

**CITY OF OLIVIA, MINNESOTA**  
**Ordinance 2022-04**

AN ORDINANCE ESTABLISHING CITY CODE TITLE IX SECTION 91.35:  
UNDERGROUNDING OF FACILITIES IN THE RIGHT OF WAY BY USERS PROVIDING  
UTILITY SERVICE

WHEREAS, the City of Olivia has adopted Ordinances regulating right-of-way management;  
and

WHEREAS, City Staff and the City Council have found certain sections of existing Code that  
need to be updated to fit the current needs and best interests of the City,

THE CITY COUNCIL OF THE CITY OF OLIVIA ORDAINS that City Code Title IX: 91.35  
shall be established as follows:

CHAPTER 91: RIGHT-OF-WAY MANAGEMENT

§ 91.35 UNDERGROUNDING OF FACILITIES IN THE RIGHT OF WAY BY USERS  
PROVIDING UTILITY SERVICE.

(A) *Purpose of Undergrounding.* The purpose of this section 91.35 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) safety around homes and buildings where overhead feeds are connected, and (iii) orderly development in the city consistent with its Comprehensive Plan. Location and relocation, installation and reinstallation of facilities in the right of way or in or on other public ground must be made in accordance with this section 91.35 and is intended to be enforced consistently with state and federal law regulating right-of-way users, to the fullest extent of the city's statutory and common law authority.

(B) *Undergrounding of Facilities.* All 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 section and in accordance with applicable construction standards, subject to the exceptions below. Above-ground installation, construction, modification, or replacement of existing meters, gauges, transformers, street lighting, pad mount switches, capacitor banks, re-closers, small wireless facilities and service connection pedestals shall be allowed, in addition to above-ground placement of new small wireless facilities in compliance with Minn. Stat. § 237.163 and properly permitted by the city. These requirements shall apply equally outside of the corporate limits of the city coincident with city jurisdiction of platting, subdivision regulation, or comprehensive planning as may now or in the future be allowed by law.

(C) *Undergrounding of Permanent Replacement, Relocated, or Reconstructed Facilities.* If the city finds that one or more of the purposes set forth in section 91.35, subd. A would be promoted, the city may require a permanent replacement, relocation, or reconstruction of a

facility to be located and maintained underground, with due regard for seasonal working conditions. For purposes of this subdivision, reconstruction means any substantial repair of or any improvement to existing facilities. 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 (1) 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, (2) the public health or safety, or (3) the safety and convenience of travel over the right of way. Subject to subd. 4 below, all relocations from previously placed underground facilities shall be to another underground location.

(D) *Exceptions to Undergrounding.* The following exceptions to the strict application of this subdivision shall be allowed upon the conditions stated:

(1) *Technical Feasibility; Promotion of Policy.* 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 staff finds that:

(a) Underground placement is not technically feasible due to topographical, subsoil, or other existing conditions which significantly and adversely affect underground facilities placement; or

(b) Failure to promote the purposes of undergrounding. The right-of-way user clearly and convincingly demonstrates that none of the purposes under Section 91.35, subd. A would be advanced by underground placement of facilities on the project in question, or the city determines on its own review that undergrounding is not warranted based on the circumstances of the proposed undergrounding.

(2) *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 three (3) months.

(b) During an emergency in order to safeguard lives or property within the city.

(c) For a period of not more than seven (7) months when soil conditions make excavation impractical.

(3) *Facilities Subject to Preemptive Public Utilities Commission Siting and Routing Jurisdiction.* Facilities that are subject to certificate of need and siting and routing requirements of the Minnesota Public Utilities Commission are exempted from this section 91.35, to the extent that the city's undergrounding authority is pre-empted by law.

(4) *Collocation of Small Cell Wireless Facilities.* Collocation of small wireless facilities and installation of wireless support structures, approved by the city and in compliance with Minn. Stat. §§ 237.162, 237.163, are exempted from this section.

*(E) Developer Responsibility.* All owners, platters, or developers are responsible for complying with the requirements of this subdivision, and prior to final approval of any plat or development plan, shall submit to the city 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

Passed and adopted by the City Council of the City of Olivia, Minnesota, on this 16th day of May, 2022 and effective upon publication.

---

Jon Hawkinson, Mayor

ATTEST:

---

Dan Coughlin, City Administrator