ORDINANCE NO. ____
ORDINANCE OF THE COUNCIL OF THE CITY OF PALO ALTO
AMENDING SECTION 12.16.020 OF CHAPTER 12.16 OF TITLE 12 OF
THE PALO ALTO MUNICIPAL CODE BY ESTABLISHING
UNDERGROUND UTILITY DISTRICT NO. 45

The Council of the City of Palo Alto does ORDAIN as follows:

SECTION 1. Findings and Declarations. The City Council finds and declares as follows:

(a) This Council, on March 10, 2008, adopted Resolution No. 8802, declaring its intention to amend Section 12.16.020 of Chapter 12.16 of Title 12 of the Palo Alto Municipal Code by establishing Underground Utility District No. 45 in the City and by such Resolution appointed Monday, May 5, 2008, at the hour of 7:00 p.m., in the Council Chambers, City Hall, at 250 Hamilton Avenue, Palo Alto, California, as the time and place of hearing protests and receiving evidence for and against the proposed action and notice of direction.

(b) Notice was given of the time and place therein stated in the manner provided by law, as appears from the affidavits on file in the office of the City Clerk.

(c) This matter came on regularly for hearing at the time therein fixed.

(d) All written protests and other written communications were publicly read at this meeting and evidence duly taken and all persons desiring to be heard were fully heard.

(e) The public necessity, health and safety require the removal of poles and overhead lines and associated overhead structures from that certain area described in Resolution No. 8802.

SECTION 2. Section 12.16.020 of Chapter 12.16 of Title 12 of the Palo Alto Municipal Code is hereby amended by adding Subsection (41) thereto to read as follows:

“(45) District No. 45. All of the area in the County of Santa Clara, City of Palo Alto, encompassing the areas contiguous with portions of Palo Alto Avenue, Alma Street, High Street, Lytton Avenue and Cambridge Avenue Underground Utility District Number 45, on file in the office of the City Clerk.”

SECTION 3. The “Underground Utility District Maps” referred to in Section 12.16.020 shall be amended to add to the areas shown on the map those referred to in Resolution No. 8802.

SECTION 4. The City Council hereby finds that the adoption of this ordinance constitutes the approval of a project that is categorically exempt from environmental review under the California Environmental Quality Act pursuant to California Public Resources Code § 15302(d) (Conversion of Overhead Electric Utility Distribution System Facilities to Underground).
NOT YET APPROVED

SECTION 5. This ordinance shall become effective upon the expiration of thirty (30) days from its passage.

INTRODUCED:

PASSED:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

ATTEST:

______________________________  ______________________________
City Clerk                            Mayor

APPROVED AS TO FORM:

______________________________  ______________________________
Deputy City Attorney               City Manager

APPROVED:

______________________________
Director of Utilities
BACKGROUND AND HISTORY ON
UNDERGROUNDING OF ELECTRIC UTILITIES

BACKGROUND

History of Undergrounding
The City of Palo Alto began a program to underground overhead electric, telephone, and cable TV facilities in 1965 with a project along Oregon Expressway. Since that time 42 Underground Districts have been formed. The main reasons for starting the undergrounding program in Palo Alto were to improve the aesthetics of the neighborhoods and to improve service reliability by reducing the impacts of weather on the electric distribution system.

To establish the undergrounding program, the city amended the Municipal Code adding Chapter 12.16 titled Underground Utilities. All new development after 1965 was required to have underground facilities. This requirement resulted in the undergrounding of electric facilities for most of the commercial areas outside of the older commercial developments in the University Avenue and California Avenue districts.

Types of Underground Districts
Rules for establishing an underground district in the City are covered by Utility Rule and Regulation 17. This rule establishes three types of underground districts: General Public Benefit, Primarily of Local Public Benefit, and areas that do not qualify under the preceding types. General Public Benefit projects are established by the City and the City pays for the installation of the electric system in the public right-of-way (ROW) and the residents pay for conversion of the facilities on their property. In the remaining two conversion area types, the residents must request the underground district and fund the service conversion on their property as well as a portion of the utility costs in the public ROW.

Most of the projects completed have been established under the General Public Benefit provision.

Joint Construction on Utilities Poles
The poles within the City of Palo Alto are jointly owned with AT&T or in some cases jointly owned with AT&T and PG&E. Comcast leases space on the poles from AT&T for the attachment of cable TV cables. Due to the joint ownership of the poles, underground districts require agreement by the other joint owners. Once agreement on the Underground District boundaries has been reached, the conduits and structures are jointly constructed. Joint construction is used to reduce costs and coordinate the construction to minimize impacts on the neighborhoods.

Agreement on Underground District boundaries by AT&T is subject to AT&T's ability to recover its costs pursuant to California Public Utilities Commission's (CPUC) Schedule A2 Rule 32 on undergrounding which specifies the criteria for different levels of financial participation by AT&T.
The applicable section of Rule 32 is critical to the financial viability of the underground project. If a project qualifies under section A.1 of Rule 32, the project has been found to have General Public Benefits, and AT&T and Comcast fund all the their improvements in the public right-of-way. If it is determined that Rule 32A.2 or 32A.3 are applicable to the project, the cost responsibility for the Cable TV and Telephone conduits and other structures shifts either to the City or to the residents. In the past, once AT&T had determined that the proposed area did not qualify under Rule 32A.1 the City has cancelled the underground project because of the increased costs to the Electric Utility and moved forward on undergrounding projects in areas where the telephone company would participate. Currently there are only a few small areas where the telephone company will participate.

To facilitate the coordination between the parties in an Underground District, a master agreement has been signed by the City, AT&T, and Cable TV. This master agreement is amended each time an underground district is formed to include the new Underground District.

**Funding for Underground Districts**

General Benefit Undergrounding was funded at approximately 2% of annual electric revenues. Beginning in 1998, funding was reduced to 1% per year due to the need to shift electric resources to rebuilding aging infrastructure. The current funding which has been recently returned to 2% of annual electric revenues converts, on average, electric facilities for approximately 150 to 200 homes per year.

The reduction in funding to 1% of revenues for underground districts was initiated about 10 years ago to “free up” revenues and resources to focus on replacing underground facilities reaching the end of their useful lives. Cables installed in the sixties and seventies had an expected cable life of 30 years. In the late nineties a significant portion of the city’s underground system had exceeded its expected life and failures were beginning to occur at an increasing rate. To reduce the rate of failure, an accelerated infrastructure program was initiated to replace the cables that had exceeded their life expectancies. Because of staffing constraints the underground program was temporarily scaled back.

Costs that AT&T can recover from its rate payers for funding General Public Benefit Undergrounding under Rule 32A.1 are limited. The restrictions on AT&T’s funding limit the City’s ability to accelerate the undergrounding program beyond 2% of revenues while still receiving the full rule 32A.1 level of participation from AT&T.

In addition the cost of the required service conversions on private property is borne by the individual owners in accordance with Utility Rule and Regulation No.17. This cost can range from $5,000 to $8,000. In order to reduce the burden of the service conversion cost to property owners in underground districts the property owners are offered the option of financing their service conversion costs over a period of ten years with interest in accordance with the procedure given in Section 12.16.090 through 12.16.096 of the Palo Alto Municipal Code. The CMR that accompanies this document seeks approval of a resolution listing property owners electing to participate in the service conversion financing offered by the City.

**Budgeting**

Funding for the Underground Districts is approved by the City Council during the annual budget process. In addition to the current fiscal year’s funding, staff also provides four additional years of projected funding for proposed undergrounding projects. These future projects are not approved for construction until the budget for these projects is approved each fiscal year. Each year staff reevaluates the future year recommendations and proposes changes based on additional information acquired since the last budget cycle including AT&T’s participation in covering project costs.
Selecting Underground Districts

Proposed undergrounding districts are determined by applying the priorities in Rule 17 and negotiations with AT&T as joint pole owners. In addition, Comcast, which leases pole space from AT&T, must also fund part of the underground costs to move their facilities.

The City Electric Utility takes the lead in proposing boundaries for an underground project. AT&T's agreement is driven by its ability to recover costs under rules that differ from Utility Rule and Regulation No. 7. Recently the City was advised by AT&T that the proposed underground district planned for FY 2007-08 did not qualify under section A.1 of Rule 32, and that AT&T would be unable to fund all the improvements in the public right-of-way, resulting in the cost responsibility for the telephone substructure shifting to the City or the residents within the proposed districts.

To give a perspective on this impact, the present cost to the City for undergrounding is about $15,000 per home. This does not include the additional cost for each homeowner of about $5,000 for their service conversion. If the City continues undergrounding without AT&T and Comcast reimbursements, the cost to the City per home increases to approximately $20,000, an increase of 33%.

Future of Program

The overhead lines for approximately 14,100 homes remain to be undergrounded and the current program undergrounds facilities for approximately 200 homes per year.

If the City were to proceed with the program without AT&T and Comcast reimbursements at the present funding rate of 2% of annual electric revenues, it is expected to take approximately 100 years more to complete the undergrounding of the entire city at a cost of $296,100,000. This is based on the current value of the dollar. Under the current program the electric rate payers would be responsible for funding approximately $225,600,000 and the property owners would be responsible for funding about $70,500,000 of total cost.

In light of the recent position taken by AT&T to suspend participation in undergrounding of utilities where AT&T is not able to recover costs from its ratepayers, staff is reviewing with AT&T and Comcast potential undergrounding project areas in the City. If an agreement is reached with AT&T on additional areas for undergrounding of utilities, then staff will obtain Council approval for undergrounding of such areas to continue the undergrounding program.