

**ORDINANCE NO. 2020-010**

**AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF COCONUT CREEK, FLORIDA, AMENDING THE CITY'S CODE OF ORDINANCES, BY AMENDING CHAPTER 13, "LAND DEVELOPMENT CODE," ARTICLE II, "SUBDIVISION REGULATIONS," DIVISION 1, "GENERALLY," SECTION 13-142, "UNDERGROUND UTILITIES; REQUIRED," TO REMOVE THE CITY-WIDE REQUIREMENT FOR THE UNDERGROUNDING OF ALL UTILITIES WHILE RETAINING THE REQUIREMENT FOR UNDERGROUNDING OF ALL UTILITIES WITHIN AND ALONG THE PERIMETER ROADS OF THE MAINSTREET REGIONAL ACTIVITY CENTER (RAC) AND REMOVAL OF LANGUAGE PERTAINING TO WAIVERS OF SAME; ADDRESSING STATUS OF CURRENT APPLICATIONS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, in 2005, the City Commission sought to address the reliability and integrity of above ground utilities within the City by requiring certain development within the City to underground those utilities; and

**WHEREAS**, at the outset, one of the major goals of Section 13-142, "Underground utilities; required," of the City's Code of Ordinances was to address downed powerlines that contributed to the loss of power and other essential utility services to residents and business owners within the City after natural disasters, such as hurricanes; and

**WHEREAS**, over the past decade, technological advances and conflicting policy and action by other controlling organizations and state agencies/commissions have lead to the hardening or reinforcement of above ground utility poles/structures reducing the practicality of the City's requirement to underground utilities and in certain instances making it impossible to underground utilities; and

**WHEREAS**, as a result, City staff recommends completing City undergrounding projects currently in the planning and development phases and focusing the City's future

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undergrounding efforts on the City's MainStreet Regional Activity Center (RAC) as described in Section 13-360, "MainStreet Regional Activity Center (RAC)," of the City's Code of Ordinances where development and undergrounding conflicts do not exist; and

**WHEREAS**, Section 13-142, "Underground utilities; required," as proposed for amendment, will require all new development or substantial redevelopment or reconstruction, including residential development, within and along the perimeter roads of the MainStreet RAC to install all utilities underground; and

**WHEREAS**, given the undeveloped nature of the RAC area and the City's desire to ensure the benefits of the undergrounding program directly support the property and the integration of those on-site underground improvements with the immediately adjacent system, the application of a waiver provision is inappropriate; and

**WHEREAS**, the City desires to apply the code amendments provided herein to all projects going forward as well as to those projects which are currently in the review and permitting process and have not yet addressed the undergrounding requirements, with the exception of the MainStreet RAC area; and

**WHEREAS**, the City Commission finds and determines that the amendments to Section 13-142, "Underground utilities; required," are in the best interest of the residents and business owners of the City.

**NOW, THEREFORE, THE CITY COMMISSION OF THE CITY OF COCONUT CREEK HEREBY ORDAINS:**

**Section 1: Ratification.** That the foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this ordinance.

**Section 2:** That the Code of Ordinances of the City of Coconut Creek, Florida, shall be amended by amending Chapter 13, "Land Development Code," Article II,

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“Subdivision Regulations,” Division 1, “Generally,” Section 13-142, “Underground utilities; required,” to read as follows:

Sec. 13-142. - Underground utilities; required.

(a) *Definitions.*

- (1) *Utilities.* "Utilities" shall mean all utilities and similar facilities including, but not limited to gas, telephone, cable, fiber, internet, broadband, telecommunications, and other communications and electrical distributing and transmission facilities.
- (2) *Substantially redevelop or reconstruct.* "Substantially redevelop or reconstruct" shall mean (i) the cost of rebuilding, repair or reconstruction will exceed fifty (50) percent of the replacement cost of the building or structure or (ii) a modification to an approved site plan that is not permitted by administrative approval as regulated by section 13-549, "Modifications to approved site plan," as amended from time to time. ~~is required.~~

(b) *~~Undergrounding required~~Applicability.*

- ~~(1) For any new commercial, industrial, retail development application or any other development application other than a residential development application approved after January 1, 202006, for new development or to substantially redevelop or reconstruct existing development, on property located within, or along the perimeter roads of, the MainStreet Regional Activity Center (RAC) as provided in Section 13-360, "MainStreet Regional Activity Center (RAC)," as amended from time to time, all utilities to be located within or in the public rights-of-way adjacent to the development and within that development even if not in the public rights-of-way shall be installed underground at the developer's and/or owner's cost. Existing overhead utilities, including "service laterals" and "service drops" that serve individual residences, units, or commercial establishments, on public rights-of-way adjacent to the new development and within that development, regardless whether such utility facilities are located in the rights-of-way or on private property, even if not in the public rights-of-way shall be converted to underground utilities at the developer's and/or owner's cost, provided that, where applicable, such cost is determined pursuant to a utility's tariffs, such as those of Florida Power & Light Company, that are approved by the enforceable by the Florida Public Service Commission. Where the costs are not subject to tariffs enforceable by the Florida Public Service Commission, it is the intent of this section that the city will not be responsible for any such costs and that the apportionment of such costs between the developer, owner, and any utility, when applicable, shall be pursuant to a written agreement between the those involved parties. For a project parcel located at a roadway intersection, the developer and/or owner shall be responsible to provide~~continue the underground conversion ~~across the intersection~~ to the nearest point/points of connection across the intersection at no cost to the city. No overhead poles shall be allowed

to stay adjacent to any parcel that is required to underground utilities pursuant to this section of the City Code.

~~(2) If any application is submitted after January 1, 2006, for a permit to substantially redevelop or reconstruct an existing commercial, industrial, retail or any project other than a residential development that occupies one (1) acre or more or that requires site plan approval, all utilities located within, or in the public rights-of-way adjacent to that development and within that development even if not in the public rights-of-way, shall be installed underground at the developer's and/or owner's cost. Existing overhead utilities shall be converted to underground utilities at the developer's and/or owner's cost. For a project parcel located at a roadway intersection, the developer and/or owner shall be responsible to continue the underground conversion across the intersection to the nearest point/points of connection at no cost to the city. No overhead poles shall be allowed to stay adjacent to any parcel that is required to underground utilities pursuant to this section of the City Code.~~

~~(3) a. For any new, redevelopment, or reconstruction of a residential project five (5) acres or more or any new redevelopment or reconstruction of a residential of five (5) units or more approved after January 1, 2006, all utilities located within or in the public rights-of-way adjacent to that development and all utilities located within the project site, shall be installed underground at the developer's and/or owner's cost. All existing overhead utilities, including "service laterals" and "service drops" that serve individual residences, units, or commercial establishments in the public rights-of-way and in the project area, regardless whether such utility facilities are located in the rights-of-way or on private property, shall be converted to underground utilities at the developer's and/or owner's cost. When an area is converted to underground service in a project in which the city participates and front-ends the costs to obtain benefits available from any utility (including, without limitation, the reduced cost available from Florida Power and Light Company through that company's governmental adjustment factor waiver tariffs), each property owner in the affected area shall complete the conversion of his or her services including, service laterals or service drops within ninety (90) days after the new underground facilities have been energized. For a project parcel located at a roadway intersection, the developer and/or owner shall be responsible to continue the underground conversion across the intersection to the nearest point/points of connection at no cost to the city. No overhead poles shall be allowed to stay adjacent to any parcel that is required to underground utilities pursuant to this section of the City Code.~~

~~b. This section shall not be applicable to the remodeling or reconstruction of an individual single family home, situated alone with no other residences on the same parcel, on any sized parcel of property, existing on the property as of the effective date of this ordinance. The remodeling or reconstruction of an existing single family residence is defined as an addition or remodeling that does not require the demolition of more than fifty (50) percent of the existing~~

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~~structure. Any reconstruction or remodeling that requires more than fifty (50) percent of the existing structure to be demolished shall be required to comply with subsection (3)a. above. The intent of this subsection is to allow remodeling of an existing single-family home anywhere in the city that was constructed before the effective date of this ordinance.~~

(c) *Exception.* Electrical transmission or distribution lines with a rated load of more than 27 kV (27,000 volts) shall be exempt from the requirements of this section. All electrical transmission or distribution lines with a rated load of 27 kV (27,000 volts) or less shall not be exempted from the requirements of this section.

(d) *City participation.* Upon application and execution of an agreement by a developer or property owner consistent with the section, the city may participate as an applicant or co-applicant for undergrounding projects in order to take advantage of benefits that may be available from the utility to local government applicants. The developer or property owner shall agree to reimburse the city for the city's costs, including, without limitation, attorney's costs, incurred in the city's participation in the project as contemplated by this section. In certain areas or projects, where the city participates to underground utilities and pays all costs up front to obtain benefits available from any utility including, without limitation, from Florida Power and Light Company (FPL), AT&T, Comcast, etc. each owner and/or developer, who benefits from this conversion or undergrounding, shall pay the city all expenses related to the conversion or undergrounding, including but not limited to design and construction and/or any fees in a pro-rated manner as determined by the city commission.

(e) *Process timing and waiver.*

~~(1) The developer and/or owner shall evidence compliance with the requirements in this division by providing to the city a signed agreement between the developer and/or the owner and each relevant utility showing that the utility has agreed, at the developer or owner's cost, to place or convert the relevant utilities underground, or the developer and/or owner has established an agreement with the city indicating their intent to comply with the undergrounding requirements of this section~~subsection (b)(3)a. above.~~ This evidence ~~or application for waiver~~ shall be submitted with the development application; if not thus submitted, then the development application shall be deemed incomplete. ~~The city shall require this evidence or an application for waiver, as described in subsection (2) below to accompany the review of the development application by the planning and zoning board, for its recommendation to the city commission. The city commission shall be the final authority to grant or deny said waiver application.~~~~

~~(2) Any developer or owner subject to the requirements of this section may apply to the city, in a form specified by the city and accompanied by the payment of a waiver application fee seeking to be relieved of the requirements of this division. This waiver application must be submitted to the city prior to the time specified in subsection (1) above. If the developer or owner claims that technical reasons are the basis for the waiver application, the application shall contain a detailed statement by a state licensed professional engineer, qualified with respect to~~

~~utility issues, explaining why, in the professional engineers professional opinion, it is technically infeasible to locate such utilities underground. The city engineer and the development services director shall review such application and shall make a recommendation to the planning and zoning board. The planning and zoning board shall have the authority to recommend granting or denying a waiver in the overall recommendation to the city commission. The city may grant a waiver if the application is supported by information detailing justifiable reasons for not pursuing the subject undergrounding, including, by way of example and not limitation, technical infeasibility or impracticability, practical infeasibility or impracticability, or costs outweigh perceived benefits, as determined by the city.~~

~~(3) If a waiver is granted, a dollar amount equal to the cost of placing the utilities underground as determined by an estimate established by the relevant utilities and as agreed upon by the city, may be required to be paid into the city's underground utility fund, prior to the development permits being issued.~~

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**Section 3: Existing Development Applications.** That this ordinance shall apply to all development applications currently being processed by the City and any existing requests for waiver pursuant to 13-142(e) of the City Code shall be deemed withdrawn and the provisions of this ordinance shall be applied to the developments to which those waiver requests related.

**Section 4: Conflicts.** That all ordinances or parts of ordinances, all City Code sections or parts of City Code sections, and all resolutions or parts of resolutions in conflict with this ordinance are hereby repealed to the extent of such conflict.

**Section 5: Severability.** That should any section or provision of this ordinance or any portion thereof, any paragraph, sentence, clause or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or part hereof other than the part declared invalid.

**Section 6: Codification.** That the provisions of this ordinance shall be codified within the Code of Ordinances of the City of Coconut Creek, Florida, and any paragraph or section may be renumbered to conform with the Code of Ordinances.

**Section 7: Effective Date.** That this ordinance shall become effective upon its passage on second and final reading.

**PASSED FIRST READING THIS 27<sup>TH</sup> DAY OF AUGUST, 2020.**

**PASSED SECOND READING THIS 10<sup>TH</sup> DAY OF SEPTEMBER, 2020.**

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Louis Sarbone, Mayor

Attest:

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Leslie Wallace May, City Clerk

	<u>1<sup>st</sup></u>	<u>2<sup>nd</sup></u>
Sarbone	<u>Aye</u>	<u>Aye</u>
Rydell	<u>Aye</u>	<u>Aye</u>
Tooley	<u>Aye</u>	<u>Aye</u>
Belvedere	<u>Aye</u>	<u>Aye</u>
Welch	<u>Aye</u>	<u>Aye</u>

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