

90.51 Undergrounding

A. Purpose.

1. The purpose of this section is to promote the health, safety, and general welfare of the public and is intended to foster:
 - a. Safe travel over the right-of-way;
 - b. Non-travel related safety around homes and buildings where overhead feeds are connected; and
 - c. Orderly development in the city. Location and relocation, installation and reinstallation of facilities in the right-of-way must be made in accordance with this division (A).
2. This section intended to be enforced consistently with state and federal law regulating right-of-way users, specifically including but not limited to M.S. §§ 161.45, 222.37, 237.162, 237.163, 238.084, 216B.36, and 301B.01, and Minn. Rules 7819.3100, 7819.5000, and 7819.5100, as they may be amended from time to time, and the Telecommunications Act of 1996, 47 U.S.C. § 253, to the extent the rules do not limit authority otherwise available to cities.

B. *Undergrounding of facilities.* Facilities newly installed, constructed, or otherwise placed in the public right-of-way or in other public property held in common for public use must be located and maintained underground pursuant to the terms and conditions of this subchapter and in accordance with applicable construction standards, subject to the exceptions below. Above-ground installation, construction, modification, or replacement of meters, gauges, transformers, street lighting, pad mount switches, capacitor banks, re-closers, and service connection pedestals shall be allowed. The requirements of this division (B) shall apply equally outside of the corporate limits of the city coincident with city jurisdiction of platting, subdivision regulations, or comprehensive planning as may now or in the future be allowed by law.

C. *Exceptions to undergrounding.* The following exceptions to the strict application of this section shall be allowed upon the conditions stated.

1. *Transmission lines.* Above-ground installation, construction, or placement of those facilities commonly referred to as "high voltage transmission lines" upon which a conductor's normal operating voltage equals or exceeds 23,000 volts (phase to phase) shall be allowed only by prior approval of the Council; provided, however, that 60 days prior to commencement of construction of such a project, the city shall be furnished notice of the proposed project and, upon request, the right-of-way user involved shall furnish all relevant information regarding such project to the city. This provision shall not be construed as waiving the requirements of any other ordinance or regulation of the city as the same may apply to any such proposed project.
2. *Technical and economic feasibility.* Above-ground installation, construction, or placement of facilities shall be allowed in residential, commercial, and industrial areas where the Council, following consideration and recommendation by the Planning Commission, finds that:
 - a. Underground placement would place an undue financial burden upon the landowner, ratepayers, or right-of-way user or would deprive the landowner of the preservation and enjoyment of substantial property rights; or
 - b. Underground placement is impractical or not technically feasible due to

topographical, sub-soil, or other existing conditions which adversely affect underground facilities placement.

3. *Temporary service.* Above-ground installation, construction, or placement of temporary service lines shall only be allowed:
 - a. During new construction of any project for a period not to exceed 24 months;
 - b. During an emergency in order to safeguard lives or property within the city; and
 - c. For a period of not more than seven months when soil conditions make excavation impractical.

D. Undergrounding of permanent replacement, relocated, or reconstructed facilities.

1. If the city finds that one or more of the purposes set forth in division (A) above would be promoted, the city may require a permanent replacement, relocation, or reconstruction of a facility of more than 300 feet to be located, and maintained underground, with due regard for seasonal working conditions. For purposes of this subchapter, reconstruction means any substantial repair of or any improvement to existing facilities.
2. Undergrounding may be required whether a replacement, relocation, or reconstruction is initiated by the right-of-way user owning or operating the facilities, or by the city in connection with:
 - a. The present or future use by the city or other local government unit of the right-of-way or other public ground for a public project;
 - b. The public health or safety; or
 - c. The safety and convenience of travel over the right-of-way.

E. Retirement of overhead facilities. The City Council may determine whether it is in the public interest that all facilities within the city, or facilities within certain districts designated by the city, be permanently placed and maintained underground by a date certain or target date, independently of undergrounding required pursuant to division (B) above (new facilities) and division (D) above (replacement facilities). The decision to underground must be preceded by a public hearing, after published notice and written notice to the utilities affected (two weeks published: 30 days written). At the hearing, the Council must consider items in division (G) below and make findings. Undergrounding may not take place until City Council has, after hearing and notice, adopted a plan containing items in division (H) below.

F. Public hearings. A hearing must be open to the public and may be continued from time to time. At each hearing any person interested must be given an opportunity to be heard. The subject of the public hearings shall be the issue of whether facilities in the right-of-way in the city, or located within a certain district, shall all be located underground by a date certain. Hearings are not necessary for the undergrounding required under divisions (B) and (D) above.

G. Public hearing issues.

1. The issues to be addressed at the public hearings include, but are not limited to:
 - a. The costs and benefits to the public of requiring the undergrounding of all facilities in the right-of-way;
 - b. The feasibility and cost of undergrounding all facilities by a date certain as determined by the city and the affected utilities;
 - c. The tariff requirements, procedure, and rate design for recovery or intended

recovery of incremental costs for undergrounding by the utilities from ratepayers within the city; and

- d. Alternative financing options available if the city deems it in the public interest to require undergrounding by a date certain and deems it appropriate to participate in the cost otherwise borne by the ratepayers.
2. Upon completion of the hearing or hearings, the City Council must make written findings on whether it is in the public interest to establish a plan under which all facilities will be underground, either city-wide or within districts designated by the city.

H. *Undergrounding plan.*

1. If the Council finds that it is in the public interest to underground all or substantially all facilities in the public right-of-way or in non-right-of-way public ground, the Council must establish a plan for such undergrounding.
2. The plan for undergrounding must include at least the following elements:
 - a. Timetable for the undergrounding;
 - b. Designation of districts for the undergrounding unless the undergrounding plan is city-wide;
 - c. Exceptions to the undergrounding requirement and procedure for establishing such exceptions;
 - d. Procedures for the undergrounding process, including, but not limited to, coordination with city projects and provisions to ensure compliance with nondiscrimination requirements under the law;
 - e. A financing plan for funding of the incremental costs if the city determines that it will finance some of the undergrounding costs, and a determination and verification of the claimed additional costs to underground incurred by the utility; and
 - f. Penalties or other remedies for failure to comply with the undergrounding.

I. *Facilities location.*

1.
 - a. In addition to complying with the requirements of M.S. §§ 216D.01 through 216D.09, as they may be amended from time to time ("One-Call Excavation Notice System"), before the start date of any right-of-way excavation, each registrant who has facilities located in the area to be excavated shall mark the horizontal placement of all said facilities.
 - b. To the extent its records contain such information, each registrant shall provide information regarding the approximate vertical location of its facilities to excavators upon request.
 - c. Nothing in this division (I) is meant to limit the rights, duties, and obligations of facility owners or excavators as set forth in M.S. §§ 216D.01 through 216D.09, as they may be amended from time to time. Any right-of-way user whose facility is less than 20 inches below a concrete or asphalt surface shall notify and work closely with the excavation contractor in an effort to establish and mark the exact horizontal and vertical location of its facility and the best procedure for excavation.

2. All facilities shall be placed in appropriate portions of right-of-way so as to cause minimum conflict with other underground facilities. When technically appropriate, all utilities shall be installed, constructed, or placed within the same trench.

- J. *Limitation of space.* To protect the health, safety, and welfare, or when necessary to protect the right-of-way and its current use, the city shall have the power to prohibit or limit the placement of new or additional facilities within the right-of-way. In making such decisions, the city shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public's needs for particular utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way, and future city plans for public improvements and development projects which have been determined to be in the public interest.
- K. *Responsibility.* All owners, platters, or developers are responsible for complying with the requirements of this section, and prior to final approval of any plat or development plan, shall submit to the Director written instruments from the appropriate right-of-way users showing that all necessary arrangements with said users for installation of such facilities have been made.

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