

LEGISTAR #39784 - BODY

DRAFTER'S ANALYSIS: This ordinance updates the right-of-way occupancy ordinance and corresponding bond schedule to give the City greater enforcement tools to better address a registrant's failure to timely relocate facilities.

Under state law, the City is limited in its ability to regulate public utility use of the municipal right-of-ways, and any such regulation is subject to review by the Public Service Commission. Any regulation or penalty imposed upon public utilities must be reasonable and nondiscriminatory. The City may not recover more than the actual costs to the City of regulating utility use of the right-of-ways. Among the City's powers is the ability to require a public utility to relocate its facilities during public improvement projects. Most public utilities work closely with the City and timely coordinate their work to ensure that the City's project is not delayed. However, over the last several years, certain public utilities have expressed a pattern of not timely complying with relocation schedules associated with major public works projects, despite verbal agreements about the schedule to be employed. As a result, multiple public works projects have commenced only to find that public utility facilities remain in the right-of-way. This has resulted in substantial delays or inefficiencies, and has greatly increased the costs to the City to complete these projects. These delays have also cost other public utilities, who may have to wait themselves to timely and efficiently relocate their facilities. Efforts to work with these non-complying public utilities has proven difficult, and it does not appear that the City's existing enforcement options are sufficient to ensure timely utility compliance with lawful facility removal or relocation orders. Indeed, despite recent issues that have increased the City's costs by hundreds of thousands of dollars on certain projects, the response of these non-complying public utilities to the City's concerns has been indifferent.

Hence, because the City cannot recover the additional project costs incurred as a result of utility delays through our ordinance, staff feels that it is necessary to increase the enforcement options available to the City as a means to gain registrants compliance with the City's reasonable relocation or removal requirements. Accordingly, this ordinance updates the right-of-way occupancy ordinance and corresponding bond schedule to clarify the process that must be followed when public utility facilities in the right-of-way must be maintained, supported, protected or relocated to allow for public work. The failure to perform the work by the due date is subject to a penalty that significantly increases with multiple violations. Moreover, the failure to meet a deadline, or otherwise comply with any requirement of this ordinance, can now be addressed by the issuance of a citation by the Engineering Division. By increasing the City's enforcement options, it is expected that public utilities will more timely adhere to the City's reasonable relocation schedules, and the public's interests will be better served.

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

1. Subdivision (a) entitled "Purpose and Findings" of Subsection (1) entitled "General Provisions" of Section 10.05 entitled Occupancy of Rights-of-Way" of the Madison General Ordinances Is amended to read as follows:

"(a) Purpose and Findings. In the exercise of governmental functions 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 are safe for public use, and to ensure that facilities are timely maintained, supported, protected or relocated to accommodate reconstruction or repairs. The taxpayers of the City bear the financial burden for the upkeep, maintenance and reconstruction of the rights-of-way and a primary cause for the early and excessive deterioration of its rights-of-way is the frequent excavation by persons who locate facilities therein.

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

The City finds that delays by occupants of the rights-of-ways in maintaining, supporting, protecting or relocating facilities, if they impact public construction projects, have the potential to significantly increase public works project costs borne by the taxpayers. Moreover, the City finds that some right-of-way occupants have a history of delays and nonresponsiveness.

The City finds that occupancy 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 associated with public right-of-way projects, such as registration, 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 actual excavation into the public right-of-way.
4. Degradation costs defined as depreciation caused to the roadway in terms of decreased useful life, due to excavations into the public rights-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 equipment currently within its rights-of-way or to be placed therein at some future time. It is intended to complement the regulatory roles of state and federal agencies.

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 recovery of the costs incurred in doing so. This ordinance provides for the health, safety and welfare of the residents of the City as they use the right-of-way of the city, as well as to ensure the structural integrity of the public rights-of-way.”

2. Subsection (15) entitled “Relocation of Facilities” of Section 10.05 entitled “Occupancy of Rights-of-Way” of the Madison General Ordinances is amended to read as follows:

“(15) Relocation and Protection of Facilities. A registrant must, promptly and at its own expense, ~~permanently remove and relocate~~ maintain, support, protect or relocate its facilities in the right-of-way whenever the City, or its agent, acting in its governmental capacity, requests such ~~removal and relocation~~ action to allow for public work in the right-of-way. The City, or its agent, shall issue a due date for the work to the local representative of not less than seventy-two (72) hours, which due date shall be reasonable and based upon the actions to be undertaken by the registrant. If requested, the registrant shall restore the right-of-way following the completion of the work. If a registrant fails to perform the action by the due date, the registrant shall be subject to a forfeiture of not less than two-hundred and fifty dollars (\$250) nor more than five-hundred dollars (\$500) for the first offense within a three (3) year period, and a forfeiture of not less than five hundred dollars (\$500) nor more than two thousand five-hundred dollars (\$2,500) for the second or subsequent offense within a three (3) year period. Each day such violation or failure to comply continues shall be considered a separate offense. Notwithstanding the foregoing, a person shall not be required to remove or relocate its facilities from any right-of-way which has been vacated in favor of a non-governmental entity unless and until the reasonable costs thereof are first paid to the person therefore.”

3. Subsection (16) entitled “Interference with Other Facilities” of Section 10.05 entitled “Occupancy of Rights-of-Way” of the Madison General Ordinances is amended to read as follows:

(16) ~~Interference with Other Facilities during Municipal Construction. When the City performs work in the right-of-way and finds it necessary to maintain, support, shore, or move a registrant's facilities, the city shall notify the local representative. The registrant shall meet with the City's representative within twenty four (24) hours and coordinate the protection, maintenance, supporting and/or shoring of the registrant's facilities. The registrant shall accomplish the needed work within seventy two (72) hours, unless the City agrees to a longer period.~~
City's Right to Self-Help. In the event that ~~the~~ a registrant does not proceed to maintain, support, ~~shore~~ protect or ~~move~~ relocate its facilities as ordered in sub. (15), the City may arrange to do the work and bill the registrant, said bill to be paid within thirty (30) days."

4. Subsection (20) entitled "Penalty" of Section 10.05 entitled "Occupancy of Rights-of-Way" of the Madison General Ordinances is amended to read as follows:

"(20) Penalty. Except as otherwise provided in this section, Any person who violates this ordinance or fails to comply with the provisions of this ordinance shall be subject to a forfeiture of not less than ~~one hundred twenty two hundred and fifty~~ dollars (~~\$120~~250) nor more than ~~six hundred one thousand~~ dollars (~~\$600~~1000). Each day such violation or failure to comply continues shall be considered a separate offense."

5. 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>
<u>Failure to obtain permit before excavation of any timely relocate or protect facilities in the public right-of-way.</u>	<u>10.05(615)(a)</u>	<u>\$500250, 1st w/in 3 yrs.</u> <u>\$1000, 2nd w/in 3 yrs.</u> <u>\$2500, 3rd+ w/in 3 yrs.</u>
<u>Failure to abide by right-of-way occupancy requirements.</u>	<u>10.05(20)</u>	<u>\$250, 1st w/in 3 yrs.</u> <u>\$500, 2nd w/in 3 yrs.</u> <u>\$1000, 3rd+ w/in 3 yrs."</u>

EDITOR'S NOTE: New bail deposits must be approved by the Municipal Judge prior to adoption. This deposit has been so approved.