

CITY OF MARGATE, FLORIDA

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF MARGATE, FLORIDA,
AMENDING CHAPTER 31 - PLATTING, SUBDIVISION AND
OTHER LAND USE REGULATIONS, ARTICLE 1. - IN
GENERAL, SECTION 31-2. UNDERGROUND WIRING
REQUIRED; EXCEPTION AND ADDING NEW SECTION SEC.
31-3 UNDERGROUND UTILITY TRUST FUND -
ESTABLISHED; PROVIDING FOR REPEAL; PROVIDING FOR
SEVERABILITY; PROVIDING FOR CODIFICATION;
PROVIDING FOR AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY
OF MARGATE, FLORIDA:

SECTION 1: The Code of Ordinances of the City of
Margate, Florida, Chapter 31 - Platting, Subdivision and Other
Land Use Regulations, Article 1. - In General, Section 31-2,
is hereby amended to read as follows¹:

**Chapter 31 - PLATTING, SUBDIVISION AND OTHER LAND USE
REGULATIONS**

ARTICLE I. - IN GENERAL

Sec. 31-2. - Underground wiring required; ~~exception.~~

(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.

¹ CODING: Words in ~~struck-through~~ text are deletions from existing
text, words in underscored text are additions to existing text, and
shaded text are changes between First and Second Readings.

1 (2) Substantially redevelop or reconstruct. "Substantially
2 redevelop or reconstruct" shall mean (i) the cost of
3 rebuilding, repair or reconstruction will 50 percent of the
4 replacement cost of the building or structure, or (ii) a
5 modification to an approved site plan as regulated by
6 section 13-549, is required.

7
8 (~~B~~a) In new residential subdivisions whose plats are approved
9 after the effective date of this section, all utility lines,
10 including but not limited to those required for electrical
11 power distribution, telephone and telegraph communication,
12 street lighting and television signal services, shall be
13 installed underground. This section shall apply to all cable,
14 conduits or wires forming part of an electrical distribution
15 system, including service lines to individual properties
16 necessary to serve the subdivision under consideration.
17 However, this section shall not apply to wires, conductors or
18 associated apparatus and supporting structures where exclusive
19 function is in transmission of electrical energy between
20 generating stations, substations and transmission lines of
21 other utility systems. Appurtenances such as transformer
22 boxes, pedestal mounted terminal boxes, and meter cabinets may
23 be placed above ground and shall be located in such a manner as
24 to minimize noise effects upon the surrounding residential
25 properties.

26 (~~C~~b) Easements shall be provided for the installation of
27 underground utilities or relocating existing facilities in
28 conformance with such size and location of easements as may be
29 determined by the city's engineer to be compatible with the
30 requirements of all utility companies involved with respect to
31 a particular utility service.

32 (~~D~~e) The subdivider or developer shall submit written evidence
33 of a satisfactory arrangement with each of the persons, firms
34 or corporations furnishing utility services involved with
35 respect to a particular development before the final plat of
36 the subdivision is submitted to the city commission for its
37 approval.

38 (~~E~~d) With regard to business and industrial zoned property, all
39 utility lines shall be located beneath the ground from the
40 building or structure to the terminal supplied by the utility
41 company (which in most cases shall mean that the utility lines
42 shall be underground from the street line or pole line to the
43 building or structure).

1 (Fe) It is specifically required by this section, whether or
2 not new plats or replats are filed or in the event it is
3 determined that replatting of areas are not required, that all
4 areas in the "eastern tier" of the City of Margate, the
5 "eastern tier" being that area of the City of Margate located
6 east of 441 (State Road 7) and north of Coconut Creek Parkway,
7 is hereby required to have underground utility lines as
8 described in paragraph (a) of this section.

9 (G) Underground placement of existing utilities:

10
11 (1) Applicability.

12 (a) For any new commercial, industrial, retail
13 development application or any other development
14 application other than a residential development
15 application approved after the effective date of this
16 ordinance, all utilities to be located within or in the
17 public rights-of-way adjacent to the development and
18 within that development even if not in the public
19 rights-of-way shall be installed underground at the
20 developer's and/or owner's cost. Existing overhead
21 utilities on public rights-of-way adjacent to the new
22 development and within that development, even if not in
23 the public rights-of-way, shall be converted to
24 underground utilities at the developer's and/or owner's
25 cost, provided that, where applicable, such cost is
26 determined pursuant to a utility's tariffs, such as
27 those of Florida Power & Light Company, that are
28 approved and enforceable by the Florida Public Service
29 Commission. Where the costs are not subject to tariffs
30 enforceable by the Florida Public Service Commission,
31 it is the intent of this section that the City will not
32 be responsible for any such costs, and that the
33 apportionment of such costs between the developer,
34 owner, and any utility shall be pursuant to a written
35 agreement between the involved parties. For a project
36 parcel located at a roadway intersection, the developer
37 and/or owner shall be responsible to continue the
38 underground conversion across the intersection to the
39 nearest point/points of connection at no cost to the
40 City. No overhead poles shall be allowed to stay
41 adjacent to any parcel that is required to have
42 underground utilities pursuant to this section of the
43 City Code.

44 (b) If any application is submitted after the
45 effective date hereof for a permit to substantially
46 redevelop or reconstruct an existing commercial,

1 industrial, retail or any project other than a
2 residential development that occupies one acre or more
3 or that requires site plan approval, all utilities
4 located within or in the public rights-of-way adjacent
5 to that development and within that development, even
6 if not in the public rights-of-way, shall be installed
7 underground at the developer's and/or owner's cost.
8 Existing overhead utilities shall be converted to
9 underground utilities at the developer's and/or owner's
10 cost. For a project parcel located at a roadway
11 intersection, the developer and/or owner shall be
12 responsible to continue the underground conversion
13 across the intersection to the nearest point/points of
14 connection at no cost to the City. No overhead poles
15 shall be allowed to stay adjacent to any parcel that is
16 required to have underground utilities pursuant to this
17 section of the City Code.

18 (c) 1. For any redevelopment or reconstruction of a
19 residential project of five acres or more or any new
20 redevelopment or reconstruction of a residential
21 project of five units or more approved after the
22 effective date hereof, all utilities located within or
23 in the public rights-of-way adjacent to that
24 development and all utilities located within the
25 project site shall be installed underground at the
26 developer's and/or owner's cost. All existing overhead
27 utilities, including "service laterals" and "service
28 drops" that serve individual residences, units, or
29 commercial establishments in the public rights-of-way
30 and in the project area, regardless whether such
31 utility facilities are located in the rights-of-way or
32 on private property, shall be converted to underground
33 utilities at the developer's and/or owner's cost. When
34 an area is converted to underground service for a
35 project in which the City participates and front-ends
36 the costs to obtain benefits available from any utility
37 (including, without limitation, the reduced cost
38 available from Florida Power and Light Company through
39 that company's governmental adjustment factor waiver
40 tariffs), each property owner in the affected area
41 shall complete the conversion of his or her services,
42 including service laterals or service drops, within 90
43 days after the new underground facilities have been
44 energized. For a project parcel located at a roadway
45 intersection, the developer and/or owner shall be
46 responsible to continue the underground conversion
47 across the intersection to the nearest point/points of

1 connection at no cost to the City. No overhead poles
2 shall be allowed to stay adjacent to any parcel that is
3 required to have underground utilities pursuant to this
4 section of the City Code.

5 2. This section shall not be applicable to the
6 remodeling or reconstruction of an individual single
7 family home, situated alone with no other residences on
8 the same parcel, on any sized parcel of property
9 existing on the property as of the effective date of
10 this ordinance. The remodeling or reconstruction of an
11 existing single family residence is defined as an
12 addition or remodeling that does not require the
13 demolition of more than 50 percent of the existing
14 structure. Any reconstruction or remodeling that
15 requires more than 50 percent of the existing structure
16 to be demolished shall be required to comply with
17 subsection (1)(c)1. above. The intent of this
18 subsection is to allow remodeling of an existing
19 single-family home anywhere in the City that was
20 constructed before the effective date of this
21 ordinance.

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

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

1 (4) Process timing and waiver.

2 (a) The developer and/or owner shall evidence
3 compliance with the requirements in this division by
4 providing to the City a signed agreement between the
5 developer and/or the owner and each relevant utility
6 showing that the utility has agreed, at the developer
7 or owner's cost, to place or convert the relevant
8 utilities underground, or the developer and/or owner
9 has established an agreement with the City indicating
10 their intent to comply with the undergrounding
11 requirements of subsection (1)(c)1. above. This
12 evidence or application for waiver shall be submitted
13 with the development application; if not thus
14 submitted, then the development application shall be
15 deemed incomplete. The City shall require this
16 evidence or an application for waiver, as described in
17 subsection (b) below, to accompany the review of the
18 development application by the Planning and Zoning
19 Board for its recommendation to the City Commission.
20 The City Commission shall be the final authority to
21 grant or deny said waiver application.

22 (b) Any developer or owner subject to the requirements
23 of this section may apply to the City, in a form
24 specified by the City and accompanied by the payment of
25 a waiver application fee seeking to be relieved of the
26 requirements of this division. This waiver application
27 must be submitted to the City prior to the time
28 specified in subsection (a) above. If the developer or
29 owner claims that technical reasons are the basis for
30 the waiver application, the application shall contain a
31 detailed statement by a state licensed professional
32 engineer, qualified with respect to utility issues,
33 explaining why, in the engineer's professional opinion,
34 it is technically infeasible to locate such utilities
35 underground. The Director of Environmental and
36 Engineering Services and the Economic Development
37 Director shall review such application and shall make a
38 recommendation to the Planning and Zoning Board. The
39 Planning and Zoning Board shall have the authority to
40 recommend granting or denying a waiver in the overall
41 recommendation to the City Commission. The City may
42 grant a waiver if the application is supported by
43 information detailing justifiable reasons for not
44 pursuing the subject undergrounding, including, by way
45 of example and not limitation, technical infeasibility
46 or impracticability, practical infeasibility or

1 impracticability, or costs outweigh perceived benefits,
2 as determined by the City.

3 (c) If a waiver is granted, a dollar amount equal to
4 the cost of placing the utilities underground, as
5 determined by an estimate established by the relevant
6 utilities and as agreed upon by the City, may be
7 required to be paid into the City's Underground Utility
8 Trust Fund prior to the development permits being
9 issued.

10
11 **SECTION 2:** The Code of Ordinances of the City of
12 Margate, Florida, Chapter 33 Underground Utility Trust Fund -
13 Established, shall read as follows:

14 Sec. 31-3 Underground Utility Trust Fund – Established.

15
16 There is hereby established an Underground Utility Trust
17 Fund. Contributions generated from the waiver provision of
18 Section 31-2 of this Code, entitled "Underground utilities;
19 required", shall be deposited into the Underground Utility
20 Trust Fund. The City Commission may, by resolution, designate
21 other additional funds to be deposited into the underground
22 Utility Trust Fund as deemed to be in the best interest of the
23 City.

24 (A) Restriction on expending funds.

25 (1) Funds deposited into the Underground Utility Trust
26 Fund shall be restricted and shall be expended solely for
27 projects that place existing or future utility lines
28 underground as may be approved by the City Commission from
29 time to time. Projects that are eligible for the
30 expenditure of such funds include but are not limited to:

31 a. The underground placement of all utilities
32 lines and appurtenances, including but not limited
33 to gas, telephone, cable, fiber, communications
34 and electrical distributing and transmission
35 facilities on public rights-of-way.

36 b. Public property beautification projects,
37 including but not limited to median improvements,
38 which are occasioned by the placement of utility
39 lines underground.

40 c. Payment for any loan, bond, or other debt
41 incurred for any project authorized by this
42 section, including debt service, if any.

43 (2) Funds deposited into the Underground Utility Trust
44 Fund are intended to be used for projects with a rational

nexus to the project or projects contributing the funds into the trust, where feasible or practicable. The rational nexus may be based on location, system integrity or other matters as determined in the discretion of the City Commission.

(B) Prohibition against expending funds.

(1) Funds deposited into the Underground Utility Trust Fund shall not be used as a source of revenue to meet operating needs of the City of Margate.

(2) Funds deposited into the Underground Utility Trust Fund shall not be commingled with general fund revenue, and shall not be used to supplement the general fund budget.

(3) All interest earnings resulting from funds deposited into the Underground Utility Trust Fund shall be transferred into the general fund on an annual basis on or by September 30 of every year.

(C) Authority to expend funds.

Any project which meets the criteria for funding from the Underground Utility Trust Fund as set forth in section (A) above, shall be approved by a separate, specific resolution of the City Commission for that project. Said resolution shall be separate and apart from the annual budget process.

(D) Amendments to or rescission of Underground Utility Trust Fund.

(1) The City Commission may, by ordinance approved by a four-fifths vote, temporarily cease depositing contributions from the waiver provisions of section 31-2 of this Code into the Underground Utility Trust Fund. Any ordinance that approves the temporary cessation of said contributions to the Underground Utility Trust Fund shall be effective for a period that shall not exceed one year.

(2) The City Commission may, by ordinance approved by a four-fifths vote, amend or rescind the Underground Utility Trust Fund.

(3) In the event the Underground Utility Trust Fund is rescinded by subsequent ordinance, it is the intention of this subsection that all existing Underground Utility Trust Fund funds be used for the purposes contained in section (A) above.

SECTION 2: All ordinances or parts of ordinances in conflict are repealed to the extent of such conflict.

SECTION 3: If any section, sentence, clause, or phrase of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

SECTION 4: It is the intention of the City Commission that the provisions of this Ordinance shall become and be made a part of the City of Margate Code, and that the sections of this Ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section", "article" or such other appropriate word or phrase in order to accomplish such intentions.

SECTION 5: This Ordinance shall become effective immediately upon adoption at its second reading.

PASSED ON FIRST READING THIS _____ day of _____, 2017.

PASSED ON SECOND READING THIS _____ day of _____, 2017.

ATTEST:

JOSEPH KAVANAGH
CITY CLERK

MAYOR TOMMY RUZZANO

RECORD OF VOTE - 1ST READING RECORD OF VOTE - 2ND READING

Caggiano	_____	Caggiano	_____
Simone	_____	Simone	_____
Peerman	_____	Peerman	_____
Schwartz	_____	Schwartz	_____
Ruzzano	_____	Ruzzano	_____