

EXHIBIT “A”
RESOLUTION R22-09-20

Title XV, Chapter 151: “Public Rights-of-Way; Encroachments”, Section 140 Utilities Encroachment Permit: is amended as follows:

§ 151.140 UTILITIES ENCROACHMENT PERMIT.

(A) *Application process.* Any person desiring an encroachment permit pursuant to this section shall file an application with the Engineering Division in the form prescribed by the city, together with that part of the non-refundable application processing fee established by Council resolution. The full fee shall be paid on demand from the city and shall be in an amount established by the City Manager as necessary to recover all reasonably related costs incurred by the city to review and process the application.

(B) *Special terms and conditions for the encroachment permit described in this section.* In addition to the general terms and conditions for all encroachment permits listed above, permits issued pursuant to this section shall also comply with the undergrounding of existing overhead and proposed utility lines per § 152.030 and § 155.057, respectively.

(C) *Fees.*

(1) Entities subject to this permit shall pay:

(a) The encroachment permit application processing fee which covers the cost of reviewing and processing the application provided, however, public utility corporations, counties, state agencies and adjacent cities, for conformity, will not be required to pay the permit application processing fee;

(b) The inspection fee which covers the cost of inspection of the construction, work, or installation to insure it meets all city requirements;

(c) A fee to recover all of the reasonable costs associated with construction, maintenance and operation of permittee’s facilities in the highway, including but not limited to all reasonable and supportable costs associated with the damage caused to the highway; and

(d) In addition to the permit fees, the permittee shall also pay such use fees as spelled out in their use agreement with the city.

(2) Each of these fees will be established by Council resolution provided however that application processing fee may be established based on cost as set forth hereinabove.

(D) *Examples.* Examples of utilities for which this permit would be applicable would be non-city owned or operated water, sewer, irrigation, effluent, electric, and gas lines.

Title XV, Chapter 152: “Property Development; Off-site Construction Improvement Requirements”, Section 30 General Provisions: is amended as follows:

§ 152.030 GENERAL PROVISIONS.

(A) The developer shall place underground all existing overhead utility lines, including but not limited to telephone, cable television and electric power, except electrical lines exceeding 13kV capacity, either within a proposed development or redevelopment project or within public rights-of-way or easements adjacent to the project, prior to issuance of a certificate of occupancy. This requirement shall apply to all projects submitted for approval or re-approval under the provisions of the site development in the zoning code. Utility poles and lines are defined herein as the poles, structures, wire, aerial cables, and related facilities used in the distribution of electricity or in the transmission of telecommunications, telegraph, data, radio, or television communications. This requirement includes utility lines on and adjacent to the project, including lines which extend across public streets, alleys, and/or easements adjacent to the property being developed or redeveloped. Existing utility lines within or adjacent to a project shall be under-grounded up to the first existing pole beyond the limits of the property. This requirement includes the undergrounding of all existing overhead service lines attached to the lines to be removed along with necessary conduit, supports, restoration and the like, necessary to convert the service line from overhead to underground. The requirement shall apply regardless of the existence of easements for overhead lines. When high-voltage power lines, above 13 kV or similar, are present on the same poles as the lower voltage lines, all lines other than the high-voltage lines shall be placed underground.

(B) Equipment appurtenant to the underground facilities, such as surface-mounted transformers, pull boxes, pedestal cabinets, service terminals, telephone splice closures, concealed ducts, or other similar on-the-ground facilities normally used with or as approved by the City Engineer, may be maintained above ground with the written permission of the City Engineer for the specific facility to be left above ground.

(C) The developer or owner of a development or redevelopment project shall be responsible to make necessary arrangements with the affected utility companies for the installation of required underground facilities, including the design and payment of any cost therefore as a condition of plan approval. Nothing contained herein is intended to obligate a providing utility company to install the underground facilities without reimbursement.

(D) In those instances where poles to be removed include street lights, the street lights will be replaced with freestanding poles by the developer in accordance with current street light standards.

(E) Relief from undergrounding requirements may be considered, at the discretion of City Council, under the following conditions.

(1) Deferment of undergrounding may be requested by a developer in cases where the utility frontage is small (generally less than 1,000 feet in length). When deferment is approved, the developer shall obtain an estimate of undergrounding costs from all

affected utility companies. The developer shall then be required to provide a cash deposit, letter of credit, certificate of deposit, or other security acceptable to the City Attorney, in an amount equal to the estimated under-grounding costs, as provided by the utility company, associated with the utility frontage of the project. The developer shall also be required to install the ductwork (conduit) required by the utility companies for the future undergrounding prior to issuance of certificate of occupancy. Phasing of projects will be considered based on the particular situation. On projects for which plans are approved in phases, the developer may request delay in payment of estimated costs until approval of plans for the largest phase involving undergrounding, at which time payment for the entire project shall be required. The obligation to pay at the time of a subsequent phase shall be secured by an agreement which shall bind the owner and subsequent buyers for undergrounding costs along the entire applicable frontage. Monies received will be held in an account by the city to be used at whatever time the applicable area is converted by the city, utility companies, or other parties to underground utilities.

(2) Exemption may be considered where the developer can show that undergrounding will be an unusual economic hardship and the costs of the undergrounding are disproportionate in terms of the utility frontage and the proportionate frontage of the project under consideration. Examples are cases where development occurs in an area where adjacent land on both sides is already developed (infill situation), and in cases involving additions or modifications to existing sites which represent a minor portion of the total site.

(3) Exemption may be considered when high-voltage powerlines, above 13 kV or similar, would remain on the poles after the undergrounding of the lower voltage lines.

(4) All requests for relief must be presented in writing to the Planning and Development Director prior to plan approval. Consideration for approval shall be in accordance with the purpose, intent, and objective of this section. The City Council shall approve or disapprove all formal requests for relief. Aesthetics is only one of many reasons for undergrounding of which public safety is paramount. Completion of undergrounding and/or payment of costs shall be required prior to granting of a certificate of occupancy. All new service lines installed shall be installed underground per § 155.057 even though relief may be granted for adjacent existing lines.

(F) The requirements set forth above shall not apply to new utility poles and wires erected for purely temporary purposes such as providing temporary building construction power, emergency power, telephone service, or the furnishing of power to temporary outdoor activities. A permit for the temporary use shall be obtained from the Engineering Division. The length of the temporary use shall be specified in the permit and may not exceed six months. An additional six-month permit may be issued upon a finding of necessity by the City Engineer.

Title XV, Chapter 155: “Subdivisions”, Section 57 Utilities: is amended as follows:

§ 155.057 UTILITIES.

(A) *Location.* All new utility facilities, including but not limited to gas, telephone, cable television and electric power, except electrical lines exceeding 13kV capacity, shall be

located underground throughout the subdivision or proposed development or redevelopment project. All existing overhead utility facilities shall be placed underground per § 152.030. All utility facilities shall be located in either the street right-of-way and its adjacent easement or in a dedicated alley except, where easements between alleys and street rights-of-way are necessary to connect the utilities, as approved by the city. Underground service connections to the street property line of each platted lot shall be installed at the owner's or developer's expense.

(B) *Easements.*

(1) Proper coordination shall be established between the subdivider and the applicable utility companies for the continuation of utility easements established in adjoining properties, when rights-of-way or dedicated alleys are not appropriate.

(2) Where topographical, locational, or other conditions are such as to make impractical the inclusion of utilities within rights-of-way or dedicated alleys, perpetual unobstructed easements of at least ten feet in width shall be provided. Easements shall be indicated on the plat.