

**ORDINANCE NO. XXXX**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BEAUMONT, CALIFORNIA AMENDING THE TITLE OF CHAPTER 12.16, ADDING CHAPTER 12.18 AND AMENDING CHAPTER 17.04 OF THE CITY OF BEAUMONT MUNICIPAL CODE CONCERNING REQUIREMENTS FOR UNDERGROUNDING OF EXISTING OVERHEAD UTILITIES APPLICABLE TO DISCRETIONARY APPROVALS RELATED TO LAND USE AND DEVELOPMENT**

**WHEREAS**, the City has implemented policies requiring the conversion of existing overhead utilities into underground systems for many years as a condition related to approvals for land use and development applications; and

**WHEREAS**, the City's consistent practice to implement policies requiring the undergrounding of existing utility poles, overhead utility lines and related transmission devices serves the public health, safety and welfare in the following respects:

- a) Undergrounding of existing overhead utilities eliminates potential hazards to life and property in the event of emergencies or disasters such as earthquakes, fires, floods, hazardous or toxic waste releases, rains, and riots;
- b) Undergrounding of existing overhead utilities facilitates the delivery of emergency services to persons and property located adjacent to the public right-of-way;
- c) Undergrounding of existing overhead utilities improves or increases the accessibility of the public right-of-way for such public uses as pedestrian travel, ease of deliveries to adjacent property, and landscaping treatments;
- d) Undergrounding of existing overhead utilities eliminates the threat of downed powerlines and the resulting fires that can be caused by high winds.
- e) Undergrounding of existing overhead utilities enhances the appearance of the City and eliminates cluttered and obstructed views

**WHEREAS**, the City Council desires to clarify the provisions related to and applicability of undergrounding of existing overhead utilities on approvals of applications and permits related to land use and development as identified in the Beaumont Municipal Code; and

**WHEREAS**, the City has proposed to amend the title of Chapter 12.16 to more clearly reflect its application to "Utility Undergrounding Districts;" and

**WHEREAS**, the City has proposed to add Chapter 12.18 "Utility Undergrounding Requirements" to incorporate the City's policies requiring the conversion of existing overhead utilities into new underground systems as a condition related to the City's approvals for land use and development applications and permits; and

**WHEREAS**, the City has proposed to amend the City’s Zoning Code in Section 17.04.100 “Utilities” to clarify the City’s requirements applicable to both the undergrounding of existing overhead utilities and the installation of new underground utility systems as a condition related to approvals for land use and development applications; and

**WHEREAS**, duly noticed public hearing to consider the amendment to the City’s Zoning Code was conducted on this matter as required by law by the Planning Commission on XXXX; and

**WHEREAS**, the Planning Commission recommends that the City Council approve the proposed amendment to Section 17.04.100 of the Zoning Code; and

**WHEREAS**, following the Planning Commission’s recommendation, the City Council has approved the amendment to Section 17.04.100 of the Zoning Code in addition to the amendments of and additions to Title 12 of the Municipal Code; and

**WHEREAS**, duly noticed public hearing was conducted on this matter as required by law by the City Council on XXXX; and

**WHEREAS**, the City Council of the City of Beaumont has reviewed the reasons for the amendments and additions to the Municipal Code as described above.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BEAUMONT DOES FIND AND ORDAIN AS FOLLOWS:**

**SECTION 1:** The title to Chapter 12.16 of the Beaumont Municipal Code from “Utility Undergrounding” is hereby amended to read: “Utility Undergrounding Districts” is hereby approved.

**SECTION 2:** Title 12 of the Beaumont Municipal Code is hereby amended to include a new Chapter 12.18 entitled “Undergrounding of Existing Overhead Utilities” to read as specifically set forth in **Exhibit “A”**, which Exhibit is attached hereto and made a part hereof.

**SECTION 3:** The City Council hereby finds that the amendment to Title 12 of the Beaumont Municipal Code to include a new Chapter 12.18 entitled “Undergrounding of Existing Overhead Utilities” is consistent with the adopted policies in the Beaumont Municipal Code and the General Plan of the City of Beaumont.

**SECTION 4:** Section 17.04.100 entitled “Utilities” is hereby amended in its entirety to read as specifically set forth in **Exhibit “B”**, which Exhibit is attached hereto and made a part hereof.

**SECTION 5:** The City Council hereby finds that the amendment to Section 17.04.100 entitled “Utilities” is consistent with the adopted policies in the Beaumont Municipal Code and the General Plan of the City of Beaumont.

**SECTION 5:** The City Council finds that the actions contemplated by this Ordinance are exempt from the California Environmental Quality Act (“CEQA”) pursuant to Section 15060(b)(3), as

CEQA review is not required because there is no possibility that this Ordinance may have a significant effect upon the environment and the proposed text amendments constitute a minor alteration in a land use limitation under CEQA Guidelines Section 15305, and such a land use limitation is a permissible exercise of the City's zoning powers.

**SECTION 6:** The City Council hereby declares that if any provision, section, paragraph, sentence, or word of this Ordinance is rendered or declared to be invalid or unconstitutional by any final court action in a court of competent jurisdiction, or by reason of any preemptive legislation, such invalidity shall not affect the other provisions, sections, paragraphs, sentences or words of this Ordinance, and to this end the provisions of this Ordinance are severable. The City Council declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the Ordinance enforced.

**SECTION 7:** The Mayor shall sign and the City Clerk shall certify to the passage of this Ordinance and cause the same or a summary thereof to be published within 15 days after adoption in accordance with Government Code Section 36933. This Ordinance shall take effect 30 days after adoption in accordance with Government Code Section 36937.

MOVED AND PASSED upon first reading and ordered posted at a regular meeting of the City Council of the City of Beaumont, California, held on the XX day of XXXXX, by the following roll call vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

MOVED, PASSED AND ADOPTED upon second reading at a regular meeting of the City Council of the City of Beaumont, California, held on the XX day of XXXXX, by the following roll call vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

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David Fenn, Mayor

Attest: \_\_\_\_\_  
Nicole Wheelwright, Deputy City Clerk

Approved as to form:

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John O. Pinkney, City Attorney

## EXHIBIT “A”

### Chapter 12.16 Utility Undergrounding Districts

#### **Chapter 12.18 “Undergrounding of Existing Overhead Utilities ”**

##### **12.18.010 – Purpose and authority.**

This chapter establishes uniform provisions and regulations requiring conversion of existing overhead utility systems into new underground systems applicable to approvals granted by the City in accordance with Title 17 of the Beaumont Municipal Code and other applicable sections of the Beaumont Municipal Code relating to land use development applications and permits for development of private property. It is the intent of this chapter to set forth and clarify the City’s requirements for undergrounding of existing overhead utilities on, and adjacent to, property subject to land use development or permit applications to further the City Council’s legislative purpose of protecting the public health, safety and welfare through the absence of utility poles, overhead utility lines and related transmission devices in the following respects:

- a) Undergrounding of existing overhead utilities eliminates potential hazards to life and property in the event of emergencies or disasters such as earthquakes, fires, floods, hazardous or toxic waste releases, rains, and riots;
- b) Undergrounding of existing overhead utilities facilitates the delivery of emergency services to persons and property located adjacent to the public right-of-way;
- c) Undergrounding of existing overhead utilities improves or increases the accessibility of the public right-of-way for such public uses as pedestrian travel, ease of deliveries to adjacent property, and landscaping treatments;
- d) Undergrounding of existing overhead utilities eliminates the threat of downed powerlines and the resulting fires that can be caused by high winds;
- e) Undergrounding of existing overhead utilities enhances the appearance of the City and eliminates cluttered and obstructed views

##### **12.18.020 – Definitions.**

Whenever in this chapter the words or phrases defined in this section are used, they shall have the respective meanings assigned to them in the following definitions.

- A. “*Development*” means a project seeking or receiving City approvals related to land use and development in accordance with Title 17 of the Beaumont Municipal Code or other sections of the Beaumont Municipal Code requiring City permits to allow for the improvement to private property; construction of new or expansion of existing residential, commercial, industrial or other buildings; residential subdivisions; and other projects requiring City land use and development approvals.
- B. “*Improvement*” means any addition or modification to an existing building or other structure on private property subject to City land use and development permits or other permits.
- C. “*Permit*” means any permit sought to be issued by the City, or any of its officials, as a

prerequisite to the development or improvement of private property within the City, including, but not limited to, any building permit, conditional use permit, plot plan approval, grading permit, occupancy permit, site approval, subdivision approval or variance.

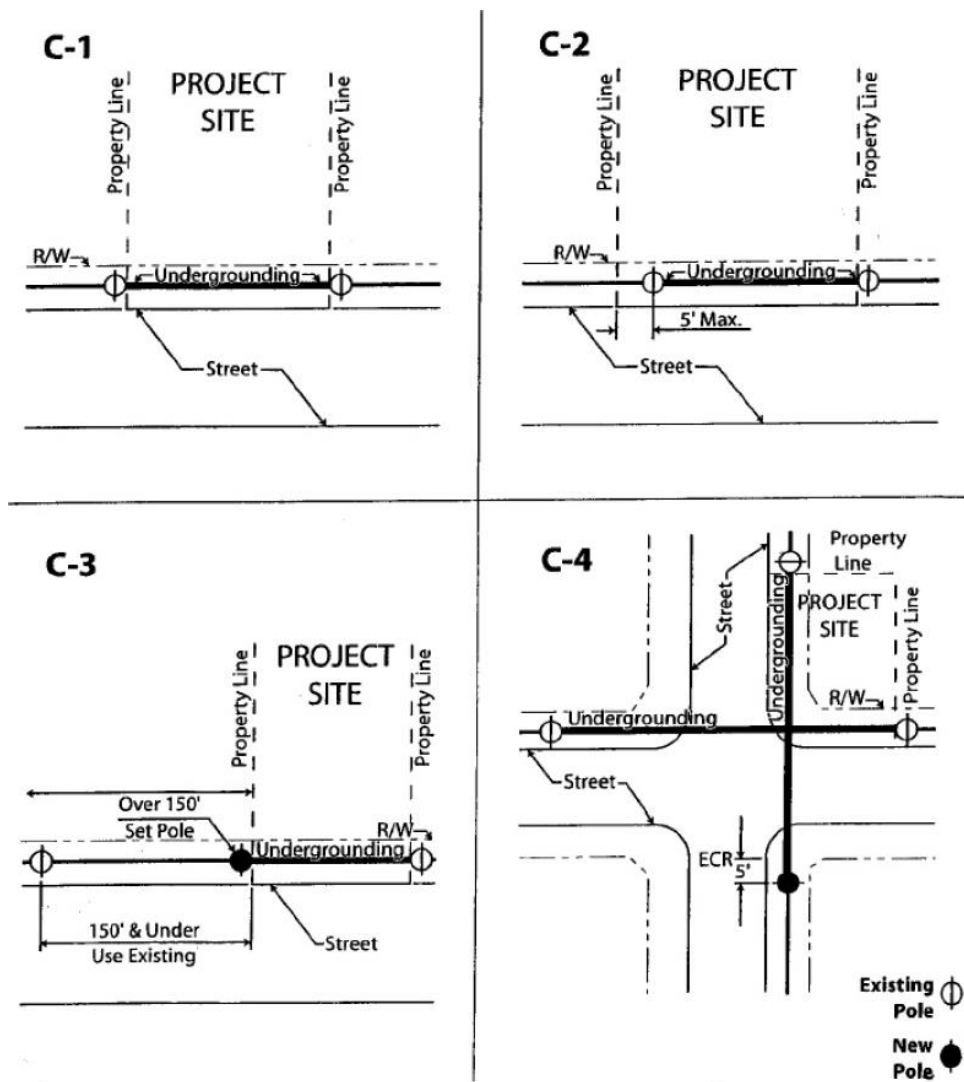
- D. “*Utility line*” means any utility line necessary, convenient or required for the transmission of energy or transmission of any communication signal to or from any property within the City, including cable television, electrical, telephone, fiber optic and other energy or communication devices such as lines, poles, transformers and related devices.

#### **12.18.030 – Requirement to underground existing overhead utility lines.**

- A. Existing overhead utility lines located on, extending across, or located adjacent to private property, including those overhead utility lines located along the perimeter of private property within utility easements and public rights-of-way of City streets overlying or bordering private property, shall be placed underground into new underground systems as required pursuant to this chapter.
- B. The requirement to place underground existing overhead utility lines shall be imposed on each and every permit or development required from the City for the development or improvement of private property within the City as required pursuant to this chapter.
- C. The requirement to underground existing overhead utility lines shall be performed by the owner and the developer of the property seeking its development or improvement, a permit or any construction thereon, at the owner’s and developer’s sole expense. The owner and developer shall arrange for the placement of existing overhead utility lines into a new underground system with the applicable utility company including the processing of any applications, permits, payment of any fees or expenses, the submission and approval of any plans and the coordination of said undergrounding with the City Engineer as required by the Beaumont Municipal Code where such undergrounding is located within utility easements or public rights-of-way.
- D. Existing overhead utility lines shall be placed underground on the property subject to the permit, development or improvement as follows:
- a. Except as otherwise provided in this subsection, the existing overhead utility lines shall be placed into a new underground system located along the entire frontage of the subject property from boundary line to boundary line as depicted in Figure C-1.
  - b. Whenever a utility pole is located on the frontage of the subject property and within five feet of the subject property’s boundary line, such existing utility pole may remain to be used as a riser with the existing overhead utility lines placed underground into a new underground system located along the frontage of the property from boundary line to the existing utility pole except for that distance of five feet or less between the utility pole and the other boundary line as depicted in Figure C-2.
  - c. Whenever an existing utility pole is located within one hundred fifty (150) feet of a

boundary line of the subject property, the existing overhead utility lines shall be placed into a new underground system located along the entire frontage of the subject property from boundary line to boundary line and from one of the boundary lines to the existing utility pole as depicted in Figure C-3. Whenever a utility pole is located more than one hundred fifty (150) feet from a boundary line of the subject property, a new utility pole shall be installed at one boundary line of the subject property and the existing overhead utility lines shall be placed into a new underground system along the entire frontage of the subject property from one boundary line to the newly installed utility pole as depicted in Figure C-3.

- d. In the event that the subject property is located on a corner where two streets intersect, the existing overhead utility lines shall be placed into a new underground system extending across one or both of the streets to the next existing utility pole provided that the utility pole is within one hundred fifty (150) feet of one of the boundary lines of the subject property as depicted in Figure C-4.



- E. No certificate of occupancy or final approval shall be issued for any property the e development or improvement of which requires the undergrounding of existing overhead utility lines unless and until compliance with this chapter shall have been accomplished to the satisfaction of the City.

**12.18.040 – Application to permits, developments and improvements.**

The requirement to underground existing, overhead utility lines created and imposed by this chapter shall apply to private property within the City whose owner or developer requires a permit from the City or who is proposing a development of the property for residential, commercial, or industrial purposes, unless otherwise exempt in accordance with Section 12.18.070.

**12.18.050 – Utility assessment form.**

- A. Upon an application for any permit or development from the City to develop or improve private property, the owner or developer shall submit a utility assessment form without which the permit application shall be incomplete and ineligible for action by the City. The utility assessment form shall require the following information:
  - 1. The name, address and telephone number of the developer and owner;
  - 2. The location of the property, public rights of way and utility easements and their legal description and depiction;
  - 3. The nature of the proposed development or improvement;
  - 4. A statement from each applicable utility company serving the property containing a general description of the existing overhead utility lines to be placed underground and an estimated cost thereof. In the absence of a cost estimate provided by the applicable utility company, the owner or developer shall provide an estimate prepared by its utility consultant using most current data available.
  - 5. If applicable, a statement by the owner or developer indicating its intent to pursue deferral of the obligation in accordance with section 12.18.070(G) or 12.18.080.
  - 6. If applicable, a statement by the owner or developer indicating its intent to pursue waiver of the obligation in accordance with section 12.17.070 or 12.18.080.
  - 7. Any other information required by the City to implement the purposes and requirements of this chapter.
- B. The City shall review the utility assessment form in order to identify the existing overhead utility lines required for placement underground unless otherwise exempted in accordance with Section 12.18.060. However, the presumption shall be that all existing overhead utility lines shall be placed underground, unless the City has received and approved the utility



assessment form that identifies the circumstances where an exemption pursuant to Section 12.18.060 applies.

- C. The approval of any development or the issuance of any permit to develop or improve private property shall be conditioned by the City with a requirement to underground each existing overhead utility line required to be placed into a new underground system as provided in this chapter.

#### **12.18.060 – Exempted utility devices.**

The following existing overhead utility lines shall be exempted from the requirement to placed underground as otherwise required in this chapter:

- A. Existing overhead utility lines operated at voltages in excess of thirty-four thousand five hundred volts (> 34.5 kV);
- B. In residential in-fill areas where property is to be developed for residential purposes where existing overhead utility lines are located along or near the rear property lot lines of the subject property to be developed and where those existing overhead utility lines provide service to adjoining residential properties that are not the subject of the permit, development or improvement;
- C. Appurtenances and associated equipment including, but not limited to, surface mounted transformers and switches, pedestal mounted terminal boxes and meter cabinets which may be left in place above ground.

#### **12.18.070 – Exemption and Deferral of certain improvements.**

The City hereby exempts from the provisions of this chapter the following permits, developments or improvements of private property meeting any one of the following criteria:

- A. Interior tenant improvements and conditional use permits for which construction is not required; or
- B. Exterior upgrading, repair or replacement of existing improvements, including but not limited to, reroofing, additions of awnings, landscaping, equipment screening, repainting and application of other exterior finishes; or
- C. Additions of functional equipment to any existing improvements, including but not limited to, air conditioners, antennae, block walls and fences, cooling towers, enclosure of outdoor storage areas, loading docks, satellite dishes, silos and water tanks; or
- D. The permitting or development of a new single-family residence on a property where the adjacent properties are serviced by existing overhead utility lines provided that the utility lines to connect the proposed single family residence to the existing overhead utility lines shall be placed underground to the proposed single family residence.

- E. Improvements to an existing commercial or industrial building where the improvement increases the building footprint or total square footage by less than three hundred (300) square feet.
- F. Improvements to an existing residential building where the improvement increases the building footprint or total square footage by less than twenty-five percent (25%).
- G. Whenever the owner or developer of a subject property is required to underground existing overhead utility lines under this chapter but the length of the project frontage is less than three hundred (300) feet, the City may in its discretion allow the owner or developer to pay a fee to the City that is equal to the unit cost of placing the existing overhead utility lines underground multiplied by the length over which the undergrounding is required, not to exceed three hundred (300) feet, in lieu of such undergrounding. The unit price for undergrounding any utility lines shall be based upon the most recent unit price for undergrounding utility lines as established by the applicable utility company that would otherwise be responsible for placing the existing overhead utility lines underground. The owner or developer shall obtain a written statement of the unit price for undergrounding the required utility lines from the applicable utility companies serving the subject property and submit it to the City for determination of the amount of the in-lieu fee. The burden is imposed on the owner or developer of the subject property to disclose at the time of application their intent to pursue an in-lieu fee, with such intent to be incorporated into the City's permit or development approval associated with the development or improvement.
- H. Whenever a state statute specifically exempts the permit or development from the requirements of this chapter.

#### **12.18.080 – Waiver and Deferral.**

If an owner or developer who is the applicant for a permit, or development application subject to the provisions of this chapter believes that the undergrounding requirement is impractical and will cause practical difficulties and unnecessary hardship due to certain topographical conditions, street configurations, underground obstacles, soil, water or other natural conditions which would make the placement of existing overhead utilities into new underground systems unreasonable, the owner or developer shall provide such notice of intent to pursue a waiver with the utility assessment form required by Section 12.18.050. The burden is imposed on the owner or developer to provide sufficient justification for a waiver to be considered by the City Council. The waiver, if requested, shall be requested and considered prior to the time the approval authority considers the permit or development application. If such waiver is granted, the City may require the owner or developer to pay an in-lieu fee in accordance with section 12.18.070(G).

#### **12.18.090 – Appeals.**

An owner or developer of private property subject to the provisions of this chapter is afforded the right to appeal a decision made by the applicable approval authority where the permit

or development application was approved with the imposition of requirements to place underground existing overhead utility lines under this chapter. The right to appeal excludes approvals of land use or development applications and in lieu fees granted by the City Council, as the opportunity to pursue a waiver of the obligation to underground existing overhead utility lines occurred during the City Council's consideration of the in-lieu fee, land use or development application in question.

The following appeal procedures shall be followed:

- A. *Appeal of City Official's Decision.* Decisions of the applicable City Official, granted by the City Official in accordance with Title 17 of the Beaumont Municipal Code and other applicable sections of the Beaumont Municipal Code relating to land use and development applications, may be appealed to the Planning Commission. All such appeals shall be filed in writing with the Secretary of the Planning Commission.
- B. *Persons Eligible to File an Appeal.* Any person may appeal a decision or action of the applicable City Official, in accordance with the terms of this chapter.
- C. *Time Limit for Filing an Appeal.* All appeals under this chapter must be filed within fifteen (15) calendar days of the date of the approval of the land use or development application. If the fifteenth (15<sup>th</sup>) day occurs on a holiday or weekend, the appeal period shall be extended to the next City workday. No appeal under this chapter shall be accepted after the appeal period has expired.
- D. *Appeals Form.* All appeals must be submitted in writing on the appropriate form provided by the City. The appeal must specifically state the grounds for the appeal and instances in which the City Official or Planning Commission allegedly erred in requiring the undergrounding of existing overhead utilities pursuant to this chapter.
- E. *Payment of Fees.* A fee shall be paid concurrent with filing of the appeal in accordance with the fee schedule established by resolution of the City Council.
- F. *Scheduling of Public Hearing.* Within 15 days upon receipt of an appeal, the City Clerk shall set the matter for public hearing. The hearing shall be noticed as provided for in Chapter 17.02 of the Beaumont Municipal Code.
- G. *Findings.* All actions to affirm, reverse, or modify in whole or part any decision of the applicable City Official or Planning Commission shall be made with supporting findings for the affirmation, reversal, or modification.

## EXHIBIT "B"

### 17.04.100 - Utilities.

The following performance standards with respect to the provision of utilities and infrastructure are outlined in this Section to ensure the service demands of existing and future development are met.

- A. Provision of **New Utility Service and Connections**. The developer or owner of a property **proposing to improve or otherwise develop the property in accordance with the provisions of Title 17 "Zoning" of this Municipal Code, or such other codes and regulations applicable to development of property**, shall be responsible for **furnishing and installing all required utility service and connections**, in cooperation with **and as required by the applicable utility provider**.
- B. **Undergrounding of Utility Lines Required**. In order to protect the public safety and improve the appearance and functioning of the community, all **new** electrical distribution lines of ~~16~~ **34.5** kilovolts or less, **and all new** telephone, cable television, fiber optic, and similar wires and lines that provide customer services shall be installed **within** underground **systems**, except for:
  - 1. Utility poles within six feet of the rear lot line used for terminating underground facilities.
  - 2. Temporary utilities while construction is ongoing.
  - 3. Risers and poles as provided by developer or owner.
  - 4. Meter boxes, terminal boxes, and similar equipment.
  - 5. Transformers, except that all transformers shall be located in vaults.
  - 6. Infill development in R-SF Zones where existing overhead lines serve the area, subject to the approval of the Director of Community Development.
- C. **Undergrounding of Existing Utility Lines Required**. In order to protect the public safety and improve the appearance and functioning of the community, existing electrical distribution lines of 34.5 kilovolts or less, and all existing telephone, cable television, fiber optic and similar wires and lines located on or adjacent to property being developed shall be converted to new underground systems subject to and in accordance with the provisions of Chapter 12.18 "Undergrounding of Existing Overhead Utilities" of the Beaumont Municipal Code.
- D. *Electrical Disturbance*. No activity shall be permitted if it causes electrical disturbance that affects the operation of equipment located beyond the property line. Radio, television, and microwave transmitters shall be suitably wired, shielded, and controlled so that they do not emit electrical waves or impulses that may affect other electronic devices or equipment.