

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,
SECTION 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
distribution 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 be 50 percent of
4 the replacement cost of the building or structure, ~~or (ii)~~
5 a modification to an approved site plan as regulated by
6 section 31-34, is required.

7
8 ~~(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 ~~(Bb)~~ 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 eCity's engineer to be compatible with the
30 requirements of all utility companies involved with respect to
31 a particular utility service.

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

9 (D) Underground placement of existing utilities:

10
11 (1) Applicability.

12 (a) For any new commercial, industrial, retail
13 development, mixed use application or any other
14 development application other than a residential
15 development application approved after the effective
16 date of this ordinance, all utilities to be located
17 within or in the public rights-of-way adjacent to the
18 development and within that development even if not in
19 the public rights-of-way shall be installed underground
20 at the developer's and/or owner's cost. Existing
21 overhead utilities on public rights-of-way adjacent to
22 the new development and within that development, even
23 if not in the public rights-of-way, shall be converted
24 to underground utilities at the developer's and/or
25 owner's cost, provided that, where applicable, such
26 cost is determined pursuant to a utility's tariffs,
27 such as those of Florida Power & Light Company, that
28 are approved and enforceable by the Florida Public
29 Service Commission. Where the costs are not subject to
30 tariffs enforceable by the Florida Public Service
31 Commission, it is the intent of this section that the
32 City will not be responsible for any such costs, and
33 that the apportionment of such costs between the
34 developer, owner, and any utility shall be pursuant to
35 a written agreement between the involved parties. For
36 a project parcel located at a roadway intersection, the
37 developer and/or owner shall be responsible to continue
38 the underground conversion across the intersection to
39 the nearest point/points of connection at no cost to
40 the 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, mixed use or any project other than
2 a residential development that occupies one acre or
3 more 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 development or reconstruction of a residential project
21 of five units or more approved after the effective date
22 hereof, all utilities located within or in the public
23 rights-of-way adjacent to that development and all
24 utilities located within the project site shall be
25 installed underground at the developer's and/or owner's
26 cost. All existing overhead utilities, including
27 "service laterals" and "service drops" that serve
28 individual residences, units, or commercial
29 establishments in the public rights-of-way and in the
30 project area, regardless whether such utility
31 facilities are located in the rights-of-way or on
32 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

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

2. 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 50 percent of the existing structure. Any reconstruction or remodeling that requires more than 50 percent of the existing structure to be demolished shall be required to comply with subsection (1)(c)1. 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.

(2) *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.

(3) *City participation.* Upon application and execution of an agreement by a developer or property owner consistent with this 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, 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 construction and/or any fees in a pro-rated manner 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 Development Review
19 Committee. The City Commission shall be the final
20 authority to grant or deny said waiver application.

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

(c) 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~~ shall be required to be paid into the City's Underground Utility Trust Fund prior to the development permits being issued.

SECTION 2: The Code of Ordinances of the City of Margate, Florida, Chapter 31, Section 31-3 Underground Utility Trust Fund - Established, shall read as follows:

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

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

(A) Restriction on expending funds.

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

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

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

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

(2) Funds deposited into the Underground Utility Trust 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

1 rational nexus may be based on location, system integrity
2 or other matters as determined in the discretion of the
3 City Commission.

4 (B) Prohibition against expending funds.

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

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

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

16 (C) Authority to expend funds.

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

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

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

31 (2) The City Commission may, by ordinance, amend or
32 rescind the Underground Utility Trust Fund.

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

38
39 **SECTION 3:** All ordinances or parts of ordinances in
40 conflict are repealed to the extent of such conflict.

41
42 **SECTION 4**nce is held to be invalid or unconstitutional by
43 a court of competent jurisdiction, then said holding shall in
44 no way affect the validity of the remaining portions of this

Ordinance.

SECTION 5: 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 6: This Ordinance shall become effective immediately upon adoption at its second reading.

PASSED ON FIRST READING THIS 18TH day of OCTOBER, 2017.

PASSED ON SECOND READING THIS 1ST day of NOVEMBER, 2017.

ATTEST:

JOSEPH J. KAVANAGH
CITY CLERK

MAYOR TOMMY RUZZANO

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

Caggiano	<u>YES</u>	Caggiano	_____
Simone	<u>NO</u>	Simone	_____
Peerman	<u>ABSENT</u>	Peerman	_____
Schwartz	<u>YES</u>	Schwartz	_____
Ruzzano	<u>YES</u>	Ruzzano	_____