

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF SAN JOSE ESTABLISHING
RULE 20A UNDERGROUND UTILITY DISTRICT ALONG McKEE
ROAD, FROM JOSE FIGUERES TO NORTH JACKSON AVENUES**

WHEREAS, by Resolution No. 78466, the City Council of San José set a Public Hearing on January 23, 2018 at 1:30 P.M., in the Council Chambers of the City of San José, City Hall, 200 E. Santa Clara Street, at the corner of Fourth and East Santa Clara Streets, San José, to ascertain whether an Underground Utility District should be established in the area designated as the "McKEE ROAD UNDERGROUND UTILITY DISTRICT" (hereinafter called "District") and more fully described and shown on EXHIBITS A-1 and A-2 hereto; and

WHEREAS, written notice of the Public Hearing has been given pursuant to Section 15.24.050 of the San José Municipal Code, such hearing has been duly and regularly held, and all persons interested have been given a reasonable opportunity to be heard; and

WHEREAS, the criteria to form a district as set forth in San José Municipal Code Section 15.24.060 include:

- a. Removal of overhead wires and placement underground will eliminate an unusually heavy concentration of poles and overhead wires within the Proposed District; and
- b. Public streets or rights-of-way within the Proposed District are extensively used by the general public and carry a heavy volume of pedestrian or vehicular traffic; and
- c. Public streets or rights-of-way within the Proposed District adjoin or pass

through a civic area or public recreation area or an area of unusual scenic interest to the general public; and

WHEREAS, pursuant to Section 15.24.060 of the San José Municipal Code, the City Council hereby finds and determines, based on evidence presented at the Public Hearing including the memorandum from the Director of Public Works dated January 3, 2018, and attached hereto as Exhibit A-3, that the above conditions exist within the proposed district, and public necessity, health, safety, and welfare require and it is in the general public interest that existing poles and overhead wires within the District be removed therefrom and thereafter prohibited and that wires and associated facilities within the District for transmitting, conducting, conveying, distributing, or supplying electricity for the purpose of providing light, heat, power, telephone, telegraph, communication, television, or other similar or associated service be installed underground; and

WHEREAS, on October 5, 2017, this Ordinance was found to be consistent to the Mitigated Negative Declaration for the Citywide Utility Undergrounding Program and City-Issued Excavation/Encroachment Permits Project (approved January 22, 2009), PP08-257;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of San Jose:

SECTION 1. The City Council hereby declares that a certain area of the City of San Jose described and shown on Exhibits A-1 and A-2, attached hereto, made a part hereof, and incorporated herein by reference is established as an underground utility district to be designated "McKEE ROAD UNDERGROUND UTILITY DISTRICT" and orders and requires that existing poles and overhead wires within said District be removed therefrom by the operators of the utilities and thereafter prohibited and that wires and associated facilities within said District for transmitting, conducting, conveying, distributing, or supplying electricity for the purpose of providing light, heat,

power, telephone, telegraph, communication, television, or other similar or associated service be installed underground subject to all of the provisions and exceptions contained in Part 3, Chapter 15.24, of the San Jose Municipal Code.

SECTION 2. Existing poles and overhead wires and associated facilities within the District for transmitting, conducting, conveying, distributing or supplying electricity for the purpose of providing heat, power, telephone, telegraph, communication, television or other similar or associated service shall be removed by the operators of the utilities ("Utility Companies") no later than November 30, 2020.

Wires and associated facilities within the District for transmitting, conducting, conveying, distributing or supplying electricity for the purpose of providing heat, power, telephone, telegraph, communication, television or other similar or associated service shall be installed underground no later than November 30, 2020. Persons owning any property as shown on the last equalized assessment roll served by overhead service drops which are extended from poles or spans located within the District must be ready to receive light, heat, power, telephone, telegraph, communications, television, or other similar or associated service by means of underground wires and facilities no later than November 30, 2020.

SECTION 3. The City Council does hereby request that the Pacific Gas & Electric Company and AT&T provide payment, computed pursuant to Rule 20 and Rule 32 respectively for the installation of no more than one hundred (100) feet (measured from the property line) of trenching, excavation, conduit installation, backfill, and surface restoration of each customer's individual service lateral to each qualifying premise affected by the District.

SECTION 4. Within twenty (20) days of the effective date of this ordinance, the Director of Public Works shall give written notice to all affected Utility Companies owning, possessing, or controlling any poles or overhead wires in the district and all

owners and occupants of property affected by said District as required by Sections 15.24.150 and 15.24.160 of the San José Municipal Code.

SECTION 5. In lieu of a notice to the Utility Companies for disconnection of service pursuant to Section 15.24.140 of the San José Municipal Code, the Director of Public Works may give an additional notice to any noncompliant property owners or occupants in said District pursuant to Section 15.24.170 of the San José Municipal Code.

SECTION 6. All encroachment permits, agreements or contracts issued or approved with the Utility Companies related to undergrounding activities in the District shall include term(s) and/or condition(s) requiring compliance with Mitigated Negative Declaration project file number PP08-257.

SECTION 8. The Director of Public Works is hereby empowered to extend the time for any act required under this ordinance for the period of time and for the reasons set forth in Section 15.24.180 of the San José Municipal Code.

PASSED FOR PUBLICATION of title this _____ day of _____, 2018, by the following vote:

AYES:

NOES:

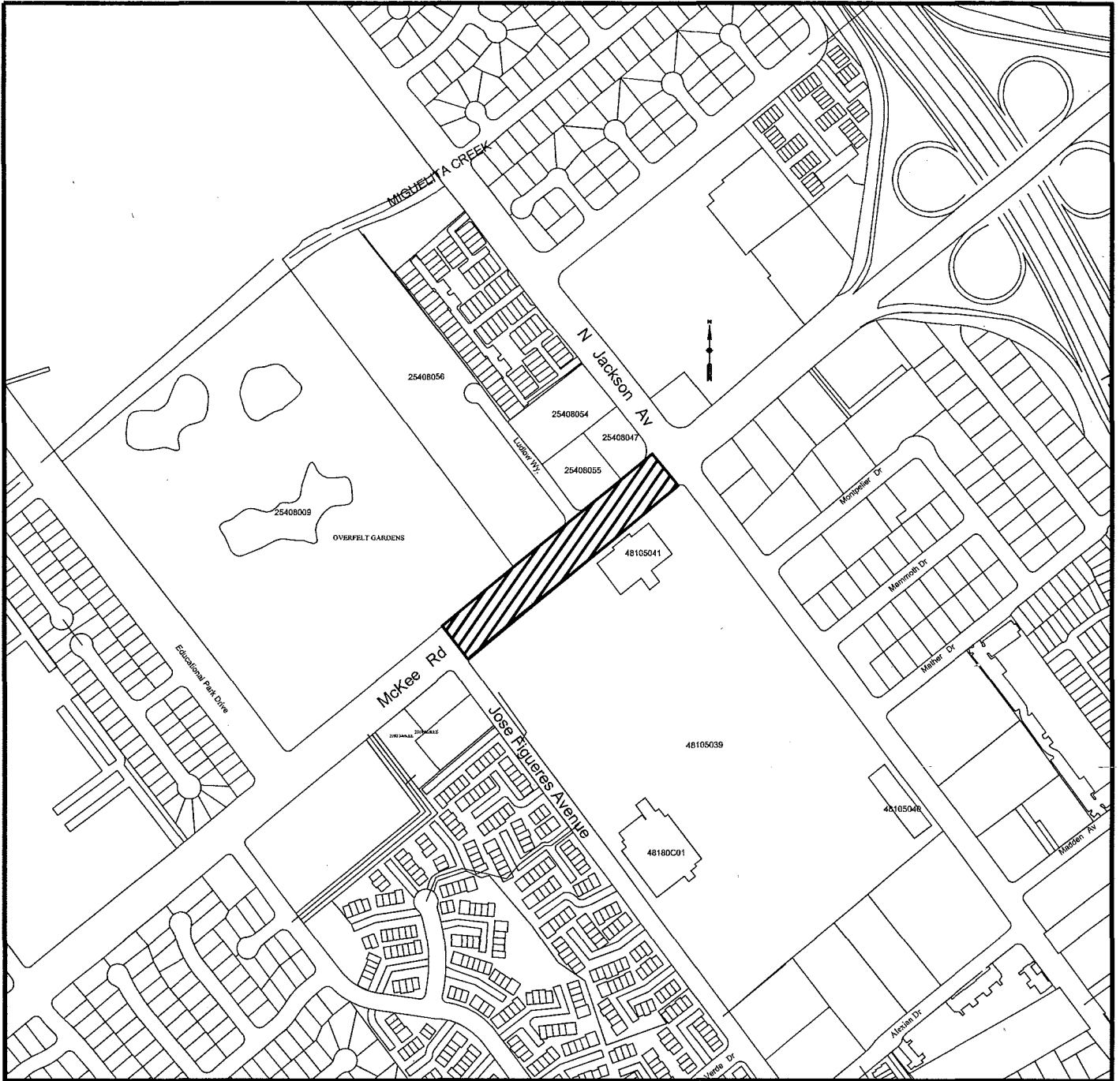
ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk



CITY OF SAN JOSE
 PROPOSED McKEE ROAD
 UTILITY UNDERGROUND DISTRICT
 RULE 20B

LEGEND

ELECTRICAL CONVERSION - C

DISTRICT BOUNDARY -



EXHIBIT A-2

**DESCRIPTION OF PROPOSED BOUNDARY OF
AN UNDERGROUND UTILITY DISTRICT
ALONG McKEE ROAD
BETWEEN JOSE FIGUERES AND NORTH JACKSON AVENUES.**

All the certain real property situated in the City of San José, County of Santa Clara, State of California, described as follows:

Beginning at the intersection of the centerline of Jose Figueres Avenue and the southeasterly right of way line of McKee Road;

Thence proceeding in a northeasterly direction $1031 \pm'$ parallel to the centerline of McKee Road to a point of intersection with the centerline of North Jackson Avenue;

Thence proceeding in a northwesterly direction $135 \pm'$ perpendicular to the centerline of McKee Road to a point of intersection with the northwesterly right of way line of McKee Road;

Thence proceeding in a southwesterly direction $1031 \pm'$ parallel to the centerline of McKee Road to a point of intersection of the extension of the centerline of Jose Figueres Avenue;

Thence proceeding in a southwesterly direction $135 \pm'$ perpendicular to the centerline of McKee Road to the true point of beginning.

COUNCIL AGENDA: 1/23/18
ITEM:

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Barry Ng

**SUBJECT: McKEE ROAD RULE 20B
UNDERGROUND UTILITY
DISTRICT**

DATE: January 3, 2018

Approved

Date

COUNCIL DISTRICT: 5

RECOMMENDATION

Conduct a Public Hearing and adopt an ordinance to establish a Rule 20B Underground Utility District along McKee Road, between Jose Figueres Avenue to North Jackson Avenue.

OUTCOME

Approval of this ordinance will establish the McKee Road Underground Utility District in accordance with the San José Municipal Code. In addition, it will enable City staff to direct utility companies to begin design of the project. Establishment of this district will improve the appearance, pedestrian mobility and ease of utility equipment maintenance within the area described above.

BACKGROUND

San José Municipal Code (Underground Utility Fee Ordinance) Chapter 15.26, provides that developers either pay a fee (currently the fee is \$469 per foot of frontage, in-lieu of performing the overhead-to underground conversions along the street frontage where the development is occurring), or as a condition of development, underground the overhead utility facilities on the street or streets adjacent to the project. Only projects that develop adjacent to designated streets as defined in the Undergrounding Utility Fee Ordinance are subject to the undergrounding in-lieu fee conditions. The in-lieu fee is adjusted annually, effective January 31 of every year, according to the Construction Cost Index for the San Francisco area from the Engineering News-Record magazine.

The City uses the in-lieu fees to legislate, design, bid, manage and construct undergrounding projects on designated streets. McKee Road between Jose Figueres and North Jackson Avenues

(see Attachment A map) is a designated street and sufficient funds have been collected to proceed with the project.

The proposed McKee Road Rule 20B Underground Utility District (District) is included in the Fiscal Year 2016/17 – 2021/22 Workplan for the Rule 20A and Rule 20B (In-Lieu Fee) Underground Utility Program, approved by Council on May 23, 2017. It meets criteria approved by the California Public Utilities Commission (CPUC) and the criteria established by the City in 1989 to complete projects that front city facilities such as parks, libraries and fire stations.

On December 19, 2017, Council approved the adoption of a resolution to consider the establishment of a Rule 20B Underground Utility District along McKee Road between Jose Figueres and North Jackson Avenues and in doing so, set a Public Hearing for January 23, 2018, at 1:30 p.m.

ANALYSIS

On December 20, 2017, notices of a public hearing were mailed to all utility companies, owners of property, and owners adjacent to the proposed District.

A schedule for establishment and implementation of the proposed Underground Utility District is presented in Attachment B.

The project will complete undergrounding along McKee Road from Jose Figueres Avenue to the west and North Jackson Avenue to the east of the proposed project site. Typically these type of projects require the involvement of property owners to convert their existing overhead electrical services to accept the new underground service. This project site has no existing overhead services to private properties and will not require property owners to hire contractors to perform the overhead electrical service work which will avoid any coordination issues.

Tentatively, construction is scheduled to start in June 2020, and to be completed in November 2020. The long duration is intended to allow for utility design and the expiration of the City's pavement moratorium for this portion of McKee Road. A more detailed schedule for the establishment and implementation of the proposed District is presented in Attachment B.

EVALUATION AND FOLLOW-UP

Upon City Council's approval of the ordinance at the public hearing, City staff and utility companies will begin design of the project. Once the design is near completion, Public Works will mail schedule updates to all property owners within the legislated district. No electrical conversion work is necessary from the property owners. In addition, continuous coordination will occur during the design and construction phases of the project with the adjacent property owners and other stakeholders.

PUBLIC OUTREACH/INTEREST

The following outreach has been and will be conducted as part of Section 15.24 of the Municipal Code for the purposes of establishing underground districts.

A letter was mailed out to all the property owners and tenants within the proposed District on August 25, 2017, to inform the public of this undergrounding project. Property owners and tenants were assured that the utility companies would minimize impacts of service interruptions and provide approximately 7-10 days notification of service interruptions. It was explained that power interruptions typically last 3 to 4 hours and other utility interruptions are shorter in duration. In addition, property owners were assured that the City's contractor, PG&E, Comcast, AT&T and Zayo construction crews would provide access to their properties at all times during construction. Property owners and tenants were requested to contact staff either by e-mail or phone to answer questions, receive comments or set up a one on one meeting. No comments or questions have been received to date. They were also informed that a date would be set for a public hearing to allow them to provide comment in front of the City Council.

There are no private electrical service conversions required within this District. This eliminated many of the questions City staff usually receives from property owners on these type of projects.

On December 19, 2017, Council approved the adoption of a resolution to consider the establishment of a Rule 20B Underground Utility District along McKee Road between Jose Figueres and North Jackson Avenues, and in doing so, set a Public Hearing for January 23, 2018, at 1:30 p.m. Furthermore, on December 20, 2017, notices of a public hearing were mailed to all utility companies, owners of property, and owners adjacent to the proposed District.

Upon Council's approval of the ordinance at the public hearing, Public Works will mail a notice of adoption of ordinance to all utility companies and property owners of property adjoining the proposed District.

Prior to the start of construction activities, property owners and tenants will receive an update to the schedule of the project and the City's contractor will place "Door Hanger" construction notices on properties adjoining the proposed District and those affected by construction.

On January 9, 2018, staff will transmit a supplemental memo should any comments or protest be received for consideration at the public hearing.

This memorandum will be posted on the City's website for the January 23, 2018, City Council meeting.

COORDINATION

The establishment of the proposed District and project schedule have been coordinated with the Department of Transportation, City Manager's Budget Office, and Planning, Building and Code

Enforcement Department. In addition, the project has been coordinated with PG&E, AT&T, Comcast, and Zayo Group. This memo and the required ordinance to establish the District have been reviewed by the City Attorney's Office.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

COST SUMMARY/IMPLICATIONS

1. AMOUNT OF RECOMMENDATION/COST OF PROJECT: None
2. COST OF PROJECT:

Construction	\$509,400
Project Delivery	255,700
PG&E Rule 20B Agreement (Estimate)	110,000
AT&T Rule 32A.2 Agreement (Estimate)	4,000
Comcast Agreement (Estimate)	8,000
Contingency (10%)	50,900
TOTAL PROJECT COSTS (ESTIMATED):	\$938,000
3. SOURCE OF FUNDING: Fund 416 - Underground Utility Fund
4. OPERATING COSTS: This project has no significant impact on the General Fund operating budget.

CEQA

CEQA: Determination of Consistency to the Mitigated Negative Declaration for the Citywide Utility Undergrounding Program and City-Issued Excavation/Encroachment Permits Project (approved in January 22, 2009), PP08-257.

/s/
BARRY NG
Director of Public Works

Attachment A: Proposed McKee Road Utility Underground District Rule 20B Map
Attachment B: Underground Utility District Establishment Schedule

For questions, please contact Michael O'Connell, Deputy Director, at (408) 975-7333.