

1 **BY AUTHORITY**

2 ORDINANCE NO. \_\_\_\_\_  
3 SERIES OF 2015

COUNCIL BILL NO. 15-0137  
COMMITTEE OF REFERENCE:  
4 Infrastructure and Culture

5  
6 **A BILL**

7  
8 **For an ordinance amending Chapter 56, D.R.M.C. to provide procedures for the**  
9 **underground relocation of overhead telecommunications lines in coordination**  
10 **with improvements to city-owned property**  
11

12 **BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:**

13  
14 **Section 1.** Chapter 56 of the Denver Revised Municipal Code (“Utilities”) shall be amended  
15 by the addition of a new Article VI, to read as follows:

16  
17 **Article VI.**  
18 **Underground relocation of overhead telecommunication lines**

19  
20 **56-300. Legislative findings and declarations.**

21  
22 The Denver City Council finds and declares:

- 23  
24 (1) The underground relocation (“undergrounding”) of overhead lines, wires and cables  
25 used for the distribution of electricity or the transmission of telecommunication  
26 services, along with the removal of utility poles from city-owned property serves a  
27 wide variety of important public purposes.  
28  
29 (2) Undergrounding enhances public safety by: removing obstructions in the public right-  
30 of-way; mitigating the risk of vehicular collisions with utility poles; improving the sight  
31 lines for vehicular and pedestrian traffic along roadways; and mitigating the risk of  
32 hazards associated with negligent or inadvertent contact with overhead lines.  
33  
34 (3) Undergrounding enhances the appearance and aesthetics of the city by: removing  
35 unsightly lines and poles from public view; improving scenic vistas in and around city  
36 parks and natural areas, toward the mountains, and within the city’s residential and

1 commercial neighborhoods generally; and allowing the city's tree canopy to flourish  
2 without conflict with overhead utility lines.

3  
4 (4) Undergrounding enhances the safety and security of the electric and  
5 telecommunications lines themselves by protecting the lines from damage due to  
6 inclement weather or accidents, and thus preserves the continuity and reliability of  
7 electric and telecommunications services to the public at large.

8  
9 (5) Coordinated undergrounding projects, in which all affected electric and  
10 telecommunications lines are relocated underground at the same time, offer the most  
11 efficient way to achieve the benefits of undergrounding at the lowest possible cost for  
12 the owners of the lines and their customers.

13  
14 (6) Since 1986, the city has included within its electric utility franchise certain  
15 undergrounding requirements for electric distribution facilities, including the  
16 establishment of a fund for electric undergrounding projects as directed by the  
17 manager of public works.

18  
19 (7) Since 1984, the city has included within its cable television franchises  
20 undergrounding requirements for cable television lines, requiring the franchisee to  
21 relocate its overhead lines underground when other overhead utility lines are being  
22 relocated underground.

23  
24 (8) Because other telecommunications companies that maintain overhead lines,  
25 including the city's local exchange telephone service provider, have not heretofore  
26 been required by any city law or franchise to cooperate and participate in  
27 underground relocation projects, on occasion telephone and other  
28 telecommunications lines have remained overhead and suspended from utility poles  
29 in locations where all other electric distribution and cable television lines have been  
30 relocated underground.

31  
32 (9) The continued existence of overhead telecommunications lines and utility poles in a  
33 location where all other utilities have been relocated underground compromises  
34 public safety and the general welfare of the public.

1  
2 (10) As a home rule city and county, Denver exercises broad inherent authority to  
3 regulate the use of city streets, alleys, parks, parkways, and other city-owned  
4 property under the police power.  
5

6 (11) In addition to its home rule authority, the Colorado Constitution and various  
7 state statutes recognize the authority of counties and municipalities to regulate the  
8 placement of public utility structures and facilities on public property in general, and  
9 utility poles and service lines in particular.  
10

11 (12) The Colorado Supreme Court has repeatedly recognized the authority of  
12 counties and municipalities to require the relocation of public utilities at the utility's  
13 expense in conjunction with county and municipal efforts to improve public property.  
14

15 (13) Pursuant to state statute, § 40-3-115, C.R.S., providers of local exchange  
16 telephone service may seek authorization from the Colorado Public Utilities  
17 Commission to recover from their customers the actual costs associated with the  
18 relocation of telephone lines when the relocation has been requested by a political  
19 subdivision.  
20

21 **56-301. Definitions**

22 Words and phrases used in this article shall have the following meanings  
23 ascribed to them:

24 (1) "*Electric utility franchise*" means the franchise granted by the city to the Public  
25 Service Company of Colorado, d/b/a Xcel Energy by Ordinance No. 342, Series of  
26 2006 and any subsequent franchise granted by the city to the company or the  
27 company's successor in interest which provides for the underground conversion of  
28 overhead electric distribution facilities upon request of the city's manager of the  
29 department of public works.  
30

31 (2) "Manager" means the manager or executive director of the department of public  
32 works.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

(3) "Overhead telecommunications lines" means aerial wires or cables located upon utility poles and used to deliver any form of telecommunications service.

(4) "Owner" means any person, firm, corporation, association, partnership which has an ownership or leasehold interest in any overhead telecommunications lines.

(5) "Telecommunications facilities" means all facilities reasonably necessary to provide telecommunications services within and through the city, including but not limited to wires, cables, lines and utility poles.

(6) "Telecommunications services" means exchange telephone service, broadband internet service, cable television service, or any similar service involving the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

(7) "Utility pole" means any pole or other structure used to suspend overhead telecommunications lines above the surface of the ground.

**56-302. Underground relocation of overhead telecommunications facilities required.**

(a) Whenever the manager exercises the authority to request the underground relocation of overhead electric distribution facilities under the city's electric utility franchise, the manager shall likewise require the owner of any overhead telecommunications facilities to relocate such facilities underground or, at the owner's option, remove the owner's facilities entirely from that location. The owner shall complete any such underground relocation or removal project at the owner's sole expense within a reasonable time, not to exceed one hundred and eighty (180) days from the date

1 upon which the manager makes a written demand upon the owner to relocate or  
2 remove the telecommunications facilities.

3 (b) The manager may also order the underground relocation or removal of overhead  
4 telecommunications facilities in any circumstance where the telecommunications  
5 facilities, whether located upon utility poles or otherwise, interfere with the  
6 improvement of any public right-of-way or other city-owned property. The owner shall  
7 complete any such underground relocation or removal project at the owner's sole  
8 expense within a reasonable time, not to exceed one hundred and eighty (180) days  
9 from the date upon which the manager makes a written demand upon the owner to  
10 relocate or remove the telecommunications facilities.

11 (c) Any proposed underground relocation of overhead electric distribution facilities or  
12 telecommunication facilities within a park or a recreational facility under the  
13 jurisdiction of the department of parks and recreation will require the review and  
14 approval of the executive director of parks and recreation.

15  
16 **56-303. Planning undergrounding projects; cooperation with other utilities.**

17 Prior to making any written demand for removal or relocation of  
18 telecommunications facilities as provided in subsection (a) or (b) of section 56-302,  
19 the manager shall provide to the owner of any telecommunication facility the same  
20 opportunity to be involved in advance planning and scheduling of undergrounding  
21 projects as is provided to the owner of the electric utility under the city's electric utility  
22 franchise. When undertaking any underground relocation project, the city and the  
23 owner shall coordinate with other utilities or companies that have their facilities above  
24 ground to attempt to have all facilities undergrounded as part of the same project.  
25 The city will enforce the provisions of its electric utility franchise requiring cooperation  
26 in the undergrounding of electric distribution facilities and telecommunication facilities  
27 as part of the same project where financially, technically and operationally feasible.

28  
29 **56-304. Compliance with other city laws and regulations.**

30 In complying with the requirements of this section and relocating overhead  
31 telecommunications facilities underground, the owner shall be subject to any and all

1 other city laws and regulations, including all relevant permitting requirements  
2 associated with excavations, construction, and placement of structures on or under  
3 city-owned property to the extent applicable and including any policies adopted by  
4 the executive director of parks and recreation with regard to any proposed  
5 undergrounding of existing or future utilities in parks and recreational facilities.

6  
7 **56-304. Unlawful to maintain overhead telecommunications lines or utility**  
8 **poles.**

9 It shall be unlawful for any owner to maintain overhead telecommunications  
10 facilities in any location where the manager has requested the underground  
11 relocation of electric distribution lines under the authority of the city's electric utility  
12 franchise, and such electric distribution facilities have in fact been relocated  
13 underground. It shall be unlawful for any owner to maintain overhead  
14 telecommunications facilities in any location where the manager has ordered the  
15 owner to relocate underground or remove the overhead facilities on the basis that  
16 overhead facilities interfere with the improvement of any public right-of-way or any  
17 other city-owned property. Any owner who maintains overhead telecommunications  
18 facilities in defiance of the manager's written demand to remove such lines and poles  
19 in accordance with section 56-302 shall be subject to a fine of up to \$999 dollars per  
20 day for each day in which the overhead telecommunications facilities remain in place.  
21 In addition to the penalties in this section, the city may seek any appropriate remedy  
22 for damages or equitable relief to secure compliance with this article and to preserve  
23 the city's interest in its public property.

24  
25 **Section 2.** This ordinance shall be effective upon adoption and publication, and shall apply  
26 to any underground relocation project ordered by the manager of public works under the authority  
27 of the city's electric utility franchise and subsection 56-302 (a) or under the authority of subsection  
28 56-302 (b), after the effective date of this ordinance.

29  
30 **[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**

31  
32  
33 COMMITTEE APPROVAL DATE: March 11, 2015.

1 MAYOR-COUNCIL DATE: March 17, 2015.

2 PASSED BY THE COUNCIL \_\_\_\_\_ 2015

3 \_\_\_\_\_ - PRESIDENT

4 APPROVED: \_\_\_\_\_ - MAYOR \_\_\_\_\_ 2015

5 ATTEST: \_\_\_\_\_ - CLERK AND RECORDER,  
6 EX-OFFICIO CLERK OF THE  
7 CITY AND COUNTY OF DENVER  
8

9 NOTICE PUBLISHED IN THE DAILY JOURNAL \_\_\_\_\_ 2015; \_\_\_\_\_ 2015

10 PREPARED BY: David W. Broadwell, Asst. City Attorney; DATE: March 12, 2015

11 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of  
12 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed  
13 ordinance. The proposed ordinance **is not** submitted to the City Council for approval pursuant to §  
14 3.2.6 of the Charter.  
15

16 D. Scott Martinez, Denver City Attorney

17 BY: \_\_\_\_\_, Assistant City Attorney DATE: \_\_\_\_\_  
18  
19  
20