

ORDINANCE NO. 82

AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON, ESTABLISHING MINIMUM REQUIREMENTS AND PROCEDURES FOR THE UNDERGROUND INSTALLATION OF ELECTRIC AND COMMUNICATION FACILITIES WITHIN SHORELINE.

WHEREAS, the Shoreline City Council finds that the health, safety and welfare of residents of the Shoreline community require that the electric and communication facilities be relocated underground as soon as practicable, and

WHEREAS, RCW 35A.47.040 authorized code cities such as the City of Shoreline to regulate by ordinance publicly- and privately-owned facilities for public service, including electrical, signal and telecommunications, and

WHEREAS, the undergrounding of overhead wires promotes the health, safety and welfare of the community by removing potential hazards from the right-of-way, thereby benefiting the safety of motorists, passengers and pedestrians, helps achieve a more aesthetically pleasing community, improves property values, and reduces the disruption of service delivery caused by natural disasters, and

WHEREAS, this ordinance has been passed by a majority of the City Council; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF SHORELINE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Policy. It is the policy of the City to require compliance with the following orderly program pertaining to the relocation of all existing overhead wires including, but not limited to, telephone, telegraph, cable television, and electrical power, and to require the underground installation of all electrical and communication facilities, with certain exceptions noted hereinafter. The health, safety, and general welfare of the residents of the community require that all such existing overhead facilities be relocated underground as soon as practicable in accordance with the requirements included in this ordinance, and that all new facilities specified in this ordinance be installed underground, in that among other things, the undergrounding removes potential hazards from the right-of-way, thus benefiting the safety of the motoring public, passengers and pedestrians and further promotes the general welfare in achieving a more aesthetically pleasing community, improving property values, and decreasing the vulnerability of service delivery due to the effects of natural disasters.

Section 2. Scope. Subject to the excepted facilities listed in Section 4, this ordinance shall apply to all electric facilities, to all communication facilities, and to all facilities that are currently attached, or that may in the future be attached, above ground to poles, including but not limited to electrical, telephone, telegraph, and cable television facilities.

Section 3. Definitions. The following terms as used in this ordinance shall be defined as follows:

- (a) **Entity** - shall include, but shall not be limited to, any of the following: Franchisees of the City of Shoreline, the City of Shoreline, Local Improvement District (LID), Road Improvement District (RID).
- (b) **Facilities** - shall include, but shall not be limited to, wires of any gauge or material, poles or other structures to support wires, transformers or other equipment with the purpose of amplifying, converting, or otherwise acting on the current or signal carried by wires.
- (c) **Owner of Record** - shall mean the person or entity listed as the owner of the property in the records of the King County Auditor.

Section 4. Facilities excepted from chapter requirements.

This ordinance shall not apply to the following facilities:

- (a) Freestanding street lights;
- (b) Police and fire sirens, or any similar municipal equipment, including traffic control equipment;
- (c) Electrical carrying facilities of a voltage over 35-kV; (This exemption only applies to physical structures strictly necessary for the conveyance of an electrical charge in excess of 35-kV. Other facilities attached to these structures are not exempted by this paragraph.)
- (d) Communication facilities relying on a carrying source other than that which could be installed above ground on poles and which cannot function underground as designed including, but not limited to, antennas and satellite communication systems.

Section 5. Undergrounding of Existing Facilities in Commercial and Industrial Areas - When Required. The following requirements apply to all areas which are zoned in Title 21A as RB (Regional Business), CB (Community Business), and I (Industrial):

- (a) Overhead facilities, with the exceptions previously noted in Section 4, existing on the effective date of this ordinance or for which a permit has been granted within 15 days of the effective date, will be allowed to remain above ground until one of the following events:
 - (1) The City desires to engage in any capital improvement or public works project which will disturb existing facilities or will facilitate the installation of a trench for underground facilities.
 - (2) The passage of fifteen (15) years from the effective date of this ordinance.
 - (3) An entity instigates a joint trenching project, as defined in Section 12 hereof, that could reasonably serve to replace existing overhead facilities.
- (b) All extensions, additions, duplications, or rebuilds (excluding repair of casualty damage) of existing overhead facilities or any new facilities shall be installed underground from and after the effective date of this ordinance.

(c) All areas rezoned, after the effective date of this ordinance, to zoning classifications substantially similar to those to which this section applies shall become subject to the provisions of this section upon the effective date of such rezoning.

Section 6. Undergrounding of Existing Facilities in Residential Areas - When Required. The following requirements apply to all areas which carry zoning classifications other than those to which Section 5 applies:

(a) Overhead facilities, with the exceptions previously noted in Section 3, existing on the effective date of this ordinance or for which a permit has been granted within 15 days of the effective date, will be allowed to remain above ground until one of the following events:

(1) The City desires to engage in any capital improvement or public works project which will disturb existing facilities or will facilitate the installation of a trench for underground facilities.

(2) An entity instigates a joint trenching project, as defined in Section 12 hereof, that could reasonably serve to replace existing overhead facilities.

(b) All extensions, additions, duplications, or rebuilds (excluding repair of casualty damage) of existing overhead facilities, or any new facilities, shall be installed underground from and after the effective date of this ordinance.

(1) Entities may avoid the mandate of paragraph (b) in areas serviced by overhead facilities on the effective date of this ordinance by entering into an Undergrounding Cooperation Agreement with the City or other contractual agreement which contains substantially the same terms as an Undergrounding Cooperation Agreement and by its terms exempts the parties from this paragraph. Nothing in this paragraph shall remove an entity's obligation to comply with paragraph (a) of this Section.

(c) All areas rezoned, after the effective date of this ordinance, to zoning classifications substantially similar to those to which this section applies shall become subject to the provisions of this section upon the effective date of such rezoning, however, in no case shall the installation of overhead facilities be allowed in an area which has previously been undergrounded.

Section 7. City Projects - Pole Removal Required. All capital improvement projects proposed by the City of Shoreline that disturb existing overhead facilities in the public right-of-way shall be designed to include the removal of utility poles and the undergrounding of overhead facilities in that right-of-way in accord with the requirements of this ordinance. The mandate of this Section may be waived if the City Manager or designee specifically finds that the proposed project is inappropriate for undergrounding. Nothing in this paragraph shall be read to require the City to bear the costs associated with such removal or undergrounding.

Section 8. Cost. The cost and expense of relocating existing overhead facilities, or installing new facilities underground, shall be borne by the serving utilities to the extent allowed by State and Federal regulations, except that disconnection from existing overhead facilities and connection of the undergrounding facilities from the edge of the right-of-way to

the abutting land owners shall be borne by the abutting land owners; provided, however, that nothing in this section shall preclude a contractual agreement governing who is to bear the cost of undergrounding as agreed upon between the utility and affected parties.

Section 9. Design standards. The design standards contained in the City of Shoreline's Development Code shall apply once adopted. The following standards shall apply during the interim period:

(a) All conductors, switches, transformers, and regulating devices shall be installed in accordance with the applicable national, State, and local safety standards. All structural devices shall be designed in accordance with the provisions of the latest edition of the Uniform Building Code.

(b) All vaults, handholds, ventilation gratings and access covers and conduit in public rights-of-way shall be strong enough to withstand a 10,000 pound wheel load.

(c) Any equipment excepted from these underground requirements or otherwise permitted to be installed above ground shall be:

(1) Placed within an enclosure or part of the building being served; or

(2) Suitably screened with masonry or other decorative panels and/or evergreen trees, shrubs, and landscaping planted in sufficient depth to form an effective and actual sight barrier within five years. Where shrubbery is the primary screening element, minimum shrub height shall be seven feet (except for equipment not exceeding such height) for the bulk of the screen, with lower shrubs in foreground to eliminate any gaps in screening.

The utility shall be responsible for the installation, maintenance, repair, or replacement of the aforementioned screening materials when the real property on which the above-ground facility is located is owned by the utility. When said above-ground facility is located on non-utility owned real property, the expense of installation, maintenance, repair, or replacement of the screening materials outlined above shall be allocated between the owner of the property and the utility as established by contract between the parties.

(d) Space frames and structural arrangements for holding equipment shall be designed to have an uncluttered and neat appearance;

(e) Plans for all above-ground installations shall be submitted to the planning commission for approval of site screening prior to the issuance of a permit by the building official.

Section 10. Variance procedure.

(a) All applications for variances from the requirements of this ordinance shall first be filed with the Development Services Coordinator or designee.

(b) A variance shall not be granted unless the Development Services Coordinator or designee finds that all of the criteria set forth in the Procedural Section of the City of Shoreline's Municipal Code, when adopted, have been satisfied. The criteria set forth in Section 11 hereof shall be used in the interim. In addition, the Development Services Coordinator or designee must find that the utility owner or user or any other affected party can demonstrate that it would work an undue hardship to place the facilities concerned underground. '*Undue hardship*' means a technological difficulty associated

with the particular facility or with the particular real property involved, which outweighs the benefit to the public derived from the underground installation.

(c) Shoreline City Ordinance No. 38 shall be followed as it relates to fees, hearings, notices, decisions, appeals and other procedural matters.

(d) The Procedural Section of the City of Shoreline's Municipal Code shall control over any conflicting provision contained in this section.

Section 11. Variance Criteria. A variance from the requirements of this ordinance shall not be granted by the Development Services Coordinator or designee without findings that all the following facts and conditions exist:

(a) The variance shall not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity and in the zone in which the property on behalf of which the application was filed is located;

(b) The variance is necessary because of special circumstances relating to the size, shape, topography, location or surrounding of the subject property in order to provide it with use rights and privileges permitted to other properties in the vicinity and in the zone in which the subject property is located;

(c) The granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and in the zone in which the subject property is situated;

(d) The authorization of such variance will not adversely affect the implementation of the comprehensive plan adopted in accordance with RCW 36.70A;

(e) The granting of such variance is necessary for the preservation and enjoyment of a substantial property right of the applicant possessed by the owners of other properties in the same zone or vicinity.

Section 12. Joint Trenches Required. Any entity planning a trenching project, as defined herein, shall receive preliminary approval of the project from the appropriate permitting authority and then within ten (10) days notify all entities maintaining overhead transmission facilities in the same corridor of the scope and nature of the project. Such notification shall include a full description of the requirements of this ordinance and shall identify all facilities in danger of being removed by the operation of this ordinance. Uncertainty as to which facilities are in danger of being removed by operation of this ordinance shall be clarified by the Development Services Coordinator or designee on a case by case basis. The final approval of permits for such project will not be provided before 60 days after the appropriate permitting authority has been provided evidence that all entities have been notified as required herein. The above ground systems of all entities so notified will be removed by the owner thereof no later than 90 days following the completion of the project.

(a) "Trenching Project" is defined as any project initiated by an entity for the purpose of undergrounding some portion of the overhead transmission system, or any project designed to include the disruption of road improvements or the digging of a trench in the public right-of-way for a distance greater than 500 feet in length that would reasonably reduce the cost of undergrounding facilities that could reasonably serve to replace existing overhead facilities.

- (b) The following activities are exempt from the requirements of this section:
- (1) those activities in areas that do not have existing overhead facilities;
 - (2) those activities by water, wastewater, or natural gas franchisees that, in the opinion of the Development Services Coordinator or designee, due to design standards or the nature of the proposed project, any potential efficiencies gained by a joint project would be outweighed by the additional disruption to the community caused by requiring the undergrounding of existing overhead facilities.

Section 13. Enforcement. Any violation of any provision, or failure to comply with any of the requirements of this ordinance, shall be a civil violation subjecting the offender to a civil penalty of up to \$100.00 for each of the first five days that a violation exists and up to \$500.00 for each subsequent day that a violation exists. Notice and Order and hearing procedures shall correspond to those established for the enforcement of land use regulations. Payment of any such monetary penalty shall not relieve any person of the duty to correct the violation as set forth in the applicable Notice and Order.

Section 14. Notice to owners to convert. When an underground utility installation, as provided for in this ordinance, is completed and service therefrom is available, the City Clerk shall mail a notice to the Owners of Record of all structures or improvements to which service from the underground installation is available, the notice shall state that:

- (1) Service from the underground facilities is available;
- (2) All electric and communication service lines from existing overhead facilities within the area to any structure or improvement must be disconnected and removed within 90 days after the date of mailing the notice;
- (3) Should the owner fail to convert such service lines from overhead to underground within said 90 days, the City will order the electric and communication utilities to disconnect and remove the service lines;
- (4) Should the owner object to the ordered disconnection and removal of the service lines, the owner may file written objections thereto with the City Clerk within 30 days after the mailing of the notice. Failure to object within the 30 days will constitute a waiver of the owner's right to object to such disconnection and removal.

Section 15. Order to disconnect. If the owner of any structure or improvement served from existing overhead electric and communication facilities shall fail to convert to the available underground service within 90 days after the notice to do so was mailed, the City shall order the electric and communications utilities to disconnect and remove all such service lines, Provided, that if the owner has filed written objection to such disconnection and removal within 30 days after the mailing of the notice, the City shall not order such disconnection and removal until after the hearing on such objection.

Section 16. Objection to disconnection - Hearing. Upon the owner's timely filing of written objections to disconnection and removal of service lines, the City Council shall conduct a hearing to determine whether the removal of all or any part of the service lines is in the public benefit. The hearing shall be held at such time as the City Council may establish and shall be in

accordance with its regularly established procedures. The determination reached by the City Council shall be final.

Section 17. Implementation. This ordinance shall be prospective in application and shall not apply to any CIP project for which the design has been completed by the effective date of this ordinance, or for which the Shoreline City Council has specifically found its application to be inappropriate. This ordinance shall be implemented in accord with Shoreline's Comprehensive Plan.

Section 18. Effective Date. This ordinance shall take effect and be in full force five (5) days after the date of publication. The City Clerk is hereby directed to publish this ordinance in full.

PASSED BY THE CITY COUNCIL ON MAY 13, 1996.



Mayor Connie King

ATTEST:



Sharon Mattioli, CMC
City Clerk

APPROVED AS TO FORM:



Janet Garrow
Interim City Attorney

Date of Publication: May 16, 1996
Effective Date: May 21, 1996