

**Legistar File No. 77808 Body**

DRAFTER'S ANALYSIS: This ordinance creates an alternative annual right-of-way occupancy permit for registered public utilities as an exception to the normal street occupancy permit requirements in MGO Sec. 10.055. Under the existing ordinance, any person seeking to temporarily occupy the right-of-way with material or machinery is required to get a street occupancy permit. Historically, the City did not routinely enforce these requirements upon public utilities and their contractors performing routine work in the right-of-way except for prolonged occupations or when coupled with an excavation permit. With increasing demand and conflicts over the shared right-of-way space, the City has worked with public utility representatives to come up with a regulatory system that will allow the City and registered utilities to better coordinate and manage work in the right-of-way, while ensuring that the public's safety and convenience is protected. Under this new permit, a registered public utility can obtain an annual permit that would allow the utility and its contractors and subcontractors to temporarily occupy the public right-of-way provided that it meets certain conditions that differ based upon the length of the occupation, the nature of the right-of-way in question, the day of the week and time of the day, and other special considerations. Certain routine utility operations will be exempt from any further City oversight, while some activities may require prior notification to the City, and some activities will require additional City approvals. Some utility operations may end up needing a street occupation permit. These levels of oversight will be established by the City's approved Traffic Control Policy, which policy will be considered contemporaneously with this ordinance. The Traffic Engineer may also, over time, develop its own set of requirements for unique streets/situations. An annual permit fee will apply, which fee will be established an amount sufficient to recover the City's costs to administer the permit. Finally, the bond schedule is being updated to allow for enforcement of this new permit. This ordinance has a delayed effective date of August 1, 2023 in order to allow staff sufficient time to establish the associated permit infrastructure.

\*\*\*\*\*

The Common Council of the City of Madison do hereby ordain as follows:

1. Subsection (9) entitled "Public Utility Right-of-Way Occupancy Permit" of Section 10.055 entitled "Occupancy of Streets or Other Public Areas" of the Madison General Ordinances is created as follows:

(9) Public Utility Right-of-Way Occupancy Permit.

(a) Definitions. For the purpose of this Subsection, the definitions provided for in Section 10.05(1)(b) apply, except as to the following:

Department means the Traffic Engineering Division.

Registered Public Utility means a public utility that is registered with the City under Section 10.05(2).

(b) Intent. The right-of-way is intended to be primarily a transportation corridor and the City must ensure that the needs of the various right-of-way users are balanced, while protecting the health, safety and welfare of the public. Under Wis. Stat. Secs. 86.16, 182.017, and 196.58, and Wis. Admin Code Ch. PSC 130, public utilities have a right to use the right-of-way, but this right is subject to the City's right to enact reasonable regulations over the use of this shared space. As the City grows and technology advances, the City has been faced with significant competing demands on the use of the right-of-way. Public utility work that interferes with the public's use of the right-of-way may affect the City's traffic patterns throughout the area, create safety concerns, and impact the City's ability to provide emergency services, depending on the type of road, the day of the week and the time of the occupation. By requiring permittees under this Subsection to comply with the City's approved Traffic Control Policy when temporarily occupying the

right-of-way, the City will be protecting the health, safety and welfare of the public, while also recognizing the interests of the public utilities in performing such work.

(c) Permit.

1. Applicability. As an alternative to a Street Occupancy Permit issued under this Section 10.055, a registered public utility may obtain a Public Utility Right-of-Way Occupancy Permit under this Subsection, which permit will allow the public utility, its contractors and subcontractors, to temporarily occupy the public right-of-way, subject to the conditions set forth in this Subsection.
2. Application. An application for a permit under this Subsection, or a request to renew a permit issued under this Subsection, shall be in writing to the City Traffic Engineer and include the annual permit fee and an agreement to abide by all conditions set forth in Paragraph 5.
3. Review and Approval. In reviewing an application for a permit under this Subsection, or a request to renew a permit issued under this Subsection, the Traffic Engineer shall ensure that the public utility's annual registration under Sec. 10.05(2) is up to date and that all necessary information under this Subsection has been provided. Unless any fees or costs remain unpaid, or the registered public utility, and its contractors or subcontractors, has demonstrated an unwillingness or inability to routinely comply with the conditions of this Subsection or other City-issued permits, the permit shall be granted.
4. Permit Length and Renewal. A permit issued under this Subsection shall be valid for one calendar year. A permittee may submit a request to renew the permit no later than December 15 of the expiring year.
5. Permit Conditions. As a condition of a permit issued under this Subsection, the permittee agrees to abide by the following conditions:
  - a. Traffic Control Policy. In occupying the right-of-way pursuant to a permit issued under this Subsection, the permittee is required to comply with the City's approved Traffic Control Policy. The Traffic Control Policy shall be prepared by the Traffic Engineer, in consultation with public utilities, and shall approved by the Board of Public Works. The Traffic Control Policy may be updated from time-to-time.
    - i. Contents of Policy. The Traffic Control Policy may provide standard operating procedures for the permittee to follow for routine public utility maintenance and operational activities. The Policy may differentiate between the classification of the right-of-way (local, collector, arterial), day of the week, time-of-day, area of work (travel lanes, parking lanes, terrace, sidewalk, bike lanes or bike path), and other relevant criteria as determined by the Traffic Engineer. The Traffic Control Policy may require that the permittee provide the City advance notice of work in certain situations, and may require that specific traffic control plans be submitted for approval for work in certain situations.
    - ii. Traffic Control Measures. Traffic control measures for all work performed under the Public Utility Right-of-Way Occupancy Permit and the Traffic Control Policy shall adhere to standards set forth in the Work Zone Safety handbook and the MUTCD Guidance on Temporary Traffic Control. In addition, the Traffic Engineer may supplement and add additional requirements to these standards through the Madison Traffic Engineering Addendum, provided that this Addendum is published and made publicly available to permit applicants at the time the annual permit is granted by the City, or to permittees within thirty (30) days of any updates or amendments thereto.
  - b. Removal for Public Purpose. Any material or machinery placed in the right-of-way under the Public Utility Right-of-Way Occupancy Permit

must be removed upon twenty-four (24) hours notice given by the City Traffic Engineer, City Engineer or Superintendent of Streets where the right-of-way is needed due to an emergency or critical event, or where such removal is necessary in order to repair, replace or install a street, sidewalk, terrace, alley, water facility, sewer facility or other facility that the City Engineer determines needs to be installed.

- c. Restoration. Upon the completion of work in the right-of-way, the area occupied under a permit granted under this Subsection shall be restored to its original condition and left in good repair and condition. The permittee shall be responsible for the repair of any damage noted by City staff and shall repair it to City of Madison Standard Specification for Public Works Construction. If necessary, the City Traffic Engineer or City Engineer shall inspect the area upon completion of the restoration and the permittee shall make any further repairs required by the City Traffic Engineer or City Engineer needed to address any deficiencies that did not exist prior to the occupation. If permittee does not adequately restore the area as required, the City may perform any repairs or restoration and recover the costs thereof by any lawful means available. A permit may not be granted or renewed under this Subsection if a public utility owes outstanding restoration costs under this Subparagraph.
- d. Compliance. In occupying the right-of-way under a Public Utility Right-of-Way Occupancy Permit, the permittee is required to obtain and possess all other necessary permits, licenses, and authority, and to pay all fees required by any other City, County, State, or Federal rules, laws or regulations. The permittee, and its contractors and subcontractors, shall perform all work in conformance with all applicable codes and established rules and regulations, including the City of Madison Standard Specifications for Public Works Construction if applicable, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who does the work. The permittee shall at all times maintain compliance with all applicable Federal, State, and local laws, regulations, and other rules, including those requirements of Section 10.05 and this Section.
- e. Contact Information. The permittee shall at all times maintain with the City accurate contact information for the permittee, which shall include a phone number, mailing address, and email address for at least one natural person.
- f. Liability. The permittee shall agree to be primarily liable for damages to person or property by reason of the granting of the permit and shall agree to hold harmless, defend, and indemnify the City, its officers, boards, committees, commissions, elected officials, employees and agents, from and against all liability, damages, and penalties resulting from the occupation of the right-of-way as permitted under this Subsection.
- g. Insurance. The permittee shall be required to furnish a Certificate of Insurance, providing evidence of commercial general liability insurance with the City of Madison, its officers, officials, agents and employees named as additional insureds. The insurance shall include contractual liability coverage, apply on a primary and non-contributory basis, and minimum limits of one million dollars (\$1,000,000) per occurrence. The Risk Manager reserves the right to require higher limits and other coverage terms and conditions at his/her discretion. Permittee shall keep required insurance in full force and effect throughout the term of the Public Utility Right-of-Way Occupancy Permit. This insurance condition may be waived for other governmental units and in those instances where the Risk Manager, in consultation with the City Attorney's Office, determines that this requirement can be waived.

- h. Permit Fee. There is an annual fee for a Public Utility Right-of-Way Occupancy Permit issued under this Subsection, and additional fees may be imposed, as provided for under the Traffic Control Policy, for the review of certain proposed activities. The fees imposed under this Subparagraph shall be established by the Board of Public Works and shall be sufficient to recover the City's costs to administer the permit issued under this Subsection. The annual permit fee shall be paid at the time of the permit application or request to renew.
- 6. Suspension; Revocation. If non-compliance with the conditions of a permit issued under this Subsection endangers the health, safety and welfare of the public, the Traffic Engineer may find it necessary to suspend or revoke the permit and require that the public utility obtain a Street Occupancy Permit for any necessary work. Any such suspension or revocation shall be made in writing.
- 7. Appeal. The registered public utility aggrieved by a decision of the Department revoking, suspending, refusing to issue or refusing to renew a permit may file a request for review with the Board of Public Works. A request for review shall be filed within ten (10) days of the decision being appealed. Following a hearing, the Board of Public Works may affirm, reverse or modify the decision of the Department.

2. Subsection (9) entitled "Penalties" of Section 10.055 entitled "Occupancy of Streets or Other Public Areas" of the Madison General Ordinances is renumbered to Subsection (10).

3. Subdivision (a) of Subsection (3) entitled "Schedule of Deposits" of Section 1.08 entitled "Issuance of Citations for Violations of Certain Ordinances and Providing a Schedule of Cash Deposits" of the Madison General Ordinances is amended by creating and amending therein the following:

<u>"Offense</u>	<u>Ord. No./Adopted Statute No.</u>	<u>Deposit</u>
Violation of street occupancy permit conditions.	10.055(4)	\$200, 1st \$500, 2nd w/in 1 yr. \$1,000, 3rd w/in 1 yr.
<u>Failure to Comply with Conditions of a Public Utility Right-of-Way Occupancy Permit.</u>	<u>10.055(9)(c)5</u>	<u>\$200, 1st</u> <u>\$500, 2nd w/in 1 yr.</u> <u>\$1,000, 3rd w/in 1 yr.</u>
Violations of Street Use Permit Ordinance.	10.056	\$300"

**EDITOR'S NOTE:** A new or revised forfeiture range must be approved by the Municipal Judge prior to adoption. These new and revised ranges have been so approved.

4. This ordinance will be effective on August 1, 2023.