

**Subject: Ordinance #1549 – Adding a New Chapter 14.10 to the RMC To require undergrounding of Electrical and communications Facilities.**

**NOTE: this is related to Ordinance #1548**

**Proposed Council Action:**

This is scheduled for Second Reading and Action. Adopt Ordinance No. 1549

**Dept. Origin:** Electrical Utility

**Prepared by:** Jennifer Robertson  
 City Attorney

**For Agenda of:** July 20, 2021

**Exhibits:** Ordinance #1549

	Initial & Date
<b>Concurred by Mayor:</b>	_____
<b>Approved/form by City Atty:</b>	<u>JSR/7-14-21</u>
<b>Approved by _____ Director:</b>	_____
<b>Approved by Department Head:</b>	_____

**INFORMATION / BACKGROUND**

In accordance with RCW 35.92.050 the City of Ruston is the electrical provider within the city limits of Ruston. When electrical distribution lines are placed underground, electrical reliability is increased as the lines cannot be taken down in windstorms, by tree growth, or by auto accidents that may occur on city rights of way. In addition, when electrical and communications lines are removed from city rights of way, utility poles are also removed which makes the city streets and sidewalks less cluttered, more aesthetically pleasing, and safer as automobiles, other vehicles, bicycles, and pedestrians will not collide with utility poles. In Ruston, the public enjoys views of Puget Sound and mountain views from many public places within the City of Ruston and overhead wires and facilities can obstruct these views and are unsightly. For all of these reasons, the City has adopted many policies over the years to support conversion of electrical and communications facilities from aerial to underground.

Some examples of these policies are found in the following documents:

- ROW Use Master Permits and Utility Relocation RMC 14.06.230 which request relocation of aerial facilities underground. (Adopted in 2012.)
- RMC 18.04.010 – “The installation of underground cable service from the transformer to the point of use shall be at the expense of the user of such service.” (Adopted in 1979.)
- RMC 18.04.020 – “The maintenance of underground cable service from the transformer to the point of use shall be at the expense of the user of the service.” (Adopted in 1979.)

- RMC 29.02.020 requires all electrical and telephone distribution systems to be placed underground in all subdivisions (In the code since at least 2004.)
- Importance of undergrounding is emphasized in all franchise agreements entered into by Ruston over the past 20+ years.
- Ruston Comprehensive Plan Policies also demonstrate City’s policy of undergrounding utilities:
  - Ch. 2 – Vision, Goals and Framework - Capital Facilities and Services Policy: “**FW-48** Aerial utilities should be located and relocated underground. Seek opportunities to achieve this.” (p. 22.)
  - Ch. 3 – Community Character – CC Policy: “**CC- 24** Enhance the scenic views and aesthetic quality of Ruston by placing overhead utilities underground.” (p. 27.)
  - Chapter 4 – Land Use Vision, Utility Services, includes: “In addition, Ruston also requires new development to underground aerial utilities and provide at a minimum, conduit for future telecommunication facilities.” (p. 31.)
  - Ch. 7, Transportation Vision, re: Alleys, says: “When the vehicle driving surface is less than 12’ wide, opportunities to place aerial utilities underground, (thus eliminating the need for utility poles which limit drive aisle width), should be considered.” (p. 91.)
  - Ch. 8 – Utilities – Utilities Goals in Comp Plan includes: “Pursue funding and other opportunities to place overhead utilities underground. All utilities related to new construction should be required to be placed underground.” (p. 154.)
  - Ch. 8 – Utilities - Comp Plan Policy UT-13 and UT-14:
    - “**UT-13** All new electrical and telecommunication wires should be located underground. Existing overhead utilities should be placed underground when impacted by new development and whenever possible.” (p. 155.)
    - “**UT-14** Support feasible co-location of new public and private utility distribution facilities **in shared trenches**. Promote coordination of construction timing to minimize construction-related disruptions to the public and reduce the cost to the public of utility delivery. Provision of an efficient, cost effective and reliable utility service is encouraged by ensuring land will be made available for the location of utility lines and utility facilities.”

It is the Council’s vision for the City that eventually all overhead wires and facilities will be moved underground to make power more reliable, make City rights of way safer and less cluttered, and to provide better aesthetics throughout the City. To codify this practice, a new chapter 14.10 RMC is being proposed to be added to the Ruston Municipal Code to address facility

undergrounding. This new chapter requires that utilities and communications companies install their lines underground in the following circumstances:

1. When it becomes necessary to remove/relocate existing overhead facilities for a distance of five hundred (500) feet because of a roadway widening project or other similar reason.
2. When existing overhead facilities for a distance of over five hundred (500) feet are to be replaced. This subsection does not apply if the purpose of the replacement is due solely to casualty damage or for the replacement of wire only.
3. When any facilities are extended beyond those facilities existing on the effective date of this chapter.
4. When another utility having facilities along the same street or easement places its facilities underground for a distance of over five hundred feet.

RMC 14.10.020(a). It also requires utility services located on private property to be installed underground in the following circumstances:

1. All new utility or communications services from an overhead or underground facility to service connections of structures shall be located underground.
2. All rebuilt or relocated utility or communications service lines from an overhead or underground facility to service connections of structures shall be installed underground unless such rebuilding or relocation involves a change in the overhead service line only without a change in the corresponding service entrance facilities.
3. All existing utility or communications services shall be converted to underground by the owner or owners of the property upon which said services are located within ninety (90) days after notification by the City in accordance with RCW 35.96.050 that underground facilities are available.

RMC 14.10.020(b). It also provides that the City may underground facilities by the creation of a local improvement district. RMC 14.10.020(c).

The new chapter also creates a variance procedure whereby an applicant may seek to avoid the undergrounding requirement by requesting a variance from the City's Hearing Examiner. RMC 14.10.030. Enforcement of this new chapter will utilize the code enforcement procedures contained in Chapter 12.40 RMC.

For consistency with this new Chapter, amendments to the City's Electric Utility Title 18 RMC are proposed, specifically amending 18.04.010 and 18.05.020. These consistency revisions are found in proposed Ordinance No. 1548 which is also on the July 20<sup>th</sup> agenda for action.

These revisions have been reviewed by the City's electrical engineer and special projects manager, both of whom support approval of this Ordinance.

**FISCAL CONSIDERATION**

None.

**RECOMMENDATION / MOTION**

This is scheduled for Second Reading and Action. Adopt Ordinance No. 1549.

MOTION: I move to adopt Ordinance No. 1549 relating to the installation of electrical, communications, and other facilities, adding a new Chapter 14.10 to the Ruston Municipal Code, describing the situations under which such facilities must be installed underground, defining the facilities subject to this requirement, establishing a variance procedure to waive such requirement in certain limited circumstances, providing for enforcement under the City's Construction Code Enforcement Procedures in Chapter 12.40 of the Ruston Municipal Code, and establishing an effective date.

**ORDINANCE NO. 1549**

**AN ORDINANCE OF THE CITY OF RUSTON, WASHINGTON, RELATING TO THE INSTALLATION OF ELECTRICAL, COMMUNICATIONS, AND OTHER FACILITIES, ADDING A NEW CHAPTER 14.10 TO THE RUSTON MUNICIPAL CODE, DESCRIBING THE SITUATIONS UNDER WHICH SUCH FACILITIES MUST BE INSTALLED UNDERGROUND, DEFINING THE FACILITIES SUBJECT TO THIS REQUIREMENT, ESTABLISHING A VARIANCE PROCEDURE TO WAIVE SUCH REQUIREMENT IN CERTAIN LIMITED CIRCUMSTANCES, PROVIDING FOR ENFORCEMENT UNDER THE CITY'S CONSTRUCTION CODE ENFORCEMENT PROCEDURES IN CHAPTER 12.40 OF THE RUSTON MUNICIPAL CODE, AND ESTABLISHING AN EFFECTIVE DATE.**

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WHEREAS, the City of Ruston is the electrical provider within the city limits of Ruston;  
and

WHEREAS, when electrical distribution lines are placed underground, electrical reliability is increased as the lines cannot be taken down in windstorms, by tree growth, or by auto accidents that may occur on city rights of way; and

WHEREAS, when electrical and communications lines are removed from city rights of way, utility poles are also removed which makes the city streets and sidewalks less cluttered, more aesthetically pleasing, and safer as automobiles, other vehicles, bicycles, and pedestrians will not collide with utility poles; and

WHEREAS, the public enjoys views of Puget Sound and mountain views from many public places within the City of Ruston; and

WHEREAS, overhead wires and facilities can obstruct these views and are unsightly; and

WHEREAS, the City Council desires that any new facilities be installed underground in accordance with the conditions and procedures in this Ordinance, so that eventually, all overhead wires and facilities will be moved underground to make power more reliable, make City rights of way safer and less cluttered, and to provide better aesthetics throughout the City; and

WHEREAS, in the alternative, the City Council recognizes that it also has the power to convert existing overhead electric and communication facilities to underground facilities pursuant to RCW 35.43.190 where such facilities are owned or operated by the City, or to create a local improvement district in an area where such facilities are not owned by the City, pursuant to chapter 35.96 RCW; and

WHEREAS, every utility pole located in the City limits of Ruston is owned by the City of Ruston; and

WHEREAS, on July 6, 2021, the City Council held first reading of this Ordinance; and

WHEREAS, on July 20, 2021, the City Council held second reading of this Ordinance, and after due consideration, the City Council adopted this Ordinance during its regular meeting at second reading; **NOW, THEREFORE**

**THE CITY COUNCIL OF THE CITY OF RUSTON HEREBY ORDAINS AS FOLLOWS:**

Section 1. A new chapter is hereby added to the Ruston Municipal Code, which shall read as follows:

**CHAPTER 14.10  
UNDERGROUNDING OF UTILITIES**

**Sections:**

<b>14.10.010</b>	<b>Definitions.</b>
<b>14.10.020</b>	<b>Underground installation required.</b>
<b>14.10.030</b>	<b>Variances.</b>
<b>14.10.040</b>	<b>Enforcement.</b>

**14.10.010 Definitions.** For purposes of this chapter, the term “utilities or communications facilities” means facilities carrying any electrical energy, including but not limited to, electrical power, telephone, telegraph, internet, and cable television; provided, however, that the terms shall not include the following facilities:

- a) Electrical utility substations, surface mounted transformers and switching facilities;
- b) Electric transmission systems having a nominal voltage of 55 kV (phase-to-phase) or more and equivalent communication facilities;
- c) Street lighting standards;
- d) Telephone pedestals and other equivalent communication facilities; or
- e) Police and fire sirens or any similar municipal equipment, including traffic control equipment.

**14.10.020 Underground installation required.**

- a) Transmission or distribution lines. All utilities and communications facilities other than electrical or communication services located on private property shall be installed underground by the utility owning said facility in the following cases:
  - 1. When it becomes necessary to remove/relocate existing overhead facilities for a distance of five hundred (500) feet because of a roadway widening project or other similar reason;
  - 2. When existing overhead facilities for a distance of over five hundred (500) feet are to be replaced. This subsection does not apply if the purpose of the replacement is due solely to casualty damage or for the replacement of wire only;
  - 3. When any facilities are extended beyond those facilities existing on the effective date of this chapter;
  - 4. When another utility having facilities along the same street or easement places its facilities underground for a distance of over five hundred feet.

Any undergrounding of facilities initiated by a utility or communications company must take place only after the City has approved the necessary permits or other approvals.

- b) Services. All utility or communications services located on private property shall be installed underground by the owner of the property in the following cases:

1. All new utility or communications services from an overhead or underground facility to service connections of structures shall be located underground;
  2. All rebuilt or relocated utility or communications service lines from an overhead or underground facility to service connections of structures shall be installed underground unless such rebuilding or relocation involves a change in the overhead service line only without a change in the corresponding service entrance facilities;
  3. All existing utility or communications services shall be converted to underground by the owner or owners of the property upon which said services are located within ninety (90) days after notification by the City in accordance with RCW 35.96.050 that underground facilities are available.
- c) Local Improvement District. The City may decide to underground facilities pursuant to chapter 35.96 RCW, allowing for the creation of a local improvement district.

**14.10.030 Variances.**

- a) Decision-making body. A variance from the underground installation requirements of this chapter may be granted by the City Hearing Examiner under the procedures set forth in this Section.
- b) Application. An application for a variance shall be submitted to the City Clerk on forms provided by the City, be accompanied by the variance fee set by Council resolution, and the applicant shall provide the following information:
1. Name, address and phone number of the applicant;
  2. Address of the property for which the variance is sought;
  3. Identification of the facilities for which the variance is sought;
  4. Identification of all utilities affected by the variance;
  5. Length of time for which the variance is sought; and
  6. Statement by the applicant describing the manner in which the application meets the criteria for approval of a variance.
- c) Procedure. Because the time needed to notify utilities, negotiate terms of undergrounding or a variance with such utilities or to ascertain the facts necessary to make a decision on a variance, any variance application submitted to the City under this chapter is specifically exempted from any permit processing requirements under RCW 36.70B.140.
- d) Criteria for Approval. The Hearing Examiner shall consider the complete application and the following criteria for approval:



1. The variance must be in the interest of the general health, welfare, and safety of the residents of the community and the traveling public, and one of the following conditions must exist:
  - a. It is technologically unsound to require undergrounding of a particular facility or in a particular location; or
  - b. That the cost of underground installation, when compared to overhead installation, is disproportionate in comparison to the benefit to be gained by the property and/or the public and is disproportionately high when compared to other properties or locations; or
  - c. Where the area in which the undergrounding is required has not established a sufficient growth pattern to permit the determination of ultimate facility requirements to major transmission routes.
2. When granting a variance, the Hearing Examiner may attach conditions, including a time limit on the duration of such variance. The Hearing Examiner shall issue a written decision on any variance, which includes findings and conclusions in support of the approval, approval with conditions or denial. Every approval or approval with conditions shall include a statement that a variance may be invalidated by the action of the City Council to either form a local improvement district for the purpose of converting overhead facilities to underground locations, pursuant to chapter 35.96 RCW, as it currently exists or may be amended in the future, or by City notice requiring the property owner to underground facilities in accordance with RCW 35.96.050.

**14.10.040 Enforcement.** This chapter may be enforced under the procedures set forth in chapter 12.40 of the Ruston Municipal Code.

**Section 2. Severability.** If any section, sentence, clause, or phrase of this Ordinance should be held to be unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

**Section 3. Publication.** This Ordinance shall be published by an approved summary consisting of the title.

**Section 4. Effective Date.** This Ordinance shall be effective five days after publication as provided by law.

ADOPTED by the City Council of the City of Ruston and attested by the City Clerk in authentication of such passage on this 20th day of July, 2021.

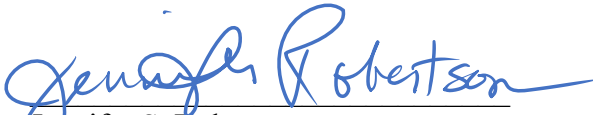
APPROVED by the Mayor this 20<sup>th</sup> day of July, 2021.

\_\_\_\_\_  
Bruce Hopkins, Mayor

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
Judy Grams  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Jennifer S. Robertson  
City Attorney's Office

FILED WITH THE CITY CLERK: \_\_\_\_\_  
PASSED BY THE CITY COUNCIL: \_\_\_\_\_  
PUBLISHED: \_\_\_\_\_  
EFFECTIVE DATE: \_\_\_\_\_  
ORDINANCE NO: 1549