

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRENTWOOD AMENDING BRENTWOOD MUNICIPAL CODE SECTION 16.120.120 TO AUTHORIZE THE CITY ENGINEER TO WAIVE LIMITED UNDERGROUND UTILITY REQUIREMENTS, FINDING THE ACTION EXEMPT FROM CEQA, AND TERMINATING URGENCY ORDINANCE NO. 1074.

WHEREAS, the City of Brentwood ("City") presently requires development projects that include a land subdivision to install utility distribution facilities, including, but not limited to, electric, communication, street lighting and advanced technology systems installed in and for the purpose of supplying service to any development, to be placed underground as governed by Chapter 16.120.120 of the Brentwood Municipal Code ("BMC"); and

WHEREAS, according to multiple media sources, as well as developer and industry testimonials, the construction industry is currently experiencing a severe shortage of subsurface electric distribution transformers; and

WHEREAS, the causes for this shortage are complex, and include increases in demand for such facilities due to growth in EV charger installation and the use of renewable energy sources, federal investment, storms and political events that have disrupted the global supply chain, the imposition of tariffs on foreign transformers, and the impacts of the COVID pandemic; and

WHEREAS, the lead time for the receipt of subsurface electric distribution transformers may delay the completion of construction projects by years if this requirement continues to be implemented; and

WHEREAS, the City Council of the City of Brentwood is authorized, pursuant to Article 11, Section 7 of the California Constitution, to make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws; and

WHEREAS, on March 26, 2024, the City Council adopted Urgency Ordinance No.1072, amending Brentwood Municipal Code Section 16.120.120 to authorize the City Engineer to waive limited underground utility requirements and find the act exempt from CEQA; and

WHEREAS, on May 8, 2024, the City Council adopted Urgency Ordinance No.1074, extending Urgency Ordinance No. 1072 for a period of an additional 10 months and 15 days, unless terminated earlier; and

WHEREAS, the City desires to enact this ordinance in order to establish enduring requirements with respect to the placement of utilities underground or above ground.

NOW, THEREFORE, the City Council of the City of Brentwood does ordain as follows:

SECTION 1. Brentwood Municipal Code is hereby amended to read as provided in Exhibit A, attached hereto and incorporated herein. Deleted language is ~~struckthrough~~; additional language is underlined.

SECTION 2. This ordinance will be published in accordance with Government Code Section 36933 by either posting or publishing the ordinance in accordance with that law.

SECTION 3. The City Clerk is requested to cause the amended language of Brentwood Municipal Code Section 16.120.120 as quoted in Exhibit A, to be entered in the City of Brentwood Municipal Code.

SECTION 4. If any exhibit, section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, the holding will not affect the validity or enforceability of the remaining provisions, and the City Council declares that it would have adopted each provision of this ordinance irrespective of the validity of any other provision.

SECTION 5. The proposed Ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3) – Common Sense Exemption - in that the proposed ordinance would only establish and clarify administrative processes and would not facilitate new construction or other groundbreaking activities. There is no potential to result in either a direct physical change to the environment or a reasonably foreseeable indirect physical change to the environment.

SECTION 6. This ordinance will take effect and be in force 30 days following its adoption, at which time Urgency Ordinance No. 1074 shall be repealed and shall no longer be in effect.

THE FOREGOING ORDINANCE was introduced with the first reading waived at a regular meeting of the Brentwood City Council on the 10th day of September, 2024, by the following vote:

EXHIBIT 'A'

BRENTWOOD MUNICIPAL CODE

TITLE 16 ('Subdivisions and Land Development')

§ 16.120.120 Undergrounding—Electric, communication, street lighting and advanced technology systems.

A. General Provisions.

1. Utility distribution facilities, including, but not limited to, electric, communication, street lighting and advanced technology systems installed in and for the purpose of supplying service to any development, shall be required to be placed underground, except as otherwise permitted by this Section 16.120.120. "Advanced technology systems" shall be defined as all necessary appurtenances, equipment and facilities required for the provision of Internet, computer, fiber optic, cable television, telephone, and other communication services within the public right-of-way and upon private property. The design, installation, inspection and testing requirements for city acceptance of such system shall meet the minimum requirements as outlined in the city of Brentwood standard plans and specifications as approved by the city engineer. The developer shall also dedicate to the city that portion of the system within the public right-of-way and shall dedicate to the property owner the portion of the system within the private property.
2. All existing facilities except transmission facilities either along abutting streets or within a development shall also be underground at the time of development. "Along abutting streets" means on the same side of the abutting street as the property being developed, not the other side of the street.
3. The developer is responsible for complying with all requirements of this subsection, and shall make the necessary arrangements with the utility companies for the installation of such facilities.
4. The city council, following the consideration by the planning commission, may waive undergrounding requirements if unusual topographical, soil or any other unusual problems (such as prolonged supply chain delays) make such underground installations unreasonable or impractical in accordance with the following:
 - a. If the requirement to underground utilities is waived, the city council may require the recordation of an improvement agreement, requiring the property owner and any subsequent owner of the subject property to join an underground utility assessment district, reimbursement district or similar improvement district, when such a district is formed, and to guarantee participation in such district by posting an improvement bond and recording a lien on subject property.

- b. The affected developer or any utility company may submit information supporting a request for such waivers.
 - c. No waiver shall be granted in any undergrounding district previously established.
 - d. In the event such a waiver is granted as to a residential development, the developer shall be responsible for installing screening consisting of dense landscaping and/or wall(s) with a concrete apron meeting all PG&E requirements on at least three sides of the surface-mounted equipment ~~to the satisfaction of the City Engineer.~~
 5. The City Engineer may waive undergrounding requirements as to equipment appurtenant to underground facilities (such as surface-mounted transformers, pedestal-mounted terminal boxes and meter cabinets, and concealed ducts) if unusual topographical, soil, or any other unusual problems (such as prolonged supply chain delays) make such underground installations unreasonable or impractical in accordance with the following:
 - a. The affected developer or any utility company may submit information supporting a request for such waiver.
 - b. In the event such a waiver is granted as to a residential development, the developer shall be responsible for installing screening consisting of dense landscaping and/or wall(s) with a concrete apron meeting all PG&E requirements on at least three sides of the surface-mounted equipment ~~to the satisfaction of the City Engineer.~~
 - c. The City Engineer's authority to waive such requirement shall sunset on December 31, 2028, unless otherwise amended by the city council.
- B. Electric, Communication, Street Lighting and Advanced Technology Systems. All costs of placing existing or new facilities, required to be undergrounded by the developer, shall be paid for by the developer subject to the current California Public Utility Commission rules and regulations.
- C. Advanced Technology Systems.
1. The developer shall design, install, test and dedicate to the city two advanced technology system conduits, size to be determined, within the public right-of-way. The developer shall install, in one of the conduits, a fiber optic system designed to serve the subject development for use by the city of Brentwood or one of its licensed franchisee. The fiber optic system shall be installed in accordance with the citywide advance technology master plan and approved by the city engineer. The second conduit shall remain empty and shall be reserved to serve the subject development for the use of a city licensed franchisee not wishing to utilize the city's fiber optic system. Both conduits

shall be installed to each lot line. The developer shall bear all design, construction, inspection, and testing costs associated with these underground requirements. Furthermore, the developer shall design, install, test and dedicate to the city all necessary components of the advanced technology system as depicted on the citywide advanced technology master plan.

2. The developer shall design, install, test and dedicate to the property owner two advanced technology system conduits, size to be determined, to connect the public advanced technology system to the individual home or building. The developer shall install, in one of the conduits, a fiber optic system designed to serve the subject property. The fiber optic system shall be installed in accordance with the citywide advance technology master plan and approved by the city engineer. The second conduit shall remain empty and shall be reserved to serve the subject property for the use of a city licensed franchisee not wishing to utilize the city's fiber optic system. The developer shall bear all design, construction, inspection and testing costs associated with these underground requirements.
3. The cable television or advanced technology company franchisee that elects to install facilities in the city's vacant conduit shall provide plans and specifications to the developer and the city of Brentwood. The licensed franchisee shall also inspect the facilities and certify to the city prior to final approval of the development that the cable television facilities or advanced technology systems are properly installed and serviceable. The design and installation shall meet the minimum criteria as outlined in the city of Brentwood standard plans and specifications.

(Ord. 471 § 3, 1990; Ord. 609, 1999)