

**LEGISTAR #53928 - Body**

DRAFTER'S ANALYSIS: This ordinance creates a new permit, administered by Traffic Engineering, that would allow City staff to track and have accurate knowledge of third parties accessing, altering or connecting to certain City facilities. This will improve the City's ability to oversee its infrastructure and prevent unauthorized access to or work in City facilities.

Currently, there is no formal process to review or approve access to the City's facilities. However, the City does have some written agreements with third party providers that allow some access, alteration or even connection to the City's facilities. Unfortunately, the City has come to discover that there has been either unauthorized activity associated with the City's facilities, or that approved work was not done according to plans. Such unapproved activity is a risk to the City's own use of its infrastructure, now and in the future, and could impair the health, safety and welfare of the public.

This ordinance creates a permit that would allow a third party to access, alter or connect to the City's facilities (defined as the City's handholes, manholes, conduits, fiber, electric supply, traffic signals, street lights, or electronic, telecommunications, or control cabinets, including any support structures for said items). It would not apply to public emergencies or parties working under a public works contract. Nor would it not extend to someone plugging in a device to a City provided electrical or Ethernet outlet. Only parties acting under a written agreement with the City may obtain a permit, meaning third parties without a contractual relationship may not access, alter or connect to the City's facilities. Unauthorized alterations or connections are subject to immediate removal by the City.

Under the permit, the applicant is required to comply with an approved project plan and make the site available for inspection during the work. Following completion of the work, the permittee is required to submit as-built drawings of the work that was done in a format approved by Traffic Engineering. If it is later discovered that the work was not done according to the approved plans, the permittee will be ineligible for future permits until such time as the person can establish an ability to comply with the ordinance in the future. It is an express goal of this provision that the parties with whom the City has entered into agreements will use better contractors and subcontractors in the future, and that the City will have more complete and accurate records of its facilities.

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

1. Section 10.057 entitled "Facility Access Permit" of the Madison General Ordinances is created to read as follows:

**"10.057 FACILITY ACCESS PERMIT.**

- (1) Purpose. The City owns and operates a vast network of street lights, traffic signals, and electrical and telecommunications infrastructure (including fiber), both within the right-of-way and on other City owned lands. These facilities have numerous access points that, while they generally have restricted access, are difficult to monitor. Unauthorized access, alterations or connections to these City facilities, such as using City handholes to access private facilities, connecting to City fiber or electricity, or using City conduit, poses a risk to the City's infrastructure, as well as a direct threat to the health, safety and welfare of the public and the ability of the City to serve the needs of its residents. The purpose of this ordinance is to ensure that only authorized persons are accessing, altering or connecting to the City's facilities, and that if any changes are made to the City's facilities that the City is made aware of them and has the ability to track those changes. It is also an express goal of this ordinance that the persons whom the City has allowed to access, alter or connect to the City's facilities will use better contractors and subcontractors in the future, and that the City will have more complete and accurate records of its facilities.
- (2) Requirement. Except as otherwise provided in this Section, no person shall access, alter or connect to a facility, or cause another person to do so, without a valid facility access permit issued under this Section. Any alterations or connections made contrary to this Section, or that were otherwise made without the City's express permission, are subject to immediate removal by the City without notice.
- (3) Applicability. This Section does not apply to the following:
  - (a) Any person acting within the scope of a public works contract.

- (b) Any emergency personnel acting on behalf of police, fire or public gas or electric utilities during a public emergency, as determined by the Department, that poses an imminent risk to the public's health, safety or welfare.
- (4) Definitions. For the purposes of this Section, the following definitions apply:
- (a) Access means to open or otherwise make contact with a facility.
  - (b) Agreement means any written legal agreement between the City and another party that allows the other party to access, alter or connect to a facility, or where express written permission to do so is granted by the Department or the City's Information Technology Department.
  - (c) Alter means to make any changes to a facility, including moving a facility, changing a facility, installing new private equipment within a facility, or in any way changing the ability of the City to use a facility. Altering includes using the City's fiber strands for non-City purposes.
  - (d) Connect means to splice or attach any private (non-City owned) electrical or telecommunications (including fiber) line to an existing facility, other than at publicly available electrical or telecommunication outlets.
  - (e) Department means the City's Traffic Engineering Division.
  - (f) Facility, or facilities, shall mean any City owned handhole, manhole, base, conduit, fiber, electric supply, traffic signal, street light, or electronic, telecommunications, or control cabinet, including any poles or other support structures for said items.
  - (g) Person shall mean any person or entity, other than the City itself.
  - (h) Project shall mean a permittee's work that requires accessing, altering or connecting to facilities.
- (5) Permit. A person who has an agreement with the City may apply for and obtain a facility access permit, for the person and the person's contractor or subcontractors, pursuant to the requirements of this Subsection. A permit holder is responsible for the actions of their contractor or subcontractors.
- (a) Permit Application. Application for a facility access permit shall be made to the Department. Permit applications shall contain and will be considered complete only upon compliance with the requirements of the following provisions:
1. Identification. The applicant shall provide the name and contact information of the person seeking to access, alter or connect to the facility. The application shall also specify the name and contact information of the contractor(s) or subcontractor(s) who will be performing the work for the applicant.
  2. Agreement. The applicant shall specify the agreement under which the permit is being sought.
  3. Purpose. The applicant shall specify the purpose for accessing, altering or connecting to the facility and any resulting impact on City operations.
  4. Project Plan. The applicant shall specify the facility or facilities being accessed, altered or connected to, and identify in detail the nature and scope of the work, including any project details requested by the Department. If the work will impact traffic, an approved traffic plan may be required.
  5. Duration and Scope. The applicant shall propose a duration and scope to the project that minimizes any interference with the City's operations or impacts on the public.
  6. Fees. The applicant shall pay:
    - a. The permit fees and costs as set forth below;
    - b. Any unpaid fees or costs due for prior facility access, alterations or connections; or,
    - c. Any loss, damage, or expense suffered by the City because of applicant's prior facility access, alterations or connections.

7. Statement of Compliance. The applicant shall sign a statement on forms provided by the Department that the applicant will comply with all local, state and federal codes.
  8. Insurance. The applicant shall furnish, or have on file, a certificate of liability insurance compliant with the standards of the Department and that is approved by the City's Risk Manager.
- (b) Permit Fee. The facility access permit fee shall be established by the Department, and approved by the Board of Public Works, in an amount sufficient to recover the costs incurred by the City to administer the permit and the requirements under this Section. Once paid, the permit fee is not refundable.
- (c) Review and Approval. The Department shall review the application to ensure that it is complete. The applicant shall provide any additional information to the Department as requested. If the Department determines that the applicant seeks to access, alter or connect to the facility or facilities pursuant to an agreement with the City, that the project plan will not adversely affect the facility or facilities or endanger the public's health, safety or welfare, that the person performing the work is competent to perform such work, and that granting the permit is not contrary to the City's interest, the Department may, subject to Subsection (6)(c), issue the permit as provided herein. The City reserves the right to reject an application under this Section for any reason, including an applicant's history of poor performance of similar work or performing work not according to approved plans.
- (d) Conditions. All permits shall be subject to the following conditions, and any other special conditions as required by the Department:
1. Compliance. Permittees shall comply with all City ordinances and applicable laws and regulations. The project may require the issuance of other City permits or approvals, and it is the permittee's responsibility to obtain all required permits or approvals.
  2. Notice. The permittee shall notify the Department no later than 24 hours before commencing the permitted activity, and again within 24 hours after ceasing the permitted activity.
  3. Project Plan. The permittee shall perform the work consistent with the approved project plan submitted with the application. If any changes to this plan are necessary, other than minor changes that do not adversely impact the City's facilities, permittee shall notify the Department prior to engaging in the activity.
  4. Permit Display. A copy of any permit issued under this Section shall be made available at all times by the permittee at the project work site and shall be available for inspection upon request.
  5. Inspection. The permittee shall make the project site available to the Department and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the project. At the time of inspection, the Department may order the immediate cessation of any work that is contrary to the approved plans or that otherwise poses a threat to the life, health, safety, or well-being of the public.
  6. As-Builts. Within 10 days following the completion of the permitted activity, unless additional time is approved by the Department, the permittee shall provide the City with as-built drawings, in a format that is acceptable to the Department, of the changes, alterations or connections made to the facility or facilities, including the specific use of any pre-existing fiber strands or conduits.
- (6) Revocation.
- (a) It shall be cause to revoke a permit issued under this Section if a permittee does not comply with the conditions of the permit, or if the City subsequently learns

that the as-built drawings submitted on previous projects do not accurately reflect the alterations or connections made to the facility or facilities.

- (b) Except in the case of an immediate threat to the health, safety and welfare of the public or the City's facilities, the Department shall provide written notice of the revocation to the permittee, who shall have no less than twenty-four (24) hours to comply with the permit requirements, including updating any drawing or performing additional work to correct any previous errors. If there is an immediate threat to the health, safety or welfare of the public, the Department may immediately revoke the permit and shall provide written notification of this action to the permittee in a timely manner.
  - (c) A person who has had a permit revoked under this Section is not eligible to be issued new permits under this Section until such time that the Department is satisfied that the permittee is in compliance with this Section and has demonstrated an ability to comply with this Section for future projects.
- (7) Appeal. In the event the Department revokes a permit under Subsection (6), the Department shall inform the person, in writing, of the reasons for the determination. The person may appeal this decision to the Board of Public Works within ten (10) days after mailing of the notice to the address of the person as shown on the permit application. Such appeal must be in writing to the City Clerk, and must inform the Board of the reasons why the person believes the decision to be in error. Failure to so appeal this decision shall result in automatic approval of the revocation without further action by the City Traffic Engineer or the Board of Public Works. Within thirty (30) days after receipt of the appeal, or as soon thereafter as agreed to by the permittee and the City, the Board of Public Works shall hold a hearing at which the person and the City Traffic Engineer may present and question witnesses and present oral and written argument. Within twenty (20) days after the hearing, the Board shall cause to be issued a written decision which shall affirm, reverse or modify the determination of the City Traffic Engineer. Appeal of the Board of Public Works' decision shall be by Certiorari to Circuit Court and shall be commenced within thirty (30) days of the date of the decision sought to be reviewed or be waived.
- (8) Unauthorized Work. If any person alters or connects to a facility without a permit issued under this Section or as specifically provided for by the terms of an agreement with the City, the person shall be required to reimburse the City for its actual expenses incurred in restoring its facilities to the condition they were in prior to the unauthorized work.
- (9) Penalty. Any person who fails to comply with any of the requirements of this Section, including any permit issued hereunder, shall upon conviction be subject to a forfeiture of not less than two-hundred and fifty dollars (\$250) nor more than one thousand dollars (\$1,000). Each day or portion thereof such violation continues shall be considered a separate offense."

2. 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>
Accessing facility without a permit.	10.057(2)	\$250, 1 <sup>st</sup> \$500, 2 <sup>nd</sup> \$1000, 3 <sup>rd</sup> + sub.
Failure to comply with facility access permit.	10.057(6)	\$100, 1 <sup>st</sup> \$250, 2 <sup>nd</sup> \$500, 3 <sup>rd</sup> + sub."

3. Subsection (4) entitled "Issuance of Citations" 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 amending therein the following:

"Enforcement Official

City Traffic Engineer, or her/his designee.

Ordinance Chapter or Section and Title

Section 10.05, Occupancy of Rights-of-Way;  
Section 10.055, Occupancy of Streets or Other  
Public Areas; Section 10.057, Facility Access  
Permit."

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