

AN ORDINANCE REGULATING THE PLACEMENT OF PUBLIC UTILITIES,
ELECTRONIC, PHONE LINES, CABLE SERVICES AND RELATED UTILITIES
UNDERGROUND.

THE CITY COUNCIL FOR THE CITY OF OAK PARK HEIGHTS DOES HEREBY
ORDAIN:

1008.010. Purpose.

The purpose of this section is to promote the health, safety and general welfare of the public and is intended to foster (i) safe travel over the right-of-way, (ii) non-travel related safety around homes and buildings where overhead feeds are connected and (iii) 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 section.

1008.020. Definitions.

The terms used in this section have the meanings given them.

Commission. "Commission" means the Minnesota Public Utilities Commission.

Facility. "Facility" means tangible asset in the public right-of-way required to provide utility service. The term does not include Facilities to the extent the location and relocation of such Facilities are preempted by Minnesota Statutes, Section 161.45, governing utility facility placement in state trunk highways. Facility does not mean electric transmission lines, as distinguished from electric distribution lines.

Public right-of-way. "Public right-of-way" has the meaning given it in Minnesota Statutes, section 237.162, subdivision 3.

Right-of-way user. "Right-of-way user" means (1) a telecommunications right-of-way user as defined by Minnesota Statutes, Section 237.162, subdivision 4; or (2) a person owning or controlling a facility, in the right-of-way, that is used or intended to be used for providing utility service, and who has a right under law, franchise or ordinance to use the public right-of-way.

Utility service. "Utility service" means and includes: (1) service provided by a public utility as defined in Minnesota Statutes, Section 216B.02, subdivisions 4 and 6; (2) services of a telecommunications right-of-way user, including the transporting of voice or data information; (3) services provided by a cable communications system as defined in Minnesota Statutes, Section 238.02, subdivision 3; (4) natural gas or electric energy or telecommunications services provided by a local government unit; (5) services provided by a cooperative electric association organized under Minnesota Statutes, chapter 308A; and (6) water, sewer, steam, cooling or heating services.

1008.030. Undergrounding of Facilities.

Facilities placed in the public right-of-way must be located, relocated and maintained underground pursuant to the terms and conditions of this section and in accordance with applicable construction standards. This section is intended to be enforced consistently with state and federal law regulating right-of-way users, specifically including but not limited to Minnesota Statutes, Sections 161.45, 237.162, 237.163, 300.03, 222.37, 238.084 and 216B.36 and the Telecommunications Act of 1996, Title 47, USC Section 253.

1008.040. Undergrounding of New Facilities.

A new Facility or a permanent extension of Facilities must be installed and maintained underground when supplied to:

- (a) a new installation of buildings, signs, streetlights or other structures;
- (b) a new subdivision of land; or
- (c) a new development or industrial park containing new commercial or industrial buildings.

All owners, developers, persons submitting plats to the city for approval as well as any utility company serving said developments are responsible for complying with the terms and provisions of this ordinance and prior to final approval of any plat, subdivision or development plan shall submit to the city a written statement from the appropriate utility company (ies) showing that all necessary arrangements with said companies for underground service and installation have been made. To the extent practical all underground work shall be completed prior to street surfacing.

1008.050. Undergrounding of Permanent Replacement, Relocated or Reconstructed Facilities.

A permanent replacement, relocation or reconstruction of a Facility of more than 300 feet must be located, and maintained underground, with due regard for seasonal working conditions. For purposes of this section, reconstruction means any substantial repair of or any improvement to existing Facilities. Undergrounding is 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 (1) the present or future use by the city or other local government unit of the right-of-way for a public project, (2) the public health or safety, or (3) the safety and convenience of travel over the right-of-way.

1008.060. Retirement of Overhead Facilities.

The city council may determine whether it is in the public interest that all Facilities within the city, or 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 sections 1008.040 and 1008.050 of this Code. 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 item (1)- (4) in section 1008.080 of this Code

and make findings. Undergrounding may not take place until city council has, after hearing and notice, adopted a plan containing items (1) - (6) of section 1008.090 of this Code.

1008.070. Public Hearings.

A hearing shall 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 sections 1008.040 and 1008.050 of the City Code.

1008.080. Public Hearing Issues.

The issues to be addressed at the public hearings include but are not limited to:

- (1) The costs and benefits to the public of requiring the undergrounding of all Facilities in the right-of-way.
- (2) The feasibility and cost of undergrounding all Facilities by a date certain as determined by the city and the affected utilities.
- (3) 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.
- (4) 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.

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 citywide or within districts designated by the city.

1008.090. Undergrounding Plan.

If the council finds that it is in the public interest to underground all or substantially all Facilities in the public right of way, the council must establish a plan for such undergrounding. The plan for undergrounding must include at least the following elements:

- (1) Timetable for the undergrounding.
- (2) Designation of districts for the undergrounding unless, undergrounding plan is citywide
- (3) Exceptions to the undergrounding requirement and procedure for establishing such exceptions.

- (4) 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.
- (5) 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.
- (6) Penalties or other remedies for failure to comply with the undergrounding.