



INFORMATIONAL MEMORANDUM

TO: **Transportation & Infrastructure Services Committee**
FROM: **Hari Ponnekanti, Public Works Director/City Engineer**
BY: **Josh Hartley, Public Works Deputy Director Transportation**
CC: **Mayor Ekberg**
DATE: **March 31, 2023**
SUBJECT: **Tukwila Municipal Code (TMC) 11.04 & 11.28 Amendment Request**

ISSUE

Revisions are being requested to sections 11.04.040 – Definitions and 11.28 – Utility Undergrounding to provide updates and clarity to the existing code language.

BACKGROUND/DISCUSSION

The City's goal for telecommunication providers is to underground most infrastructure, where feasible, to make the City's neighborhoods and street corridors more aesthetically pleasing. Over the last few decades, the existing TMC codes have been misinterpreted by both external and internal agencies resulting in fewer opportunities to underground telecommunication utilities. Only a handful of corridors have been undergrounded thus far (i.e., 42nd Ave., portions of TIB, etc.). To maximize opportunities for undergrounding telecommunication utilities, a revision to the TMC code will be required.

TMC 11.28 – Utility Undergrounding has not been revised since 2002, with most of the language dating back to 1995. To provide clarification and critical updates to the code, Public Works is hereby requesting that the attached ordinance be approved as it outlines specific requirements, particularly as it relates to overloading and upgrade services, that specify undergrounding requirements in more detail. As part of the revised language, telecommunication providers can no longer request waivers to undergrounding based on financial impacts alone. A new deviations section has been added that outlines when a company may request for an exemption to the ordinance.

Language has been added that explicitly exempts the City from the undergrounding requirement due to the majority of city-owned utilities are already constructed underground. With that said, Public Works is committed to working with telecommunication providers to underground their service lines when feasible. To help with this, new franchise agreements will utilize project descriptions that specify project scopes and when undergrounding will be triggered. More information on this can be found in the attached PowerPoint presentation and will be discussed in further detail at the formal meeting.

FINANCIAL IMPACT

There are no immediate financial impacts approving the revised codes requested above.

RECOMMENDATION

The council is being asked to approve an ordinance that revises TMC codes 11.04.040 and 11.28 and consider this item at the April 10, 2023 Committee of the Whole Meeting, and subsequent Consent Agenda at the April 17, 2023 Regular Council Meeting.

ATTACHMENTS: TMC 11.04 & 11.28 Revised Code Ordinance
TMC 11.04 & 11.28 Revised Code Amendment PowerPoint Presentation

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, AMENDING ORDINANCE NO. 1995 §1 (PART), AS CODIFIED IN TUKWILA MUNICIPAL CODE (TMC) SECTION 11.04.040, "DEFINITIONS"; REPEALING ORDINANCE NO. 1995 §1 (PART), AS CODIFIED IN TMC CHAPTER 11.28; REENACTING TMC CHAPTER 11.28, "UNDERGROUNDING OF UTILITIES," TO UPDATE DEFINITIONS AND ADOPT NEW REGULATIONS RELATED TO UNDERGROUNDING OF UTILITIES; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City is engaged in an ongoing effort to streamline code processes and improve permitting procedures; and

WHEREAS, the City desires to provide clarification on regulations related to undergrounding utilities; and

WHEREAS, the proposed revisions to Tukwila Municipal Code (TMC) Chapter 11.28 will align the TMC with current engineering industry standards and practices; and

WHEREAS, the City Council finds that the adoption of this ordinance for updating regulations related to undergrounding of utilities prevents harm to the health or safety of the public, and promotes the public health, safety and general welfare;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, HEREBY ORDAINS AS FOLLOWS:

Section 1. Adoptions of Findings of Fact. The City Council hereby adopts the foregoing recitals and incorporates them herein as support for these amendments.

Section 2. Ordinance No. 1995 §1 (part), as codified at TMC Section 11.04.040, "Definitions," is hereby amended to read as follows:

11.04.040 Definitions

As used in this title, unless the context or subject matter clearly requires otherwise, the words or phrases defined in this chapter shall have the indicated meanings.

1. “*Abutting Property*” means all property having a frontage upon the sides or margins of any public right-of-way.

2. “*Affiliate*” means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person.

3. “*Applicant*” shall mean any owner or developer, or duly authorized agent of such owner or developer, who has submitted an application for a permit under this title.

4. “*Assessment Reimbursement Area*” means all real properties that will benefit from the street and/or utility system improvements.

5. “*Banner*” means a sign consisting of fabric and containing a public service message or event announcement which is hung above or across a public right-of-way.

6. “*Business Registration*” means a requirement of all telecommunications and cable providers who are not otherwise required to license or franchise with the City.

7. “*Cable Act*” means the Federal Cable Communications Policy Act of 1984, as amended by the Federal Cable Television Consumer Protection and Competition Act of 1992, as amended by portions of the Federal Telecommunications Act of 1996, and hereafter amended.

8. “*Cable Facilities*” – see “Facilities.”

9. “*Cable Operator*” shall have the same meaning as defined in the Cable Acts.

10. “*Cable Service*” shall have the same meaning as defined in the Cable Acts.

11. “*Campus*” means a development site under a single public or private ownership, upon which a structure or structures exist. By way of illustration and not limitation, a campus includes a public or private school, a multifamily development, a retirement housing facility, a nursing home facility, a continuing care retirement community, a boarding home, a hospital, a recreational facility, a business park, and a shopping center.

12. “*City*” means the City of Tukwila, Washington, in King County, and all the territory within the corporate boundaries of Tukwila, as these may change from time to time.

13. “*City Council*” means the City of Tukwila Council acting in its official capacity.

~~14. “*City inspector*” means the Director’s designated employee(s) responsible for inspecting the installation of warning and safety devices in the public right-of-way and restoration of public rights-of-way disturbed by work.~~

~~15. “*Cost of Construction*” means those costs incurred for design, acquisition for right-of-way and/or easements, construction, materials and installation required in order to create an improvement that complies with City standards. Until such time as RCW Chapter 35.91 is amended to expressly authorize inclusion of interest charges or other financing costs, such expenses shall not be included in the calculation of construction costs. In the event of a disagreement between the City and the applicant concerning the cost of improvement, the Public Works Director’s determination shall be final.~~

~~16. “Criminal Citation” means a written document initiating a criminal proceeding issued by an authorized peace officer.~~

~~17.~~ 14. “Curb” means a cement, concrete or asphaltic concrete raised structure designed to delineate the edge of the street and to separate the vehicular area of the public right-of-way from the area provided for pedestrians.

4815. “Department” means the City of Tukwila Public Works Department.

4916. “Deposit” shall mean any bond, cash deposit, or other security provided by the applicant in accordance with TMC Section 11.08.110.

2017. “Developer” means the owner and/or building permit applicant who is required – by any ordinance of the City, as the result of the review under State Environmental Policy Act, or in connection with any decision of the City Council – to construct street system and/or utility system improvements which abut the development site.

2418. “Development” means a private improvement to real property requiring electrical and/or communication services including, but not limited to, such services being distributed to subdivisions, short plats, planned unit developments, or single-family or commercial building sites.

2219. “Development Site” means the lot or lots upon which real property improvements are proposed to be constructed.

~~23. “Development Standards” are those standards set forth in Chapter 11.08.130 of the Tukwila Municipal Code and the Department’s Infrastructure Design and Construction Standards.~~

~~24. “Directive Memorandum” means a letter from the City to a right-of-way use permittee, notifying the recipient of specific nonconforming or unsafe conditions and specifying the date by which corrective action must be taken.~~

2520. “Director” means the Director of the Public Works Department or ~~his or her~~ designee.

2621. “Electrical or Communication Systems” means facilities carrying electrical energy, including but not limited to, electric power, telephone, telegraph, telecommunication, fiber optics, and cable television services.

2722. “Emergency” shall mean any unforeseen circumstances or occurrence, the existence of which constitutes an immediate danger to persons or property, or which causes interruption of utility or public services.

2823. “Excavation” shall mean any work in the surface or subsurface of the public right-of-way, including, but not limited to, opening the public right-of-way for installing, servicing, repairing, or modifying any facility or facilities in or under the surface or subsurface of the public right-of-way.

~~2924.~~ *“Excess Capacity”* means the volume or capacity in any existing or future duct, conduit, manhole, handhold or other utility facility within the right-of-way that is or will be available for use for additional telecommunications or cable facilities.

~~3025.~~ *“Facilities” or “Facility”* means the plant, equipment, ~~structures and/or~~ property, ~~including, but not limited to, overhead and underground water, gas, electric, and telecommunication facilities and appurtenance such as cables, wires, conduits, transformers, substation, pad-mounted J-boxes, switch cabinets, ducts, pedestals, antennas, electronics, vaults, poles, meter boxes, sewers, pipes, drains, and tunnels. within the City used to transmit, receive, distribute, provide or offer telecommunications or cable service.~~

~~3426.~~ *“FCC” or “Federal Communications Commission”* means the Federal administrative agency, or lawful successor, authorized to regulate and oversee telecommunications carriers, services and cable operators on a national level.

~~3227.~~ *“Franchise”* is an agreement required with ~~any telecommunications carrier or cable operator a right-of-way user~~ who desires to construct, install, operate, maintain or otherwise locate facilities in rights-of-way, ~~and to also provide telecommunications or cable services to persons or areas in the City.~~

~~33.~~ *“Franchised Utilities”* means ~~utilities that have City Council approval to use City rights-of-way for the purpose of providing their services within the City.~~

~~3428.~~ *“Frontage”* means that portion of the development site abutting public right-of-way; provided, however, in the case of developments ~~s~~ sites which are not substantially rectangular, such as “pipe-stem” lots, the frontage shall be equal to the greatest linear distance of the lot which is parallel to the public right-of-way. In the case of corner lots, “frontage” means any portion of the development site abutting any public right-of-way.

~~3529.~~ *“Fronting”* means abutting a public right-of-way or public rights-of-way.

~~3630.~~ *“Grantee”* means the holder of a franchise or a right-of-way ~~license~~ permit.

~~3731.~~ *“Hazardous Waste”* includes any and all such materials as defined by RCW ~~43.200.015~~ 70A.384.005 (radioactive wastes) and RCW ~~70.105.010~~ 70A.300.010(5), (6) and (15) (other hazardous wastes), now or as hereafter amended.

~~3832.~~ *“Installer”* means the person or organizations who actually and physically hangs the banner over the public right-of-way and who has the required skill and equipment to properly and safely hang the banner. The Director will maintain a list of approved installers having the required skill and equipment to properly and safely hang banners.

~~39.~~ *“License”* is an agreement with ~~any telecommunications carrier who desires to construct, install, operate, maintain or otherwise locate telecommunications facilities in rights-of-way and to also provide telecommunications services exclusively to persons and areas outside the City.~~

4033. “*Maintain or Maintenance*” means mowing, trimming, pruning (but not including topping or tree removal), edging, root control, cultivation, reseeding, fertilization, spraying, control of pests, insects and rodents by nontoxic methods whenever possible, watering, weed removal, and other actions necessary to assure normal plant growth.

~~41. “*Minor Addition, Replacement, or Relocation*” includes the installation of secondary conductors, changing wire size or type, pole replacement, relocation of poles at a distance of not more than 50 feet, replacing secondary wire with primary wire to serve not more than two new customers, hardware replacement on existing poles, and the like.~~

~~42. “*Municipal Excavator*” shall mean any agency, board, commission, department or subdivision of the City that owns, installs, or maintains a facility or facilities in the public right-of-way.~~

4334. “*New Electrical or Communication Service*” means installation of service lines to a building where none existed before, and shall not include overlashing, restorations and repairs.

4435. “*Nonconforming Paved Street Surface*” means asphaltic concrete or cement concrete street surface that does not conform to the current “City of Tukwila Infrastructure Design and Construction Standards,” but that the Director finds to be adequate for projected vehicular traffic.

~~45. “*Nonprofit*” means not for monetary gain.~~

~~46. “*Notice and Order*” means a written document initiating a civil proceeding in accordance with TMC Chapter 8.45.~~

4736. “*Occupant*” means a person who is occupying, controlling or possessing real property, or his or her agent or representative.

~~48. “*Off-Site Street System and/or Utility System Improvements*” means such improvements as are defined in TMC 11.12.030.~~

~~49. “*On-Site Street System Improvements*” means street system improvements that are required to be constructed on public right-of-way adjacent to the frontage of the development site and extending to the centerline of the public right-of-way.~~

5037. “*Open Video System*” means those systems defined and regulated as Open Video Systems by the FCC, pursuant to Section 653 of the Federal Communications Act of 1934, as amended, 47 U.S.C. 573.

~~51. “*Oral Directive*” means a directive given orally by City personnel to correct or discontinue a specific condition.~~

~~52. “*Ordinance*” means the City of Tukwila Telecommunication Ordinance, TMC Chapter 11.32.~~

5338. “*Overhead Facilities*” means ~~telecommunications and/or cable~~ facilities located above the surface of the ground, including the underground supports and foundations for such facilities.

~~5439.~~ “Owner” shall mean any developer or person, including the City, who owns any facility or facilities that are, or are proposed to be, installed or maintained in the public right-of-way.

~~5540.~~ “Paved Street Surface” means street surface that is either standard street surface or nonconforming paved street surface.

~~5641.~~ “Permit” means a document issued by the City granting permission to engage in an activity that involves the use of the public right-of-way.

~~57. “Permit Center” means the central location for applying for permits.~~

~~5842.~~ “Permittee” shall mean the applicant to whom a permit to use the public right-of-way has been granted and thereby has agreed to fulfill the requirements of TMC Title 11.

~~5943. “Person” shall mean any person, corporation, partnership, municipal excavator, or any governmental agency means, and includes: corporations, companies, associations, joint stock companies or associations, firms, partnerships, limited liability companies and individuals, and includes their lessors, trustees and receivers, but excludes the City.~~

~~64. “Personal Wireless Services” means commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services as defined by Federal laws and regulations.~~

~~6045.~~ “Private Use” means use of the public right-of-way – other than as a thoroughfare for ordinary transit of vehicles, pedestrians, or equestrians – for the benefit of a particular person or entity.

~~6146.~~ “Procedure” means a procedure adopted by the Director to implement this title, or to carry out other responsibilities as may be required by this title or by other codes, ordinances, or resolutions of the City or other agencies as they may apply.

~~6247.~~ “Real Property Improvements” means:

- a. Construction of a structure on an unimproved lot;
- b. Additions, alterations, or repairs to an existing structure other than one single-family residence, where square footage is added to the structure, or the construction of accessory buildings; or
- c. Construction of an additional structure or structures on a campus.

~~63. “Rebuilds” means a placement of overhead facilities for a distance of three or more spans (four poles) or 500 feet exclusive of replacements due to casualty damage.~~

~~6448.~~ “Recently Improved Street” shall mean any street that has been reconstructed or resurfaced by the Department or any other owner or person in the preceding three-year period.

~~6549.~~ “Reimbursement Agreement” means contracts authorized by RCW Chapter 35.91, as presently constituted or as may be subsequently amended, for utility

system improvements, and may be referred to from time to time in this title as “Latecomer Agreements.”

~~66. “Relocations” means removal of existing facilities with subsequent reinstallation at an adjacent location, generally necessitated by roadway improvements or widening projects.~~

~~67. “Removal” means the act of cutting down or removing any vegetation, or causing the effective removal through damaging, poisoning, or other direct or indirect actions resulting in the death of vegetation.~~

~~6850. “Replacement Vegetation” means vegetation of equal species, size, quality and number to that which has been removed.~~

~~6951. “Restoration” means all work including, but not limited to, backfilling, compacting, replacing street pavement, replacing sidewalks, or other public right-of-way to like-new condition in the manner prescribed by the Department’s Design and Infrastructure Design and Construction Manual. (See TMC Section 11.08.230-270 for more details.)~~

~~7052. “Right-of-Way” means all public streets, alleys and property granted, reserved for, or dedicated to public use for streets and alleys, together with all public property granted, reserved for, or dedicated to, public use including, but not limited to, walkways, sidewalks, trails, shoulders, drainage facilities, bike ways and horse trails, whether improved or unimproved, including the air rights, subsurface rights, and easements related thereto, but does not include:~~

- ~~1. State highways;~~
- ~~2. Land dedicated for roads, streets, and highways not opened and not improved for motor vehicle use by the public;~~
- ~~3. Structures, including poles and conduits, located within the right-of-way;~~
- ~~4. Federally granted trust lands or Forest Board trust lands;~~
- ~~5. Lands owned or managed by the Washington State Parks and Recreation Commission; or~~
- ~~6. Federally granted railroad rights-of-way acquired under 43 U.S.C. 912 and related provisions of federal law that are not open for motor vehicle use.~~

~~53. “Right-of-Way User” means any person with any facility in the right-of-way, including but not limited to, persons who have been granted City approval via franchise or other agreement to be in the right-of-way.~~

~~71. “Security Device” means any and all types of bonds, deeds of trust, security agreements, or other similar instruments.~~

~~7254. “Service Connection” means a connection made to a telecommunications facility and/or cable facility for the purpose of providing telecommunications or cable services.~~

~~7355.~~ “*Service Connections*” are facilities extending from a distribution system and terminating on private property and/or for the specific purpose of servicing one (1) customer.

~~7456.~~ “*Sidewalk*” means that property between the curb and the abutting property, set aside and intended for the primary use of pedestrians, but may include mixed uses such as pedestrians and bicyclists, improved by paving with cement concrete or asphaltic concrete, including all driveways.

~~75.~~ “*Sidewalk Routes*” means sidewalk routes shown on a map prepared by the Director and adopted by the City Council by resolution or by ordinance pursuant to the comprehensive plan.

~~7657.~~ “*Standard Street Surface*” means street surface that is paved in accordance with the “City of Tukwila Infrastructure Design and Construction Standards.”

~~7758.~~ “*State*” means the State of Washington.

~~7859.~~ “*Stop Work Notice*” means a notice authorized by the Director or his/her designee, posted at the site of an activity that requires all work to be stopped until the City approves continuation of work.

~~7960.~~ “*Street*” means any street, road, boulevard, alley, lane, way or place, or any portion thereof within the City limits.

~~80.~~ “*Street Assessment and/or Utility Assessment Agreement*” means contracts authorized by RCW Chapter 35.72 and RCW Chapter 35.91, as presently constituted or as may be subsequently amended, for system improvements, and may be referred to from time to time in this chapter as “*Latecomer Agreements*.”

~~8161.~~ “*Street System Improvements*” include half street section of street pavement (including appropriate sub paving preparation), surface water drainage facilities, sidewalks where required, curbs, gutters, utility undergrounding, street lighting, right-of-way landscaping (including street trees where required), and other similar improvements.

~~8262.~~ “*Street System Improvements*” means such improvements as are defined in TMC [Section 11.12.030](#).

~~8363.~~ “*Street Trees*” means any trees located on any street or public right-of-way.

~~84.~~ “*Street Use Official*” means the Director’s designated employees responsible for inspecting the installation of warning and safety devices in the public right-of-way and restoration of public rights-of-way disturbed by work.

~~8564.~~ “*Surface Water Drainage Facilities*” means ditches, piped and covered surface water drainage, including catch basins, and such detention, retention, and biofiltration as the Director shall require in accordance with sound engineering principles and the adopted ordinances and policies of the City.

~~8665.~~ “*Surplus Space*” means that portion of the usable space on a utility pole which has the necessary clearance from other pole users, as required by the orders and

regulations of the Washington Utilities and Transportation Commission, to allow its use by a telecommunications carrier for a pole attachment.

~~8766.~~ *“Telecommunications Carrier”* for the purposes of this chapter includes every person that directly or indirectly owns, controls, operates or manages plant, equipment, structures, or property within the City, used or to be used for the purpose of offering telecommunication service. Provided, however, this does not include lessees that solely lease bandwidth (and do not own telecommunication facilities within the City of Tukwila).

~~8867.~~ *“Telecommunication Facilities”* – see “Facilities.”

~~8968.~~ *“Telecommunication Service”* means the providing or offering for rent, sale or lease, or in exchange for other value received, the transmittal of voice, data, image, graphic or video programming information or service(s) between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities, with or without benefit of any closed transmission medium.

~~9069.~~ *“TMC”* means the Tukwila Municipal Code adopted by the City Council.

~~9170.~~ *“Topping”* means the severe cutting of the top of a street tree resulting in stubs beyond the branch collar in the crown or severe cutting which removes a substantial portion of the normal canopy, disfigures the street tree, and reduces the height.

~~9271.~~ *“Underground Facilities”* means ~~telecommunication and/or cable~~ facilities located under the surface of the ground, alone or in combination, direct buried or in utility tunnels or conduits, excluding the underground foundations or supports for overhead facilities.

~~9372.~~ *“Unpaved Street Surface”* means street surface that is neither standard nor nonconforming paved street surface.

~~9473.~~ *“Unsafe Condition”* means any condition that the Director reasonably determines is a hazard to health, endangers the safe use of the right-of-way by the public, or does or may impair or impede the operation or functioning of any portion of the right-of-way, or may cause damage thereto.

~~95.~~ *“Utility Excavator”* shall mean any owner whose facility or facilities in the public right-of-way are used to provide electricity, gas, information services, sewer service, steam, storm drains, telecommunications, traffic controls, transit service, video, water, or other services to customers regardless of whether such owner is deemed a public utility.

~~9674.~~ *“Utility System Improvements”* means water and/or sewer facilities as specified in RCW 35.91.020 as it now reads, or as hereafter amended.

~~9775.~~ *“Vegetation”* means all trees, plants, shrubs, groundcover, grass, and other vegetation.

~~9876.~~ *“Wire”* means a guided transmission medium, consisting of either one strand or a group of stands insulated together, which are used to power and/or send multiple transmission signals.

77. “Washington Utilities and Transportation Commission” or “WUTC” means the State administrative agency, or lawful successor, authorized under Title 80 of the Revised Code of Washington to regulate and oversee telecommunications carriers, services and telecommunications providers in the State of Washington to the extent prescribed by law.

Section 3. Repealer. Ordinance No. 1995 §1 (part), as codified at TMC Chapter 11.28, “Undergrounding of Utilities,” is hereby repealed.

Section 4. TMC Chapter 11.28 Reenacted. TMC Chapter 11.28 is hereby reenacted to read as follows:

CHAPTER 11.28 UNDERGROUNDING OF UTILITIES

Sections:

11.28.010	Policy
11.28.020	Purpose
11.28.030	<u>Undergrounding – Scope</u>
11.28.040	Facilities Excepted <u>Exempted</u>
11.28.050	Cost <u>Undergrounding Requirements</u>
11.28.060	Permits and Fees <u>Deviations</u>
11.28.070	Undergrounding Requirements <u>Overlapping</u>
11.28.080	Service Connection Requirements <u>Upgraded Service</u>
11.28.090	Street Lighting Connections and Disconnections of Affected Service
11.28.100	Connections and Disconnections of Affected Service <u>Service Connection Requirements</u>
11.28.110	Site Screening
11.28.120	As-built Drawings
11.28.130	Joint Trenches
11.28.140	Request for Waiver

Section 5. TMC Section 11.28.010 is hereby reenacted to read as follows:

11.28.010 Policy

It is the policy of the City to require the underground installation of all new electrical and communication facilities, with certain exceptions noted in this chapter. The City Council finds that the convenience, health, safety, and general welfare of the residents of the community require that all new facilities specified in this chapter be installed underground.

Section 6. TMC Section 11.28.020 is hereby reenacted to read as follows:

11.28.020 Purpose

The purpose of ~~TMC Chapter 11.28 this chapter~~ is to establish minimum requirements and procedures for the underground installation ~~and relocation~~ of electric and communication facilities within the City.

Section 7. TMC Section 11.28.030 is hereby reenacted to read as follows:

11.28.030 Undergrounding – Scope

This chapter shall apply to ~~anyone~~any person or entity, other than the City, who owns electrical or communication facilities, and to all new electrical and communication systems, including but not limited to electric power, telephone, telecommunication, and cable television facilities within the corporate City limits.

Section 8. TMC Section 11.28.040 is hereby reenacted to read as follows:

11.28.040 Facilities ExceptedExempted

~~A.~~ The following facilities are ~~excepted~~exempted from the undergrounding requirements of this chapter:

1. Electric utility substations, pad-mounted transformers, and switching facilities not located on the public right-of-way where site screening is or will be provided in accordance with TMC ~~11.28.110~~Chapter 18.54.

2. Electric transmission systems of a voltage of 115 kV or more (including poles and wires) and equivalent communication facilities.

3. Ornamental street lighting standards, as defined by the ~~Public Works~~ Director.

4. Telephone pedestals, cross connect terminals, repeaters, cable warning signs, and other equivalent communication facilities.

5. ~~Municipal Government~~ equipment, including but not limited to: traffic control equipment and police and fire sirens.

6. Temporary services for construction.

7. Replacement of existing overhead facilities due to damage by natural or man-made causes.

8. ~~Secondary wiring for street lighting.Overlashing onto existing facilities installed, subject to the limitations and restrictions set forth in TMC Section 11.28.070.~~

9. ~~Cable television cables to the extent that such cables are to be hung on existing utility poles in areas of the City where electrical facilities under 115kV or other distribution facilities are primarily overhead.~~Secondary wiring for street lighting.

10. Upgrade or replacement service of existing facilities pursuant to TMC Section 11.28.080.

11. Other facilities as determined by the Director.

~~B. The Director shall decide if a facility qualifies for an exception. The decision is determinative and final.~~

Section 9. TMC Section 11.08.050 is hereby reenacted to read as follows:

11.28.07011.28.050 Undergrounding Requirements

~~— A. **New Facilities:**~~

~~1. New electrical or communication service to a building where no service previously existed shall be constructed underground. Does not include restorations and/or repairs.~~

~~2. All major additions of new facilities (three or more spans and/or 500 feet or more) shall be underground.~~

~~3. Minor additions of new facilities may be constructed aerially where existing services are aerial.~~

~~— B. **Rebuilds, Replacements and Additions:**~~

~~1. A relocation necessitated by a public works project, including, but not limited to, road realignment or widening, sewer and water main projects, a major rebuild or replacement of existing aerial facilities (three or more spans and/or 500 feet or more) shall be underground, and a permit from the Department shall be required; except undergrounding shall not be required in those cases where the Director finds that undergrounding will not be in the best interest of the public.~~

~~2. A minor rebuild, replacement or relocation of existing aerial facilities that does not alter the essential system configuration may be constructed aerially.~~

~~3. When there is casualty damage to an overhead service system or other major service outage, the facilities may be restored aerially.~~

~~4. Installation of additional conductors to provide one three-phase circuit is allowed on existing aerial facilities.~~

~~5. Reconductoring for routine maintenance that does not constitute a major rebuild is allowed on existing aerial facilities. Routine maintenance is also allowed on existing facilities for pole replacements and replacement of miscellaneous hardware.~~

~~6. No work permitted by this subsection shall result in an increase in the number of utility poles, except an additional pole may be installed if an existing pole that is suitable as a termination for underground installation is not available within 300 feet of the closest property line of the development site.~~

Except for wireless communication facilities specifically permitted, pursuant to TMC Chapter 18.58, all new facilities shall be constructed, installed, and located in accordance with the following terms and conditions, unless otherwise specified in a franchise. Right-of-way users shall be responsible for all costs associated with undergrounding its facilities except as otherwise provided herein or within Federal or State law.

1. The right-of-way user shall install its new facilities underground, unless otherwise approved by the City, pursuant to TMC Section 11.28.060.

2. The right-of-way user shall install its new facilities within an existing underground duct or conduit whenever excess capacity exists within such facility and the right-of-way user is able to access such underground duct or conduit for a commercially reasonable fee; otherwise, the right-of-way user shall place its new facilities within its own new underground duct or conduit. The right-of-way user is encouraged to place conduit underground that can accommodate both the new facilities and future facilities, including any existing above ground facilities that may be relocated underground at a later date.

3. Whenever any new or existing electric utilities are being located underground, or upon a City project within a public right-of-way, the right-of-way user, with permission to occupy the same right-of-way, shall also relocate its facilities underground or along an alternative public way, consistent with the requirements of RCW 35.99.060 and TMC Section 11.08.300.

4. If requested, the right-of-way user shall provide the City with additional ducts and conduits, at the right-of-way user's cost, and related structures necessary to access the ducts and conduits; provided, that the terms and conditions under which such additional ducts and/or conduits are provided shall be consistent with RCW 35.99.070.

5. These locational requirements shall apply even if the right-of-way user is providing services to a wireless communication facility in the right-of-way, and such wireless communication facility is allowed to remain above ground.

Section 10. TMC Section 11.28.060 is hereby reenacted to read as follows:

11.28.060 Permits and Fees Deviations

~~— A. Unless as otherwise provided in any existing franchise agreement, a permit for underground construction shall be obtained from the Department prior to construction of facilities in the public right-of-way.~~

~~— B. An appropriate fee shall be charged for this permit, consistent with the schedule on file with the Department.~~ A. The right-of-way user may request that the Director allow a deviation from the requirements in this section by establishing that such compliance would be an undue hardship to the right-of-way user, a user of the facilities, or any other affected person. The term "undue hardship" shall mean either:

1. The installation would be technologically unfeasible; or

2. The impact of the underground construction outweighs the general welfare consideration in requiring underground construction; or

3. Delay of the installation of the underground facilities would better coordinate the project with other private improvements which are in the permitting process or public improvements shown on the Capital Improvement or Transportation Improvement elements of the Comprehensive Plan; or

4. Strict application of this chapter would materially inhibit or would have the effect of materially inhibiting a right-of-way user's ability to provide telecommunication services; or

5. For existing or new single-family residences only, the requirement to underground new facilities constitutes a financial hardship.

B. The Director may also deviate from these requirements if a statute or tariff prohibits the enforcement thereof or requires the City or rate payers to pay for such undergrounding.

C. Deviations shall be requested in writing by the applicant, which shall include how the applicant meets the criteria of TMC Section 11.28.060.A or B. The Director shall determine, in writing, if the undue hardship criteria are sufficiently established such that the applicant is not required to underground the new facilities. The Director's decision shall be final.

Section 11. TMC Section 11.28.070 is hereby reenacted to read as follows:

11.28.070 Overlashing

Existing right-of-way users may overlash to their existing wires, subject to all applicable local, state, and federal regulations; and further provided that existing right-of-way users may only overlash a total of two additional new wires per existing wire owned by the right-of-way users on a given pole, not to exceed three wires in total for any given right-of-way user. The overlashed wire(s) shall be limited to like-in-kind only, meaning that it shall not exceed the same size, weight and diameter of the original wire that is being overlashed to.

Section 12. TMC Section 11.28.080 is hereby reenacted to read as follows:

11.28.080 Upgraded Service

Existing wires may be replaced or upgraded for increased service capacity provided that no additional wires are added (i.e., a new wire can be added but the existing wires shall be removed). The new upgrade or replacement wires shall be limited to like-in-kind only, meaning that it shall not exceed the size, weight, and diameter of the original wire that the applicant proposes to remove.

Section 13. TMC Section 11.08.090 is hereby reenacted to read as follows:

11.28.10011.28.090 Connections and Disconnections of Affected Service****

The owner of real property abutting an underground project shall be responsible, at his or her expense, for converting to underground service and disconnecting his or her aerial services within 30 days following notice in writing of availability of such underground service. Time in consummating such connection and disconnection is of the essence, and such notice to the property owner, customer or subscriber may be mailed, postage prepaid, or delivered in person. In the event that such conversion and disconnection is not accomplished within 30 days of receipt of notice, the City may order the work done and the

actual cost shall constitute a lien against the real property, subject to enforcement as provided by law.

Section 14. TMC Section 11.28.100 is hereby reenacted to read as follows:

11.28.100 Service Connection Requirements

A. **Single-Family Residential Areas.** All electrical or communication service lines from either existing overhead or underground facilities to the service connection of new structures shall be installed underground.

B. **Non-Single Family Residential Areas.** All new electrical or communication service lines from either existing overhead or underground facilities to the service connection of new and existing structures shall be installed underground.

Section 15. Repealer. Per the repealer in Section 3 of this ordinance, the following sections of the Tukwila Municipal Code are hereby eliminated:

- 11.28.110 Site Screening
- 11.28.120 As-built Drawings
- 11.28.130 Joint Trenches
- 11.28.140 Request for Waiver

~~11.28.110 Site Screening~~

~~Where a permit for the underground project is required by this chapter, plans for all above-ground facilities shall be submitted to the Department of Community Development for approval of site screening and setbacks, prior to issuance of a permit by the Public Works Department.~~

~~11.28.120 As-built Drawings~~

~~A drawing of a completed underground project in a form acceptable to the Department and conforming to generally accepted engineering practices shall be submitted in duplicate to the Public Works Department within 30 days of the completion of any underground project within the City. No bond money, deposit or fee shall be released to the developer until the Department receives the drawings.~~

~~11.28.130 Joint Trenches~~

~~Where several utilities are planned or required in the same corridor, every effort shall be made by the utilities to use joint trenches for such facilities.~~

~~11.28.140 Request for Waiver~~

~~A. All applications for waivers from the foregoing underground requirements shall be first filed with the Director.~~

~~B. A waiver shall not be granted by the Director unless the Director finds that the utility owner or user or other affected parties can demonstrate that it would be an undue~~

~~hardship to place the facilities concerned underground. For purposes of this chapter, undue hardship is intended to mean:~~

~~1. A technological or environmental difficulty associated with the particular facility or with the particular real property involved that would render the installation unfeasible; or~~

~~2. The cost of the underground construction outweighs the general welfare consideration in requiring underground construction.~~

~~C. The Director may grant a deferral of the requirement for undergrounding if the current underground construction would not be in the best interests and welfare of the public. A deferral is predicated upon the applicant's willingness to sign a no-protest LID agreement for future installation. The Director's decision is determinative and final.~~

Section 16. Corrections by City Clerk or Code Reviser Authorized. Upon approval of the City Attorney, the City Clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of scrivener's errors; references to other local, state or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering.

Section 17. Severability. If any section, subsection, paragraph, sentence, clause or phrase of this ordinance or its application to any person or situation should be held to be invalid or unconstitutional for any reason by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this ordinance or its application to any other person or situation.

Section 18. Effective Date. This ordinance or a summary thereof shall be published in the official newspaper of the City, and shall take effect and be in full force five days after passage and publication as provided by law.

PASSED BY THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, at a Regular Meeting thereof this _____ day of _____, 2023.

ATTEST/AUTHENTICATED:

Christy O'Flaherty, MMC, City Clerk

Allan Ekberg, Mayor

APPROVED AS TO FORM BY:

Filed with the City Clerk: _____
Passed by the City Council: _____
Published: _____
Effective Date: _____
Ordinance Number: _____

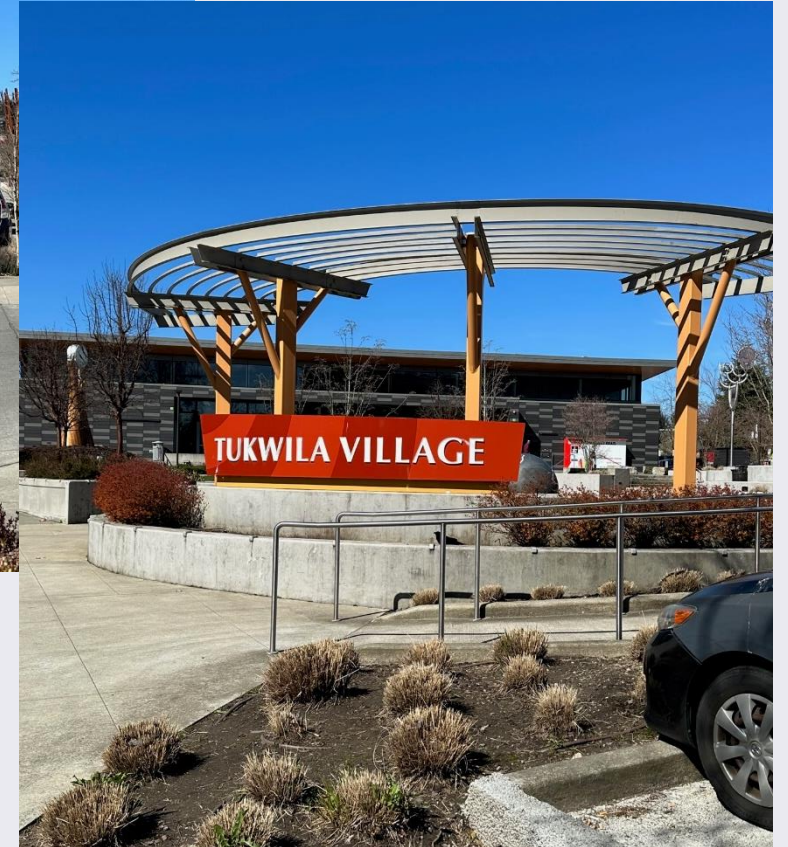
Office of the City Attorney

City of Tukwila



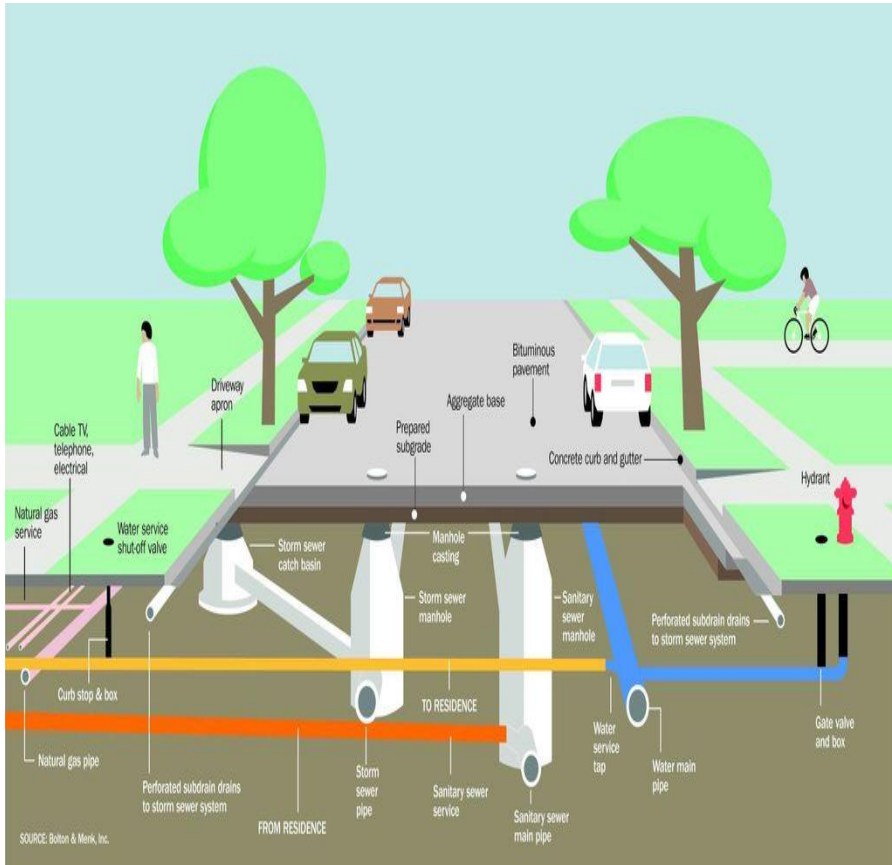
TMC 11.04 & 11.28 Revised Code Amendment

Josh Hartley, P.E.
April 3, 2023



S. 144th St (TIB – 42nd Ave. S)

Purpose of Amendments

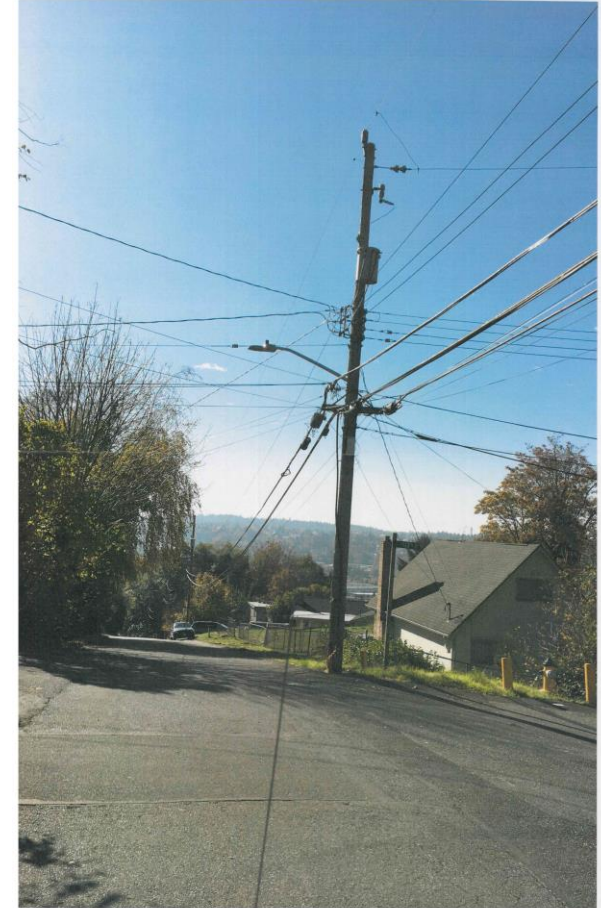


- To externally and internally re-affirm and clarify City's existing policy as it relates to undergrounding.
- Discuss New Deviations Section
- Provide examples of typical permits requested.
- City CIP projects that trigger or don't trigger undergrounding.
- Jurisdiction Code Comparisons

Old Code Requirements

Old code: underground all new facilities

- Per plain language of code, “new facilities” means communication and electric facilities. City does not have “facilities” because it doesn’t own communication nor electric lines, thus old code never actually applied to require City to underground any of its facilities.
- Only time undergrounding was required was placement of new facilities (i.e. stringing a new electric or communication line between poles, or connecting a building to service, where no service had previously existed).
 - Only facilities that had to be undergrounded were the facilities that were new, the existing facilities could remain above ground.
 - Facility owner could seek waiver from requirement to underground if it was too expensive



New Code Requirements



New code: Underground all new facilities

- Definitions revised and/or added to TMC 11.04.
- Clarifies explicitly that code does not apply to City by excluding chapter from applying to City.
- Clarifies that overlashing (wrapping a new overhead line around an existing overhead line) is limited to two cables in like kind only meaning not to exceed same size, weight, and diameter.
- Clarifies that deviations from code requirements are only allowed if in undergrounding is technologically unfeasible (i.e., Small Wireless Facilities can't be undergrounded) or if the installation coordinates with a CIP project, or if the impact to undergrounding outweighs the benefit.

Typical Service Request Examples

Installation of Comcast and SCL service to a new housing development:

Undergrounding of new lines required. Existing lines in a block would remain overhead, but new lines received by the new development would be required to be placed underground.



46th Ave. S (144th – 146th)

Typical Service Request Examples

Repair or replacement of **SCL existing service line:**

No undergrounding required.
This is general maintenance and upkeep and not considered a new service line.



E. Marginal Way near Museum of Flight

Typical Service Request Examples (cont.)



Overlashing on existing lines:

Two extra cables are allowed and must be like in-kind, meaning it shall not exceed the same size, weight, or diameter of existing cable. If three or more cables are being requested, undergrounding will be required. This applies to upgraded service lines also (i.e. changing material to fiber from electric line).

Typical Service Request Examples (cont.)



Installation of a *new* telecommunication company's service lines in the City:

Undergrounding of new lines required. With new restrictions on overlying and upgraded services for existing providers, this requirement shall not limit competition.

Typical Service Request Examples (cont.)



S. 122nd St at 44th Ave S. Intersection

Installation of new cable service to a single house:

Undergrounding of new service line required if two or more overlashed lines already exist on a given pole. However, code allows for deviation to this requirement if requested by property owner.

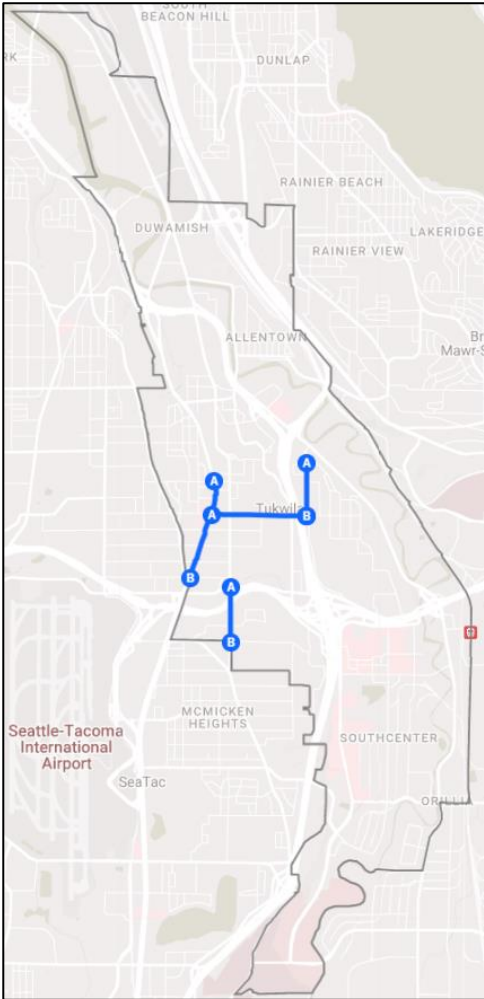
City Capital Projects Undergrounding Requirements

Both existing and amended TMC 11.28 codes do not require undergrounding of existing telecommunication service lines. Only newly installed lines require undergrounding.

For future CIP Projects the City constructs, the following project definitions will determine undergrounding requirements:

- **Major Project:** A public project constructing and/or replacing two or more City-owned utilities (i.e. sewer, water, stormwater) or fully reconstructing the roadway cross-section. **Undergrounding will be required.**
- **Minor Project:** A public project constructing fewer than two City utilities (i.e. sewer, water, stormwater) and/or partial roadway reconstruction, sidewalk construction, etc. **Undergrounding will NOT be required.**

CIP Projects with Undergrounded Utilities



The City has four (4) projects to date that have required telecommunication companies to underground their infrastructure:

- 42nd Ave. S Phase II (Southcenter Blvd. – S. 160th St.)
- 53rd Ave S. (S. 137th St. – S. 144th St.)
- S. 144th St. (TIB – 42nd Ave. S)
- TIB Phase I (S. 140th St. –S. 152nd St.)

53rd Ave. S CIP Project (S. 137th – S. 144th)



BEFORE: August 2017



AFTER: August 2021

42nd Ave. S CIP Project (Southcenter – 160th)



BEFORE: Oct. 2015



AFTER: September 2022

TIB Phase I CIP Project (S. 140th St. –S. 152nd St.)



TIB near S. 130th St.



TIB near S. 144th St.

Comparisons

- Burien Municipal Code Chapter 12.40: ... it is the policy of the city to require the underground installation of *all new electrical and communication facilities*, with certain exceptions noted in this chapter.
- SeaTac Municipal Code Chapter 11.20: it is the policy of the city to require the underground installation of *all new electrical and communication facilities*, subject to certain exceptions noted hereafter.’
- Issaquah Municipal Code 12.60: *All new facilities must be placed underground....* For purposes of clarity, new facilities include but are not limited to all new wireline facilities and over-lashing on existing facilities.



Questions and/or Comments?