

CHAPTER FIVE: PLANNING, ZONING, USE, AND DEVELOPMENT OF LAND AND IMPROVEMENTS

Subchapter 5.09: Regulations and Procedures for the Removal of Overhead Utility Facilities and Installation of Underground Facilities in Underground Utility Districts

5.09.010 Definitions.

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

- (a) *Commission* shall mean the Public Utilities Commission of the State of California.
- (b) *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 5.09.030.
- (c) *Person* shall mean and include individuals, firms, corporations, partnerships, and their agents and employees.
- (d) *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 aboveground within a District and used or useful in supplying electric, communication or similar or associated service.
- (e) *Utility* shall include all persons or entities supplying electric, communication or similar or associated service by means of electrical materials or devices.

[*History:* formerly § 5.901; ORD. 296, 4/11/84; ORD. 638, 12/14/05]

5.09.020 Public Hearing by Council.

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

[*History:* formerly § 5.902; ORD. 296, 4/11/84; ORD. 638, 12/14/05]

5.09.030 Council May Designate Underground Utility Districts by Resolution.

If, after any such public hearing, the Council finds that the public necessity, health, safety or welfare requires such removal and such underground installation within a designated area, the

Council shall, by resolution, declare such designated area an Underground Utility District and order such removal and underground installation. Such resolution shall include a description of the area comprising such district and shall fix the time within which such removal and underground installation shall be accomplished and within which affected property owners must be ready to receive underground service. A reasonable time shall be allowed for such removal and underground installation, having due regard for the availability of labor, materials and equipment necessary for such removal and for the installation of such underground facilities as may be occasioned thereby.

[*History:* formerly § 5.903; ORD. 296, 4/11/84; ORD. 638, 12/14/05]

5.09.040 Unlawful Acts.

When the Council creates an Underground Utility District and orders the removal of poles, overhead wires and associated overhead structures therein as provided in Section 5.09.030 hereof, it shall be unlawful for any person or utility to erect, construct, place, keep, maintain, continue, employ or operate poles, overhead wires and associated overhead structures in the District after the date when said overhead facilities are required to be removed by such resolution, except as said overhead facilities may be required to furnish service to an owner or occupant of property prior to the performance by such owner or occupant of the underground work necessary for such owner or occupant to continue to receive utility service as provided in Section 5.09.090 hereof, and for such reasonable time required to remove said facilities after said work has been performed, and except as otherwise provided in this subchapter.

[*History:* formerly § 5.904; ORD. 296, 4/11/84; ORD. 638, 12/14/05]

5.09.050 Exception, Emergency or Unusual Circumstances.

Notwithstanding the provisions of this subchapter, overhead facilities may be installed and maintained for a period not to exceed ten (10) days without authority of the Council in order to provide emergency service. The Council may grant special permission, on such terms as the Council may deem appropriate, in cases of unusual circumstances, without discrimination as to any person or utility, to erect, construct, install, maintain, use or operate poles, overhead wires and associated overhead structures.

[*History:* formerly § 5.905; ORD. 296, 4/11/84; ORD. 638, 12/14/05]

5.09.060 Other Exceptions.

This subchapter and any resolution adopted pursuant to Section 5.09.030 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 City Engineer.
- (b) Poles or electroliers used exclusively for street lighting.
- (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 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.

[History: formerly § 5.906; ORD. 296, 4/11/84; ORD. 638, 12/14/05]

5.09.070 Notice to Property Owners and Utility Companies.

Within ten (10) days after the effective date of a resolution adopted pursuant to Section 5.09.030, the City Clerk shall notify all affected utilities and all persons owning real property within the District created by said resolution of the adoption thereof. Said City Clerk shall further notify such affected property owners of the necessity that if they or any person occupying such property desire to continue to receive electric, communication, or similar or associated service, they or such occupant shall provide all necessary facility changes on their premises so as to receive such service from the lines of the supplying utility or utilities at a new location, subject to applicable rules, regulations and tariffs of the respective utility or utilities on file with the Commission.

Notification by the City Clerk shall be made by mailing a copy of the resolution adopted pursuant to Section 5.09.030 together with a copy of this ordinance, to affected property owners as such are shown on the last equalized assessment roll and to the affected utilities.

[History: formerly § 5.907; ORD. 296, 4/11/84; ORD. 638, 12/14/05]

5.09.080 Responsibility of Utility Companies.

If underground construction is necessary to provide utility service within a District created by any resolution adopted pursuant to Section 5.09.030, 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.

[History: formerly § 5.908; ORD. 296, 4/11/84; ORD. 638, 12/14/05]

5.09.090 Responsibility of Property Owners.

(a) Every person owning, operating, leasing, occupying or renting a building or structure within a District shall perform construction and provide that portion of the service connection on his property between the facilities referred to in Section 5.09.080 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. If the above is not accomplished by any person within the time provided for in the resolution enacted pursuant to Section 5.09.030, the City Engineer 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 (109) days after receipt of such notice.

(b) 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 laws equalized assessment roll, and when no address appears, to General Delivery, Town of Colma. If notice is given by mail, such notice shall be deemed to have been received by the person to whom it has been sent within forty-eight (48) hours after the mailing thereof. If notice is given by mail to either the owner or occupant of such premises, the City Engineer shall, within forty-eight (48) hours after the mailing thereof, 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.

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

(d) If, upon the expiration of the thirty (30) day period, the said required underground facilities have not been provided, the City Engineer 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 City Engineer 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 City Engineer, 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 costs of such work upon such premises, which said time shall not be less than ten (10) days thereafter.

(e) The City Engineer 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.

(f) 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.

(g) If any assessment is not paid within five (5) days after its confirmation by the Council, the amount of the assessment shall become a lien upon the property against which the assessment is made by the City Engineer, and the City Engineer 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 rate of six per cent (6%) per annum.

[*History:* formerly § 5.909; ORD. 296, 4/11/84; ORD. 638, 12/14/05]

5.09.100 Responsibility of City.

City shall remove, at its own expense, all City-owned equipment from all poles required to be removed hereunder in ample time to enable the owner or user of such poles to remove the same within the time specified in the resolution enacted pursuant to Section 5.09.030 hereof.

[*History:* formerly § 5.910; ORD. 296, 4/11/84; ORD. 638, 12/14/05]

5.09.110 Extension of Time.

In the event that any act required by this ordinance or by a resolution adopted pursuant to Section 5.09.030 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.

[*History:* formerly § 5.911; ORD. 296, 4/11/84; ORD. 638, 12/14/05]

5.09.120 Penalty.

It shall be unlawful for any person to violate any provision or to fail to comply with any of the requirements of this Subchapter Nine. Any person violating any of the provisions of this subchapter shall be guilty of a misdemeanor, which shall be punishable as set forth in section 1.05.010 et seq.

[*History:* formerly § 5.912; ORD. 296, 4/11/84; ORD. 638, 12/14/05; ORD. 643, 4/12/06]

5.09.130 Constitutionality.

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

[*History*: formerly § 5.913; ORD. 296, 4/11/84; ORD. 638, 12/14/05]