

ORDINANCE # 2026-1

AN ORDINANCE RELATED TO RIGHT-OF-WAY EXCAVATION AND OCCUPANCY

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 Section 336-11 of the City of Arcadia Code of Ordinances is repealed and recreated as follows:

- A. Purpose and Findings.** This ordinance is adopted pursuant to the City's authority under Wis. Stat. §§ 62.16, 86.16, 196.499(14), 196.58, and 182.017(1r). In the exercise of its governmental functions and police powers, the City has priority over all other uses of the public rights-of-way. The City desires to anticipate and minimize the number of obstructions and excavations taking place therein and to regulate the placement of facilities in the rights-of-way to ensure that the rights-of-way remain available for public services and safe for public use. The taxpayers of the City bear the financial burden for the upkeep of the rights-of-way, and a primary cause for the early and excessive deterioration of the rights-of-way is the frequent excavation by persons who locate facilities therein.

The City finds with increased use of the public rights-of-way there are increased costs to the taxpayers of the City and these costs are likely to continue into the foreseeable future.

The City finds that use and excavation of its rights-of-way causes costs to be borne by the City and its taxpayers, including but not limited to:

1. Administrative costs such as permitting, inspection and supervision, supplies, and materials.
2. Management costs associated with ongoing management activities necessitated by public right-of-way users.
3. Repair or restoration costs to the roadway associated with the excavation of the public right-of-way.
4. Depreciation caused to the roadway in terms of decreased useful life due to excavations into the public right-of-way.

In response to the foregoing facts, the City hereby enacts this ordinance relating to administration of and permits to excavate, obstruct, and/or occupy the public rights-of-way. This ordinance imposes reasonable regulations on the placement and maintenance of facilities in the public right-of-way. It is intended to complement the regulatory roles of state and federal agencies and shall be interpreted consistent with all applicable requirements of state and federal law.

The purpose of this ordinance is to provide the City a legal framework within which to regulate and manage the public rights-of-way and to provide for the recovery of costs incurred in doing so. This ordinance provides for the health, safety, and welfare of the residents of the City as they use the rights-of-way, as well as to ensure the structural integrity of the rights-of-way.

B. Definitions.

Right-of-Way Manager means the Community Planner or his or her designee.

Right-of-way means the surface of, and the space above and below the entire width of any City street, road, alley, highway, public way, bicycle lane, terrace, shoulders, or sidewalk held by the City or over which the City exercises rights of management and control.

C. Excavation Permit.

1. Prohibition. Except as otherwise permitted in this Section 336-11 or elsewhere in the City of Arcadia ordinances, no person shall injure, tear up, or deface any public improvement, nor dig any hole, ditch, drain, or trench, nor make any alterations or construct any improvement of any kind in any right-of-way without a written excavation permit from the City. Application for such excavation permit shall be in such form and contain such information as shall be required by the Right-of-Way Manager. This requirement shall not apply to work performed by City staff or any person performing work under contract with the City.

2. Excavation Permit Application Requirements.

- (a) Application for an excavation permit under this section shall be made to the Right-of-Way Manager. The application shall be signed by an authorized representative of the applicant.
- (b) The applicant shall pay the right-of-way excavation permit fee at the time of application submittal. The fee shall be in an amount as established by resolution of the common Council, and may be amended from time to time.
- (c) The application shall be signed by the applicant or an authorized representative of the applicant and shall include the name and contact information of the applicant (including any corporate or trade name), any duly authorized representative acting on behalf of the applicant with respect to the filing of the application, and any contractor who will perform work described in the application.
- (d) The applicant shall provide a detailed plan describing the proposed excavation, including a description of the excavation method, completion date, and scale drawings showing the location and dimensions of the proposed

excavation, along with the location of all streets, sidewalks, utilities, trees, and other obstructions in the vicinity of the proposed excavation, along with any other information reasonably requested by the Right-of-Way Manager.

- (e) To the extent that filing of the excavation permit application establishes a deadline for action on any other permit that may be required in connection with the proposed structure or equipment, the application must include complete copies of applications for every required permit (including without limitation electrical permits, building permits, and right-of-way permits), with all engineering completed and all fees associated with each permit.

3. Application Approval Process. The Right-of-Way Manager shall review the permit application and determine if all application materials have been submitted within 10 days of receipt of the initial application (or such longer time as may be permitted by state or federal law). Once a complete application is received, the Right-of-Way Manager shall determine whether to grant, deny, or conditionally grant the excavation permit within 60 days of receipt of a complete application, unless the applicant and the City agree to an extension. Any grant of an excavation permit is subject to all terms and conditions of this ordinance, all applicable laws, the standard permit conditions set out in subsection E, and such other conditions as may be imposed by the Right-of-Way Manager. Any denial of an excavation permit shall include a written explanation of the reasons for the denial.

4. Duration. Excavation permits shall be valid for a period of 30 days from the date of issuance. If operations have begun under an approved permit and will continue beyond the 30-day permit period, the permit holder shall apply for an extension by written request to the Right-of-Way Manager, who may grant extensions at his or her reasonable discretion. If operations have not begun under an approved permit by the end of the 30-day permit period, then the permit holder shall apply for and obtain a new excavation permit before proceeding.

5. Excavation Standards.

- (a) All excavations made pursuant to this ordinance must be made to the City's specifications, unless waived by the Right-of-Way Manager.
- (b) The permit holder shall comply with the Diggers' Hotline requirements set forth in Wis. Stat. § 187.0175.
- (c) No excavations shall be permitted within the right-of-way between November 15 and April 15 unless, prior the commencement of the excavation, there has been a determination made in writing by the Right-of-Way Manager that an excavation is required for the immediate protection of public health, public safety, or property or in other situations deemed urgent by the Right-of-Way Manager. All non-emergency excavations within the right-of-way shall be accomplished between 8:00 a.m. and 4:00 p.m., Monday through Friday.

- (d) No more than 500 continuous linear feet of trench shall be open at any one time.
- (e) The permit holder shall comply with all requirements contained in the City of Arcadia ordinances and all other applicable laws and regulations in connection with the permitted excavation.

D. Right-of-Way Permit.

1. **Prohibition.** Except as provided in this Section 336-11 or elsewhere in the City of Arcadia ordinances, no person shall encroach upon or obstruct or encumber any public right-of-way or permit such encroachment or encumbrance to be placed or remain on any public right-of-way without a written right-of-way permit from the City for such facilities.
2. **Exceptions.** The prohibition in subsection D.1 shall not apply to the following:
 - (a) Official signage, official traffic control devices, and utilities or other facilities owned or leased by the City.
 - (b) Mailboxes for the collection of mail from the United States Postal Service, if they comply with the City's standards for mailbox dimensions and installation guidelines.
 - (c) Installation, maintenance, operation, or replacement of a small wireless facility strung on cables between two existing utility poles in compliance with the National Electrical Safety Code, provided that the small wireless facility does not exceed 24 inches in length, 15 inches in width, and 12 inches in height and has not exterior antenna longer than 11 inches.
 - (d) Replacement of an existing small wireless facility with a small wireless facility that is substantially similar to, or the same size or smaller than, the existing small wireless facility, provided that there is no change to the support structure on which the small wireless facility is placed.
 - (e) Installation of a mobile cell facility (commonly referred to as a "cell on wheels" or "cell on truck") for a temporary period in connection with an emergency or event, but no longer than required for the emergency or event, provided that installation does not involve excavation, movement, or removal of existing facilities.
 - (f) Temporary encroachments or obstructions authorized by permit granted pursuant to Wis. Stat. § 66.0425.

- (g) A tent erected pursuant to a tent placement permit under Section 336-3 et. seq. of the City of Arcadia ordinances.

3. Right-of-Way Permit Application Requirements.

- (a) Application for a right-of-way permit under this section shall be made to the Right-of-Way Manager. Requests for waivers from any application requirement of this subsection D.3 shall be made in writing to the Right-of-Way Manager, who may grant a request for a waiver if it is demonstrated that, notwithstanding the issuance of the waiver, the City will be provided with all information necessary to understand the nature of the structure, equipment, construction, or other activity to be conducted to pursuant to the permit sought.
- (b) The applicant shall pay the right-of-way permit fee at the time of application submittal. The fee shall be in an amount as established by resolution of the Common Council, and may be amended from time to time.
- (c) The application shall be signed by the applicant or an authorized representative of the applicant and shall include the name and contact information of the applicant (including any corporate or trade name), any duly authorized representatives acting on behalf of the applicant with respect to the filing of the application, and any contractor who will perform work described in the permit application.
- (d) The applicant shall provide a detailed plan with structural engineering, scale drawings, and visual renderings showing the location, size, appurtenances and/or attachments of the structures or equipment to be placed in the right-of-way, along with the location of all streets, sidewalks, utilities, trees, and any other obstructions in the vicinity of the proposed installation. The application shall specify a reasonable completion date for the work described in the plans.
- (e) If the support structure on which the equipment will be mounted is owned by a third-party, a certification that the applicant has permission from the owner to mount its equipment on the structure. If the support structure is a governmental pole or a municipal utility pole or other City-owned or controlled structure or infrastructure, the application must state the applicant's willingness to enter into a pole attachment agreement as referenced in subsection D.6.
- (f) To the extent that filing of the right-of-way permit application establishes a deadline for action on any other permit that may be required in connection with the proposed structure or equipment, the application must include complete copies of applications for every required permit (including without limitation electrical permits, building permits, and excavations), with all engineering completed and all fees associated with each permit.

- (g) If the proposed use or installation includes matters regulated by Wis. Stat. § 66.0414 (small wireless facilities) or a use or installation that would have a similar impact on the City due to size, location, and construction materials, the following additional application requirements apply:
- [1] A statement of which state or federal shot clock(s) apply to the application, if any, and the reasons the chosen shot clocks apply.
 - [2] A separate and complete description of each wireless facility including the location of the facility and technical specifications for each element of the facility, clearly describing the site and all structures and equipment at the site before and after installation or modification and identifying the owners of such preexisting structures and equipment.
 - [3] A structural report performed by a professional engineer registered in the State of Wisconsin evidencing that the support structure on which the facility will be mounted will structurally support the facility, or that the structure may and will be modified to meet structural requirements, in accordance with applicable codes.
 - [4] A certification by the applicant that any wireless facility will comply with relevant FCC regulations concerning radio frequency emissions from radio transmitters and unacceptable interference with public safety spectrum, including compliance with the abatement and resolution procedures for interference with public safety spectrum established by the FCC set forth in 47 C.F.R. §§ 22.971 to 22.973 and 47 C.F.R. §§ 90.672 to 90.675.
 - [5] A certification by the applicant that the facility will not materially interfere with the safe operation of traffic control equipment or sight lines or clear zones for transportation of pedestrians, and will fully comply with the federal Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement.
 - [6] A statement that the wireless facility will comply with all applicable codes, including the state electrical wiring code, as defined in Wis. Stat. § 101.80(4), as amended; the state plumbing code specified in Wis. Stat. § 145.02(2)(a), as amended; the fire prevention code under Wis. Admin. Code § SPS 314, as amended; the Wisconsin commercial building code under §§ SPS 361 to 366, Wis. Admin. Code, as amended; and all local amendments to those codes enacted solely to address imminent threats of destruction of property or injury to persons.
 - [7] If the application is an eligible facilities request under 47 C.F.R. 1.6100(b)(3), the application must contain information sufficient to show that the application qualifies as an eligible facilities request under that

section, including evidence that the application relates to an existing tower or base station that has been approved by the City and detailed specifications demonstrating that the modification does not substantially change the physical dimensions of the existing approved tower or base station.

- (h) Applicant shall also provide any other information reasonably requested by the Right-of-Way Manager.

4. Application Approval Process. The Right-of-Way Manager shall review the permit application and determine if all application materials have been submitted within the time required by applicable laws. After a complete application is received, the Right-of-Way Manager shall determine whether to grant, deny, or conditionally grant the right-of-way permit. All permits and appeals will be processed in conformity with the deadlines set forth in state, local, and federal law, unless the applicant and the City agree to an extension. Any denial of a right-of-way permit shall include a written explanation of the reasons for the denial.

5. Standards. Structures and equipment placed in the right-of-way shall meet the minimum requirements set forth in the City of Arcadia ordinances, in addition to the requirements of any other applicable law or regulation.

- (a) **General Standards.** Structures and equipment in the right-of-way shall be installed in locations and in a manner that:

- [1] does not interfere with pedestrian or vehicular traffic and complies with the requirements of the Americans with Disabilities Act of 1990.

- [2] ensures that placement of equipment on existing support structures is within the tolerance of those structures.

- [3] Avoids the installation of new support structures when the applicant has the right to place its equipment on an existing structure on reasonable terms and conditions and placement in that location is technically feasible and not materially more expensive.

- [4] Avoids installation or modification of a utility pole that would exceed the height limits set forth in Wis. Stat. § 66.0414(2)(e)2, if applicable.

- [5] Maintains the integrity and character of the neighborhoods and corridors in which the facilities are located.

- [6] does not obstruct or hinder travel, drainage, maintenance, or the public health, safety, and general welfare.

[7] does not inconvenience the public or interfere with the primary uses of the right-of-way.

[8] does not negatively impact the ability of the City or other government entities to efficiently remove snow or grass from the terrace, sidewalk, or street or conflict with the operation or maintenance of existing structures or equipment within the right-of-way.

[9] does not hinder the ability of the City or other government entities to improve, modify, relocate, abandon, or vacate the right-of-way or any portion thereof, or cause the improvement, modification, relocation, vacation, or abandonment of facilities in the right-of-way.

(b) **Aesthetic Standards.** Unless in conflict with state or federal law, structures and equipment placed in the right-of-way shall comply with the following standards:

[1] In areas identified by the Right-of-Way Manager where public utility poles, wires, cables, and lines (other than those of a high-voltage transmission line) are located underground, scheduled to be undergrounded, or required to be underground, undergrounding is required.

[2] No new above-ground structures or equipment, including collocations on existing structures, shall be placed within 500 feet of a historic site or historic structure as defined in Chapter 230 of the City of Arcadia ordinances. The 500-foot separation requirement is waived for installations that are completely concealed from view or are not visible from locations where the historic site or historic structure can be observed.

[3] Attachments are prohibited on City decorative light poles, unless the applicant demonstrates to the satisfaction of the Right-of-Way Manager that the installation will be entirely interior to the existing pole or an identical replacement pole provided by applicant.

6. **Pole Attachment Agreement.** Any applicant who wishes to place facilities on a municipal utility pole, street light, or other City-owned structure must obtain a right-of-way permit under this Section 336-11 and enter into a pole attachment agreement with the City in a form approved by the City Attorney or the attorney for the municipal utility, as applicable. Unless prohibited by state or federal law, the applicant seeking the agreement shall reimburse the City for all costs the City incurs in connection with its review and action upon the request for a pole attachment agreement. Recurring fees charged for attachments to municipal utility poles, street lights, or other City-owned structures shall be consistent with the requirements of any applicable state or federal law.

7. Existing Utility Facilities. Any legally placed utility encroachment, obstruction, or encumbrance in existence in the public right-of-way prior to March 4, 2026 is hereby granted a right-of-way permit under this subsection D without making application therefor.

E. Permit Conditions. Any permit granted pursuant to this Section 336-11 is subject to such permit conditions as may be imposed by the Right-of-Way Manager for protection of health, safety, and welfare and in consideration of circumstances applicable to the individual application. All permits granted pursuant to this Section 336-11 or by operation of state or federal law shall be subject to the following permit conditions, whether stated on the permit or not, unless specifically excluded in writing:

1. *Compliance with Laws.* The permit holder shall at all times maintain its excavation and/or facilities within the right-of-way in compliance with this Section 336-11 and all applicable laws and regulations, including any FCC regulations governing radio frequency emissions.
2. *Contact Information.* The permit holder shall at all times maintain with the City accurate contact information for the permit holder and any other persons or entities making use of the permit holder's facilities within the right-of-way, which shall include a phone number, mailing address, and email address for at least one natural person.
3. *Emergencies.* The City shall have the right to support, repair, disable, or remove all or any part of the permit holder's excavation and/or facilities in the right-of-way in emergencies or when it threatens imminent harm to persons or property.
4. *Indemnification.* The permit holder, by accepting a permit under this Section 336-11, agrees to indemnify and hold harmless the City, its elected and appointed officials, officers, employees, agents, representatives, and volunteers (collectively, the "indemnified parties") from and against any and all liability and loss from personal injury or property damage resulting from or arising out of, in whole or in part, the use or occupancy of rights-of-way by the permit holder or anyone acting under its direction or control or on its behalf arising out of the rights and privileges granted under this Section 336-11, even if liability is also sought to be imposed on one or more of the indemnified parties. The obligation to indemnify and hold harmless the indemnified parties shall be applicable even if the liability results in part from an act or failure to act on the part of one or more of the indemnified parties. However, the obligation does not apply to the extent the liability results from the sole negligence or willful misconduct of an indemnified party.
5. *No Adverse Impacts on Adjacent Properties.* The permit holder shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, or modification of the permit holder's excavation and/or facilities in the right-of-way.

6. *Maintenance.* The permit holder shall maintain its excavation and/or facilities in the right-of-way in a neat and clean manner and in accordance with all approved plans and conditions of approval.
 7. *Record Retention.* The permit holder shall retain full and complete copies of all permits and other regulatory approvals issued in connection with the permit holder's excavation and/or facilities in the right-of-way, which includes without limitation all conditions of approval, approved plans, resolutions, and other documentation associated with the permit or regulatory approval. In the event the City cannot locate any such full and complete permits or other regulatory approvals in its official records, and the permit holder fails to retain full and complete records in the permit holder's files, any ambiguities or uncertainties that would be resolved through an examination of the missing documents will be conclusively resolved in favor of the City.
 8. *Relocation.* At the request of City pursuant to subsection O, the permit holder shall promptly and at its own expense temporarily or permanently remove and relocate its facilities in the right-of-way. [Right-of-way permit only]
 9. *Abandonment.* The permit holder shall promptly notify the City whenever a structure or equipment has not been in use for a continuous period of 60 days or longer and must comply with subsection P. [Right-of-way permit only]
- F. Denial of Permit.** The Right-of-Way Manager may refuse to issue a permit under this Section 336-11 for any legal reason, including any of the grounds stated below:
1. The permit application is incomplete.
 2. The applicant is seeking to perform work or install facilities that do not meet the standards set forth in this Section 336-11, any other City of Arcadia ordinance, or any other applicable laws or regulations.
 3. Issuance of a permit for the requested date would interfere with a parade, celebration, festival, or other City-sponsored or approved event.
 4. Misrepresentation of any fact by the applicant.
 5. The extent to which space is available in the right-of-way for the proposed excavation, structure, or equipment, in light of competing demands for the particular location sought by the applicant, and the availability of other usable locations in the right-of-way or other rights-of-way for the facilities of applicant. The Right-of-Way Manager shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public's needs for the particular service, the condition of the right-of-way, the protection of existing facilities in the right-of-way, and future City plans for public improvements projects determined to be in the public interest.

6. The proposed activity is contrary to the public health, safety, or welfare.
- G. Revocation of Permit.** A permit under this Section 336-11 may be revoked for failure to comply with the conditions of the permit, the City of Arcadia ordinances, or other applicable laws or regulations. Any permit revocation shall include a written explanation of the reasons for the revocation. Upon revocation, any excavation for which an excavation permit has been revoked must be closed and the surface restored and any structure or equipment for which a right-of-way permit has been revoked must be removed within 10 days of receipt of written notice from the City. If the permit holder fails to satisfactorily and timely complete such work, the City, at its option, may perform such work without any liability for damage to the facilities. All costs incurred by the City in connection with revocation, notice, removal, and right-of-way restoration shall be paid by the permit holder.
- H. Failure to Obtain Permit.** Any excavation made without an excavation permit must be closed and the surface restored and any installation made without a right-of-way permit must be removed within 10 days of receipt of written notice from the City. If such work is not satisfactorily and timely completed, the City, at its option, may perform such work without any liability for damage to the facilities. All costs incurred by the City in connection with the notice, removal, and right-of-way restoration shall be paid by the entities who own or control any part of the installation.
- I. Bond.** Subject to any limitations contained in applicable state or federal law, prior to commencing work under an excavation permit, the permit holder shall post a financial guarantee in an amount approved by the Right-of-Way Manager and in a form approved by the City Attorney. If, 36 months after completion of the restoration of the right-of-way, the Right-of-Way Manager determines that the right-of-way has been properly restored, the financial guarantee shall be released.
- J. Insurance.** Subject to any limitations contained in applicable state or federal law, prior to commencing work pursuant to a permit under this Section 336-11, the permit holder shall provide satisfactory written evidence that it has in force and will maintain commercial general liability insurance with minimum limits of \$1,000,000 per occurrence. The policy shall name the City of Arcadia as an additional insured; shall include contractual liability coverage; and shall apply on a primary and non-contributory basis.
- K. Protection of the Public.** No permit shall be issued under this Section 336-11 unless the method of construction and location of the work to be performed are such that the public safety and convenience will not be impaired. The permit holder shall erect barriers, warning lights, and signs in accordance with the latest edition of the Wisconsin Manual of Uniform Traffic Control and any instructions of Right-of-Way Manager to adequately inform the traveling public of the nature and location of the work being performed pursuant to any permit issued under this Section 336-11.

- L. Inspection.** The permit holder shall make the work site available to the Right-of-Way Manager and all others authorized by law for inspection at all reasonable times during the execution of and upon completion of the work. At any time, the Right-of-Way Manager may order the immediate cessation of any work that poses a threat to the life, health, safety, or well-being of the public. The Right-of-Way Manager may issue an order to the permit holder to correct any work that does not conform to the requirements of the permit, this Section 336-11, any other City of Arcadia ordinance, or any other applicable law or regulation. Failure to correct the violation will be cause for revocation of the permit. Within 10 days after issuance of the order, the permit holder shall present proof to the Right-of-Way Manager that the violation has been corrected. If such proof has not been timely presented, the Right-of-Way Manager may revoke the permit.
- M. Notice of Completion.** When work under any permit issued under this Section 336-11 is completed, the permit holder shall notify the Right-of-Way Manager in writing and shall certify either that the work was completed in accordance with the plans and drawings approved by the City when issuing the permit or shall submit as-built plans and drawings and list the ways in which the as-built plans and drawings differ from the approved plans and drawings.
- N. Right-of-Way Restoration.** The work to be done under the permit, and the repair and restoration of the right-of-way must be completed within the dates specified in the permit to the satisfaction of the Right-of-Way Manager. The permit holder must repair all damage to and restore the right-of-way, including the paving and its foundations, to the same condition that existed before the commencement of the work. The permit holder must inspect the area of work and use reasonable care to maintain the same condition for 36 months thereafter.

The permit holder shall perform repairs and restorations according to the standards and with the materials specified by the Right-of-Way Manager. The Right-of-Way Manager shall have the authority to prescribe the manner and extent of the restoration, and may do so in written procedures of general application or on a case-by-case basis. The Right-of-Way Manager, in exercising this authority, shall be guided by the following standards and considerations:

1. The number, size, depth, and duration of the excavations, disruptions, or damage to the right-of-way.
2. The traffic volume carried by the right-of-way.
3. The character of the neighborhood surrounding the right-of-way.
4. The pre-excavation condition of the right-of-way.
5. The remaining life expectancy of the affected right-of-way.

6. Whether the relative cost of the method of restoration to the permit holder is in reasonable balance with the prevention of an accelerated depreciation of the right-of-way that would otherwise result from the excavation, disturbance, or damage to the right-of-way.
7. The likelihood that the particular method of restoration would be effective in slowing the depreciation of the right-of-way that would otherwise take place.

Methods of restoration may include, but are not limited to, patching, replacement of the right-of-way base, restoration of landscaping, and milling and overlay of the entire area of the right-of-way affected by the work. During the 36-month period that follows the restoration, the permit holder shall, upon notification from the Right-of-Way Manager, correct all restoration work to the extent necessary using the method required by the Right-of-Way Manager. Said work shall be completed within five business days of the receipt of the notice from the Right-of-Way Manager. If the permit holder fails to restore the right-of-way in the manner and to the condition required by the Right-of-Way Manager, or fails to satisfactorily and timely complete all repairs required by the Right-of-Way Manager, the City, at its option, may do such work. In that event, the permit holder shall pay to the City all costs incurred by the City in connection with the notice and right-of-way restoration and repair.

- O. Removal and Relocation.** Except as otherwise prohibited by state or federal law, a permit holder must promptly and at its own expense, with due regard for seasonal working conditions and as directed by the City, temporarily or permanently remove and relocate any of its facilities in the right-of-way whenever such relocation is necessary to prevent the structure or equipment from interfering with a present or future City use of the right-of-way; a public improvement undertaken by the City; an economic development project in which the City has an interest or investment; when necessary to prevent interference with the safety and convenience of ordinary travel over the right-of-way; or when the public health, safety, or welfare otherwise require it. Notwithstanding the foregoing, a permit holder shall not be required to remove or relocate its facilities from any right-of-way that has been vacated in favor of a non-governmental entity unless and until that entity pays the reasonable costs of removal or relocation to the permit holder. An order requiring temporary or permanent removal and relocation of a permit holder's facilities shall be in writing and shall include a description of the facilities to be removed and relocated and a reasonable deadline for completion of the work. In the event that a permit holder does not timely remove and relocate its structures or equipment as required by this subsection, the City, at its option, may perform such work without any liability for damage to the facilities. In that event, the permit holder shall pay to the City all costs incurred by the City in connection therewith.

P. Abandonment.

1. **Cessation of Use.** In the event that any structure or equipment within the right-of-way is not in use for a continuous period of 60 days or longer, the permit holder must promptly notify the City and do one of the following:

- (a) Provide information satisfactory to the Right-of-Way Manager that the permit holder's obligations for such facilities have been lawfully assumed by another permit holder; or
- (b) Submit to the Right-of-Way Manager a proposal and instruments for dedication of the unused facilities to the City. If a permit holder proceeds under this subsection P.1(b), the City may, at its option:
 - [1] accept the dedication of all or a portion of the facilities;
 - [2] require the permit holder, at its own expense, to remove the facilities and perform the required restoration under subsection N; or
 - [3] require the permit holder to post a bond or provide payment sufficient to reimburse the City for reasonably anticipated costs to be incurred in removing the facilities and performing the required restoration under subsection N.
- (c) Remove its facilities from the right-of-way and perform the required restoration under subsection N within one year, unless the Right-of-Way Manager waives this requirement or provides a later deadline.

2. **Abandoned Facilities.** Structures or equipment of a permit holder who fails to comply with subsection P.1 and which, for one year, remain unused shall be deemed to be abandoned. Abandoned facilities are deemed to be a nuisance. In addition to any remedies or rights it has at law or in equity, the City may, at its option:

- (a) Abate the nuisance and recover the cost from the permit holder or the permit holder's successor in interest;
- (b) Take possession of the facilities; and/or
- (c) Require removal of the facilities and restoration of the right-of-way under subsection N by the permit holder or the permit holder's successor in interest.

3. **Public Utilities.** This subsection shall not apply to any public utility that is required to follow the provisions of Wis. Stat. § 196.81.

Q. Powers of Right-of-Way Manager. The Right-of-Way Manager is responsible for administering this Section 336-11 and, as part of such administration, may:

- 1. Interpret the provisions of this Section 336-11.

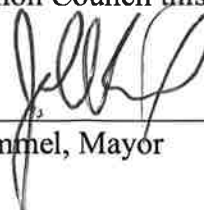
2. Adopt standards governing use of and placement of facilities in the right-of-way in addition to but consistent with the requirements of this Section.
 3. Develop forms and procedures for submission of applications for permits consistent with this Section.
 4. Establish deadlines for submission of information related to an application, and extend or shorten deadlines where appropriate and consistent with applicable law.
 5. Issue notices of incompleteness or requests for information in connection with any permit application.
 6. Consult with and seek input from other City staff, consultants, committees, and/or the Common Council on any permit application.
 7. Select and retain an independent consultant or attorney with expertise in right-of-way regulation to review any issue that involves specialized or expert knowledge in connection with any permit application.
 8. Subject to appeal as provided in subsection V, determine whether to grant, grant subject to conditions, or deny a permit application or revoke an existing permit.
 9. Take such other steps as may be required to timely act upon permit applications under this Section 336-11, including issuing written decisions and entering into agreements to mutually extend the time for action on an application.
- R. Nondiscrimination.** In establishing the rights, obligations, and conditions set forth in this Section 336-11, it is the intent of the City to treat each applicant and right-of-way user in a competitively neutral and nondiscriminatory manner, to the extent required by law, while taking into account the unique technologies, situation, and legal status of each applicant or request for use of the right-of-way.
- S. Liability.** The issuance of a permit under this Section 336-11 does not make the City liable for any excavation made or structure or equipment placed within the public right-of-way.
- T. Reservation of Rights.** The City, by the granting of a permit under this Section 336-11 does not surrender or to any extent lose, waive, impair, or lessen the lawful powers and rights which it has, or may be granted, under the constitution and statutes of the state of Wisconsin to regulate the use of the right-of-way; and the permit holder, by its acceptance of a permit under this Section, agrees that all lawful powers and rights, regulatory power, police power, or otherwise, as are or the same may be from time to time vested in or reserved to the City, shall be in full force and effect and subject to the exercise thereof by the city at any time. A permit holder is deemed to acknowledge that its rights are subject to the regulatory and police powers of the City to adopt and enforce general ordinances to

promote the public health, safety, and welfare and is deemed to agree to comply with all applicable ordinances enacted by the City pursuant to such powers.

- U. **Public Records.** Applications and other materials submitted to the City under this Section 336-11 are public records that may be made publicly available pursuant to state and federal public records law.
- V. **Appeals.** Any person adversely affected by a decision of the Right-of-Way Manager with respect to a permit under Section 336-11 may appeal that decision to the Common Council, which may decide the issues *de novo*, and whose written decision will be the final decision of the City. If an applicant contends that denial of the application would prohibit or effectively prohibit the provision of service in violation of state or federal law, or otherwise violate applicable law, the documentation accompanying the appeal must include that contention and provide all evidence on which the applicant relies in support of that claim. Appeals that involve permit applications for eligible facilities requests must be filed within three business days of the written decision with respect to the permit. All other appeals must be filed within five business days of the written decision, unless the Right-of-Way Manager extends the time therefor. An extension may not be granted where extension would result in approval of an application by operation of law. All appeals shall be conducted so that a timely written decision may be issued in accordance with the applicable deadline.
- W. **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. *Severability.* If any section, subsection, clause, phrase, or portion of this ordinance is for any reason held to be illegal or otherwise invalid by any court or administrative agency of competent jurisdiction, such illegal or invalid portion shall be severable and shall not affect or impair any remaining portion of this ordinance, which shall remain in full force and effect.

ADOPTED at a regular meeting of the City of Arcadia Common Council this 4th day of March, 2026.



John Kimmel, Mayor

ATTEST: 

Angela Berg, Clerk

Passed and adopted: March 4, 2026

Published: March 18, 2026

CITY OF ARCADIA ORDINANCE 2026-1
An Ordinance Related to Right-of-Way Excavation and Occupancy

ENACTED March 4, 2026

City of Arcadia Ordinance No. 2026-1 repeals and recreates Section 336-11 of the City of Arcadia Code of Ordinances to govern excavation and occupancy of certain public rights-of-way within the City.

Ordinance No. 2026-1 repeals and recreates Section 336-11 to (i) require an Excavation Permit to excavate within the right-of-way and a Right-of-Way Permit to encroach upon, obstruct, or encumber the right-of-way, subject to certain enumerated exceptions; (ii) set out permit application requirements, procedures for review of permit applications, and grounds for approval, denial, or revocation of permits; (iii) establish standards for excavations within the right-of-way, structures or equipment placed within the right-of-way, and restoration of the right-of-way after work done under a permit is complete; (iv) establish standard permit conditions and requirements related to bonding, insurance, inspection, and protection of the public; (v) require removal or relocation of permitted structures or equipment in the right-of-way under certain conditions; (vi) grant powers to the designated Right-of-Way Manager to administer the ordinance; (vii) set out a process for appealing decisions made under the ordinance, and (viii) establish penalties for violation of the ordinance.

Ordinance No. 2026-1 was adopted by the common council by a __5__ - __0__ vote.

The full text of this Ordinance may be obtained by contacting the city clerk for the City of Arcadia at (608) 323-3359. The full text of this Ordinance may also be viewed at City Hall, 945 S. Dettloff Drive, Arcadia, Wisconsin, or by visiting <http://www.cityofarcadiawi.com>.