

## ORDINANCE # 2024-3

### AN ORDINANCE RELATED TO UTILITIES IN STREET RIGHTS OF WAY OR A CITY EASEMENT IN THE CITY OF ARCADIA

The common council of the City of Arcadia, Wisconsin, do ordain as follows:

SECTION 1. Section 336-11 of the City of Arcadia Code of Ordinances is created to read as follows:

“336-11        Utilities in Street Rights of Way.

**A.     Authority; Purpose.** This ordinance is adopted pursuant to the authority under *Wis. Stat. §§62.16 and 196.58* authorizing municipalities to regulate streets within their jurisdiction, including the regulation of utilities within such streets.

**B.     Definitions.** For the purpose of this ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein:

1. “Right-of-way” (“ROW”) means the surface of, and the space above and below, any public street, road, alley, highway, dedicated way, local access road or road easement used or intended to be used by the general public for vehicles, and any utility easement granted to the City.
2. “Utility” means any entity, including cooperatives, that supplies electrical energy, water, sewer, stormwater, gas, heat, cable, or communications.

**C.     Location of Utilities in Right-of-Way.** No Utility may place utility facilities, including but not limited to pipes, wires, conduits, pedestals, hydrants, manholes, valves or other means to provide utility services in the Right-of-Way without the prior, express, written approval of the City of Arcadia. For purposes of this Section 336-11, the City of Arcadia common council may designate one or more City employees to approve the location of utility facilities in the Right-of-Way.

**D.     Relocation.** Upon reasonable notice and a written request from City to a Utility, the Utility shall relocate any utility facilities located within a Right-of-Way to a new location acceptable to the City. The Utility shall be solely responsible for the cost to relocate utility facilities from within the Right-of-Way. The City shall provide written notice of the time by which a Utility must remove, relocate, change, alter or bury underground its facilities and of the reason therefor, which shall be to promote the health, safety, or public welfare. If a Utility fails to remove, relocate, change, alter or bury underground any utility facility as requested by the City, by the date reasonably established

by the City, the Utility shall pay all costs incurred by the City due to such failure. Costs shall include but not be limited to costs related to project delays. If the Utility refuses to make a change requested by the City, the City may cause the utility facility to be removed, relocated, changed, altered, or buried underground at the Utility's sole expense. Upon receipt of a detailed invoice from the City, the Utility shall reimburse the City for the costs the City incurred. Reimbursement shall be made within 30 days of the date of the invoice.

**E. Removal of Unauthorized Facilities.** Unless otherwise agreed to in writing by the City, within 30 days following written notice from the City, the Utility and any other person who owns, controls, or maintains any abandoned or unauthorized utility facility within the Right-of-way shall, at its own expense, remove or abandon in place the utility facility and restore the Right-of-way to its condition prior to such removal.


**F. Removal by City.**

1. The City retains the right and privilege to cut or move any utility facilities located within the Right-of-way, without notice, as the City may determine to be necessary, appropriate, or useful in response to a public health or safety emergency.
2. If the Utility fails to remove any facility when required to do so under this Section 336-11, the City may remove the facility using qualified personnel or contractors consistent with applicable State and Federal safety laws and regulations, and the Utility shall be responsible for paying the full cost of the removal and any administrative and legal costs incurred by the City in removing the utility facility and obtaining reimbursement. Upon receipt of an invoice from the City, the Utility shall reimburse the City for the costs the City incurred within 30 days of the date of the invoice.
3. The City shall not be liable to any Utility for any damage to utility facilities, or for any consequential losses resulting directly or indirectly therefrom, caused by the City or its contractor in removing, relocating or altering the utility facilities pursuant to this Section 336-11 or resulting from the Utility's failure to remove, relocate, alter, or bury underground its facilities as required by this Section 336-11 unless such damage arises directly from the City's willful misconduct.

**G. Violation.** Violation of any of the provisions of this Section 336-11 shall be punishable by a forfeiture in the amount of \$100 per violation, with each day during which the violation continues constituting a separate offense."

**SECTION 2. Effective Date.** This ordinance shall take effect upon passage and publication as provided by law.

ADOPTED at a regular meeting of the City of Arcadia Common Council this 20<sup>th</sup> day of March, 2024.

  
Kevin Mayzek, Mayor

ATTEST:   
Angela Berg, Clerk

Passed and adopted: March 20, 2024

Published: March 27, 2024