

CITY OF AURORA, ILLINOIS

ORDINANCE NO. _____
DATE OF PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 42, ARTICLE X OF THE CITY OF AURORA
CODE OF ORDINANCES ENTITLED, "CONSTRUCTION OF FACILITIES IN PUBLIC
RIGHTS-OF-WAY"

WHEREAS, the City of Aurora is a home-rule unit of local government under Subsection (a) of Section 6 of Article VII of the Illinois Constitution of 1970; and

WHEREAS, subject to said Section, a home-rule unit may exercise any power and perform any function pertaining to its government and affairs for the protection of the public health, safety, morals and welfare; and

WHEREAS, under Rider Local Government Compliance Adjustment (LGC) as approved by the Illinois Commerce Commission, Commonwealth Edison is permitted to recover the cost of complying with non-standard requirements imposed by units of local government by billing all of Commonwealth Edison's customers within the City of Aurora's boundaries; and

WHEREAS, the replacement and maintenance of Commonwealth Edison's underground facilities within the City is a non-standard municipal requirement; and

WHEREAS, these services are necessary to maintain and promote public safety, welfare, comfort and convenience; and

WHEREAS, the corporate authorities of the City desire to require Commonwealth Edison to replace its existing underground facilities, from time to time upon written request, and for Commonwealth Edison recover the cost of replacing or re-grounding the underground facilities only as permitted under the Rider LGC, Local Government Compliance Adjustment, as approved by the Illinois Commerce Commission; and

WHEREAS, in furtherance of its home rule powers, it is necessary and desirable for the City of Aurora to amend its Code of Ordinances regarding the construction of facilities in public rights-of-way and / or utility easements to require Commonwealth Edison to replace or reground the existing underground facilities within the City boundaries, as requested by the City, in accordance with the provisions of the Rider LGC;

NOW, THEREFORE, BE IT ORDAINED by the Mayor and City Council of the City of Aurora, Kane, DuPage, Kendall, and Will Counties, Illinois, pursuant to its home rules powers, as follows:

Section 1: The preambles set forth above are incorporated herein and made a part hereof.

Section 2: That Chapter 42, Article X entitled “Construction of Facilities in Public Rights-of-Way,” of the City of Aurora Code of Ordinances is hereby amended by amending Section 42-318 to read in its entirety as follows:

Sec. 42-318. – Removal, relocation, or modifications of facilities.

(a) *Notice.* Within ninety (90) days following written notice from the city, a utility shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any utility facilities within the rights-of-way whenever the corporate authorities have determined that such removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any city improvement in or upon, or the operations of the city in or upon, the rights-of-way. A facility owner shall be responsible for any costs incurred due to inaccurate information provided during the design phase of a city improvement project.

(b) *Removal of unauthorized facilities.* Within thirty (30) days following written notice from the city, any utility that owns, controls, or maintains any unauthorized facility or related appurtenances within the rights-of-way shall, at its own expense, remove all or any part of such facilities or appurtenances from the rights-of-way. A facility is unauthorized and subject to removal in the following circumstances:

- (1) Upon expiration or termination of the utility's license or franchise, unless otherwise permitted by applicable law;
- (2) If the facility was constructed or installed without the prior grant of a license or franchise, if required;
- (3) If the facility was constructed or installed without prior issuance of a required permit in violation of this article; or
- (4) If the facility was constructed or installed at a location not permitted by the utility's license or franchise.

(c) *Emergency removal or relocation of facilities.* The city retains the right and privilege to cut or move any facilities located within the rights-of-way of the city, as the city may determine to be necessary, appropriate or useful in response to any public health or safety emergency. If circumstances permit, the city shall attempt to notify the utility, if known, prior to cutting or removing a facility, and shall notify the utility, if known, after cutting or removing a facility. All costs associated with the repair, replacement, or relocation of the facilities cut or removed by the city, shall be borne by the facility owner.

(d) *Abandonment of facilities.* In the event the use of a facility has been discontinued for a period of one hundred and eighty (180) consecutive days, within the rights-of-way of the city, the facility shall be deemed to be abandoned.

Determination of the date of abandonment shall be made by the city engineer, who shall have the right to request documentation and/or affidavits from the utility regarding the issue of the facility's use. Upon the city engineer's determination and written notification to the utility of such abandonment, the utility shall have ninety (90) days within which to: (1) reactivate the actual use of the facility or transfer the facility to another utility which makes actual use of the facility; or (2) dismantle and remove the facility and notify the city engineer in writing of the completion of such removal. Following the end of the ninety-day period from the date of receipt of such notice from the city, if no action has been taken under subsections (1) or (2) hereinabove, the city engineer may direct the utility to remove all or any portion of the facility if it is determined that such removal will be in the best interest of the public health, safety and welfare. At the earlier date of either (1) two hundred and seventy (270) days from the date of discontinuance without reactivation, or (2) upon completion of dismantling or removal, any special exception or variance approval for the facility shall automatically expire without further action by the city. In the event that the city does not direct the utility that abandoned the facility to remove it, by giving notice of abandonment to the city, the abandoning utility shall be deemed to consent to the alteration or removal of all or any portion of the facility by another utility or person.

(e) *Local Government Compliance Adjustment.* Whenever the City provides notice to Commonwealth Edison to replace or reground its existing underground facilities within the City's boundaries, Commonwealth Edison shall recover the cost thereof only as permitted under the Rider LGC, Local Government Compliance Adjustment, as approved by the Illinois Commerce Commission.

Section 3: That this ordinance shall be in full force and effect, and shall be controlling, upon its passage and approval.

Section 4: That all ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of any such conflict.

Section 5: That any Section or provision of this ordinance that is construed to be invalid or void shall not affect the remaining Sections or provisions which shall remain in full force and effect thereafter.

PASSED by the City Council of the City of Aurora, Illinois, on _____.

AYES ____ NAYS ____ ABSENT ____ NOT VOTING ____

APPROVED AND SIGNED by the Mayor of the City of Aurora, Illinois, on

_____.

Mayor

ATTEST:

City Clerk