



MEMORANDUM

TO: Bryan Cosgrove, City Manager
Amanda Guile-Hinman, City Attorney

FROM: Wilsonville City Council

DATE: March 3, 2025

RE: Interpretation of WC 3.340 and WC 4.300-4.320

I. INTRODUCTION

City staff has requested the City Council interpret certain provisions of the Wilsonville Code (WC) regarding the presence and expansion of utilities, and, particularly, new utility poles, in the City right-of-way. In particular, City staff seeks City Council interpretation of the relationship between WC 3.340 and WC 4.300 through 4.320 concerning high-voltage electrical transmission poles. This memorandum serves as the City Council's official interpretation of WC Sections 3.340 and 4.300 through 4.320, and any related Wilsonville Code provisions referenced herein.

II. WC 3.340 – UTILTY CONSTRUCTION, INSTALLATION, AND RELOCATION

The City Council interprets WC 3.340(3) to prohibit a utility provider from installing new utility poles in the City right-of-way, public easement, and public utility easement areas

(collectively referred to herein as “City right-of-way”)¹. This interpretation is supported by the text, context, and legislative history of WC 3.340.

The City Council adopted WC 3.300 through 3.410 via Ordinance No. 615 in 2006. This ordinance created a uniform right-of-way management policy imposed on all providers with utilities in the City right-of-way. As a result, instead of approving individual franchise agreements with each service provider operating in the City right-of-way, Ordinance No. 615 provides a process for service providers to install, relocate, and maintain their utilities in the City right-of-way through acquiring a right-of-way permit from the City. *See* WC 3.320(1). The permit is required to meet the terms of WC Chapter 3. *See* WC 3.320(1)(a). If the public interest warrants, the City Engineer or designee may negotiate additional terms and conditions to the permit, but if such terms and conditions conflict with WC 3.300 through 3.410, the City Council must approve the negotiated permit. *See* WC 3.320(1)(b).

While WC 3.320 describes the right-of-way permit that a service provider must obtain, WC 3.340 describes the terms under which a service provider may construct, install, and/or relocate its facilities and equipment in the City right-of-way. WC 3.340(3) requires service providers to underground all new facilities and equipment with one limited exception. WC 3.340(3), states the following:

¹ “Right-of-Way” is defined in WC 3.310 as “the space in, upon, above, along, across, over or under the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, sidewalks, bicycle lanes, and places used or intended to be used by the general public for travel as the same now or may hereafter exist, that the City has the right to allow User to use.”

“Public Easement” is defined in WC 3.310 as “the space identified within the easement document this is in, upon, above, along, across, over or under the publicly owned and maintained storm, sanitary, or water facility.”

“Public Utility Easement” is defined in WC 3.310 as “the space in, upon, above, along, across, over or under the easement as identified within the easement document. By way of general description, public utility easements are typically created along the border(s) of a tax lot or frontage along public right-of-way and are intended for the use of utility companies and other authorized users to operate, place, relocate and maintain facilities in accordance with City requirements and standards.”

“Under Grounding Required. All new equipment or facilities^[2] shall be constructed pursuant to W.C. 4.300 - 4.320. User is prohibited from installing any new aerial cables, wire, or conduit except in locations where existing aerial cables, wire, or conduit have not yet been brought underground, permission for attachment or over-wrapping is obtained, and the City has no planned and funded construction project to bring aerial utilities underground.”

The only exception to the requirement to underground utilities is that new aerial cables, wire, or conduit may be installed where existing aerial cables, wire, or conduit are already present, and thus, attached to existing utility poles. Nothing in WC 3.340(3) allows installation of new utility poles. It is notable that “poles” are referenced in the definition of “equipment and facilities” in WC 3.310, but not in the narrow exception stated in WC 3.340(3). Therefore, the City Council does not interpret the exception in WC 3.340(3) to include poles. The express language in WC 3.340(3) supports the City Council’s interpretation because the provision only references an exception allowing installation of new aerial cables, wire, or conduit where equipment is already present. WC 3.340(3) does not state an exception to allow for new utility poles to be installed.

Not only does the express language in WC 3.340(3) support the City Council’s interpretation, the context of WC 3.340(3) does so as well. The second sentence of WC 3.340(3)

² The term “equipment or facilities” is broadly defined in WC 3.310 and explicitly includes “poles:”

Equipment or Facilities means any tangible component, whether referred to singly or collectively, installed, maintained, or operated by User within the right-of-way, public easement, or public utility easement. By way of example, the terms means any pole, wire, sensor, loop, light, stabilization or "guy" wire, anchor, pipe, conduit, line, main, duct, cable, wire, switch, transformer, value, antennae or other equipment, including any equipment box or vault, located wholly or in part under, on, or above the surface of the ground within any right-of-way or easement. "Facility" includes any item placed in the right-of-way for the purpose of providing electric power, natural gas, telephone, telecommunications, radio, cable television, internet access, sewer, water, storm sewer or other utility or similar service.

Therefore, it is clear that the undergrounding requirement in WC 3.340(3) applies to utility poles, wires, and cables (and other similar equipment and facilities).

only permits new aerial cables, wire, or conduit if three conditions are met: (1) there are existing aerial cables, wire, or conduit that have not yet been brought underground; (2) there is permission for attachment or over-wrapping; and (3) the City has no planned and funded construction project to underground the utilities. The first and second conditions demonstrate that installing new poles is not included in the exception. For there to be existing aerial cables, wires, or conduit (the first exception), they necessarily have to be attached to existing poles. The second exception requires the service provider to obtain permission for attachment to the existing pole(s) where the existing aerial cables, wire, or conduit are present. Both these conditions indicate that new aerial cables, wire, or conduit are only allowed to be attached to existing utility poles.

Finally, the legislative history of WC 3.340(3) supports the City Council's interpretation. The staff report accompanying Ordinance No. 615 noted some of its key features, including the prohibition against above-ground utilities:

“(3) Aerial facilities are prohibited (under-grounding of all new equipment is required) except where there are no current underground facilities and city has no planned and funded project to bring aerial facilities underground.”

Based on the text, context, and legislative history regarding WC 3.340(3), the City Council interprets WC 3.340(3) to prohibit a utility provider from installing new utility poles in the City right-of-way. Subject to the terms of a right-of-way permit, a utility service provider may install only new aerial cables, wire, or conduit on existing utility poles if existing aerial cables, wire, or conduit have not yet been brought underground, permission for attachment or over-wrapping is obtained, and the City has no planned and funded construction project to bring aerial utilities underground. *See* WC 3.340(3).

III. WC 4.300-4.320 – UNDERGROUND UTILITIES

WC 4.300 through 4.320, referenced in WC 3.340(3), only apply to circumstances where

existing above-ground utilities are present on land that is subject to a land use development approval. The City Council interprets WC 4.300 through 4.320 to be inapplicable to utility service providers unless a developer or subdivider is seeking land use development approval from the City. This interpretation is supported by the text, context, and legislative history of WC 4.300 through 4.320.

WC 4.300(.01) states the City Council's policy to "require underground installation of utilities in all new developments." (emphasis added). This provision makes clear that the undergrounding requirements in WC 4.300 through 4.320 apply to new developments, nothing more. Then, WC 4.300(.02) states:

"The approval of any development of land within the City will be upon the express condition that all new utility lines, including but not limited to those required for power, communication, street lighting, gas, cable television services and related facilities, shall be placed underground." (emphasis added).

In other words, WC 4.300(.02) states that a condition of approval for new developments will be to underground all new utility lines. Both WC 4.300(.01) and (.02) state that the undergrounding provisions found in this section apply to new development. Nothing in these provisions indicate that WC 4.300 through 4.320 apply to utility installations in City right-of-way where no new development is occurring.

WC 4.310 then states that Section 4.300 does not apply to, among other equipment and facilities, "utility transmission lines operating at 50,000 volts or more." WC 4.310, like WC 3.340(3), does not mention utility poles. Stated simply, WC 4.310 only exempts a new development from being required to underground high-voltage transmission lines, nothing more.

The City Council's interpretation of WC 4.300 through 4.320 is supported by the context of the provisions. WC 4.320(.01) requires the developer or subdivider to arrange with the serving

utilities to provide underground services. If WC 4.300 through 4.320 applied to circumstances beyond new land use development applications, the language in WC 4.300 and 4.320 would be broader than only referencing new development and the developer's responsibility to coordinate undergrounding.

The legislative history of WC 4.300 through 4.320 also supports the City Council's interpretation that these code provisions only apply to approvals of new development. The City Council first adopted undergrounding requirements for new development in 1973 via Ordinance No. 39. The title of Ordinance No. 39 is "An Ordinance Relating to Underground Utilities and Requiring Their Installation in All New Subdivisions." The title indicates that the regulations will apply to new subdivisions. Section 1(A) of the Ordinance states the City Council's intent of requiring "the underground installation of utilities in all new subdivisions." WC 4.300(.01) is now broader to include all new development, but has never expanded to include circumstances beyond development of land.

The reason that WC 3.340(3) references WC 4.300 through 4.320 is to include the circumstances when a service provider applies for a right-of-way permit pursuant to WC 3.300 *et seq.* to install utilities for a new development. That way, the City can impose the requirements of the development approval on both the service provider and the developer. *See* WC 4.320(.02) ("The location of the buried facilities shall conform to standards supplied to the subdivider by the City.").

Finally, assuming, for argument's sake only, that the reference to WC 4.300 through 4.320 in WC 3.340(3) was meant to apply those provisions to utilities in the City right-of-way regardless of a development approval, nothing in WC 4.300 through 4.320 states an intent to allow a utility to install new above-ground utility poles. At most, the reference in WC 3.340(3) to WC 4.300

through WC 4.320 is to reiterate the general undergrounding requirement while exempting utilities from having to underground certain existing equipment and facilities, such as existing utility transmission lines operating at 50,000 volts or above.

IV. CONCLUSION

The City Council interprets WC 3.340(3) to prohibit a utility provider from installing new utility poles in the City right-of-way, public easement, and public utility easement areas, and further interprets WC 4.300 to 4.320 to only apply to circumstances where existing above-ground utilities are present on land that is subject to a land use development approval.

Attachments:

WC 3.300 through 3.340

WC 4.300 through 4.320

Ordinance No. 615

Staff Report to Ordinance No. 615

Ordinance No. 39