council is faced with a policy decision to consider either (1) encouraging development in the Agoura Village Specific Plan area by allowing the in-lieu fee, resulting in the City having to cover the difference to pay for undergrounding, or (2) not allowing the in-lieu fee, and potentially causing development to slow down, with no extra costs to be incurred by the City.

RECOMMENDATION

Staff respectfully recommends the City Council conduct a public hearing, introduce, read by title only, and waive further reading of Ordinance No. 10-380; amending Division 3 of Part 1 of Chapter 6 of Article IX of the Agoura Hills Municipal Code, to allow for the option of an in-lieu fee for developments within undergrounding utility districts.

Attachment: Ordinance No. 10-380

ORDINANCE NO. 10-380

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AGOURA HILLS, CALIFORNIA AMENDING DIVISION 3 OF PART 1 OF CHAPTER 6 OF ARTICLE IX OF THE AGOURA HILLS MUNICIPAL CODE, RELATING TO THE CITY'S UNDERGROUNDING UTILITIES ORDINANCE TO ALLOW FOR THE OPTION OF AN IN-LIEU FEE FOR DEVELOPMENTS LOCATED WITHIN SPECIFIED AREAS OF UNDERGROUNDING DISTRICTS

The City Council of the City of Agoura Hills does hereby ordain as follows:

SECTION 1. Division 3 of Part 1 of Chapter 6 of Article IX of the Agoura Hills Municipal Code is hereby amended to read as follows:

“DIVISION 3. UNDERGROUND FACILITIES

9603. Underground facilities requirement.

The following provisions are hereby established to govern the installation of underground utilities for the conversion of existing overhead facilities within the city.

9603.1. Development subject to undergrounding provisions.

A. For purposes of this Division 3, the term “development” means either:

1. The construction of new buildings or structures; or

2. The expansion, enlargement, modernization, renovation, remodeling, repair, improvement, or alteration of existing buildings or structures for which one or more approvals or permits by or from the City are required, and which adds more than two thousand square feet of floor area.

B. Except as provided in this chapter, all new and existing electrical distribution lines, telephone, cable television, and similar service wires or cables, which are adjacent to and provide service to ~~the a development's~~ property ~~being developed~~, shall be installed underground as a part of development's property from the nearest existing pole not on the development's property ~~being developed~~ with the following exceptions:

1. ~~A.~~—In the development, ~~remodeling, or enlargement~~ of a single-family dwelling upon an existing, subdivided lot in the OA overlay district and RS district when overhead utility distribution lines presently exist. Any new single-family dwelling shall conform to the requirements of section 9603.2 as a part of development.

- 2. ~~B.~~—Temporary utilities along with the necessary service poles, wires and cables during the period when authorized construction is continuing for which valid building permits have been issued or for temporary use authorized under the provisions of the zoning ordinance, building code and other applicable regulations.
- 3. ~~C.~~—Appurtenances and associated equipment, such as surface mounted transformers, when it is determined by the planning commission that it would be economically unfeasible to underground such equipment.

9603.2. Recorded agreement.

In lieu of undergrounding existing distribution lines as a part of ~~construction~~development, the planning commission may permit the recording of an agreement guaranteeing that the property will participate in any undergrounding district which is subsequently established by the City. The form of the agreement shall be approved by the City Attorney and shall run with the land. This section shall not be applicable to the service lines that lead directly to the building.

9603.3. Responsibility for compliance.

The developer or owner shall be responsible for complying with the requirements of sections 9603 through 9603.2 and shall make the necessary arrangements with the utility company for the installation of such facilities.

9603.4. Nonconforming structures.

Buildings or structures, which on the effective date of this chapter are nonconforming in regard to aboveground on-site utility lines, may continue to be used, altered, or enlarged in the same manner as if such nonconforming utility lines did not exist. However, when the buildings or structures are enlarged over two thousand (2,000) square feet in floor area or when alteration or enlargement require the installation of utility lines at new locations on the buildings and structures, the service lines shall comply with the requirements of this title.

9603.5. Optional In-Lieu Fee for Properties Located in Specified Areas within an Existing Undergrounding District

In lieu of undergrounding existing distribution lines as a condition of development, a developer or owner whose development is located in a specified area within an existing undergrounding district may request instead to pay an in-lieu fee, in an amount established by resolution of the City Council, as a contribution to the future undergrounding of existing overhead utilities. Only those properties located in areas, specifically designated by resolution of the City Council, within an existing undergrounding district are eligible for the option of the payment of said in-lieu fee.”

SECTION 2. If any section, subsection, sentence, clause, portion, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining sections, subsections, sentences, clauses, portions, or phrases of this Ordinance. The City Council hereby

declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, portion, or phrase without regard to whether any other section, subsection, sentence, clause, portion, or phrase of the Ordinance would be subsequently declared invalid or unconstitutional.

SECTION 3. This ordinance shall go into effect on the 31st day after its passage.

SECTION 4. The City Clerk of the City of Agoura Hills shall certify to the passage and adoption of this ordinance and shall cause the same or a summary thereof to be published and posted in the manner required by law.

PASSED, APPROVED AND ADOPTED this _____ day of _____, 2010, by the following vote to wit.

AYES: ()
NOES: ()
ABSENT: ()
ABSTAIN: ()

William D. Koehler, Mayor

ATTEST:

Kimberly Rodrigues, City Clerk

APPROVED AS TO FORM:

Craig A. Steele, City Attorney