

LEGISTAR 46815 - Body

DRAFTER'S ANALYSIS: This ordinance repeals and replaces the existing right-of-way occupancy ordinance to update the City's requirements for the use of the public right-of-way. The City's current ordinance needs to be updated to account for current practices and in light of various issues that have faced the City over the years and that are likely to face the City in the years to come.

Of note, there is a recent movement within the telecommunications industry where companies are beginning to look to site tall (e.g. 50 foot tall or higher) communication only poles or towers within the public right-of-way rather than siting these poles or towers on zoning lots. While the City may enact reasonable regulations directed at these sorts of installations, the City's current requirements do not impose requirements sufficient to give staff enough information to review these poles or towers and their impact on the public's health, safety and welfare. The updates directed at these sorts of installations in the right-of-way are consistent with the City's existing authority. These changes will not apply to traffic signals, street lights, emergency alert signals or high voltage transmission lines. Applicants will be required to notify the area alder and nearby property owners as part of the application process. New poles and towers over 50 feet tall must be located outside of the fall radius of a residential, commercial, retail or other occupied building. Moreover, this ordinance codifies the statutory Digger's Hotline requirements to enable the City to enforce these requirements. The City has found itself unable to do anything when faced with either a registrant's non-marking or untimely marking. The resulting delays are costly and problematic, not only for the City and our contractors, but for other private parties and utilities working in the right-of-way.

In addition to these changes, the other changes being proposed include the following:

- Specific inclusion of the City's statutory authority to regulate the use of the right-of-way;
- Expanded and additional definitions;
- Making it more clear who is required to register with the Department, and that annual registration is required;
- Delegating the authority to the Board of Public Works to set the registration and excavation permit fees, enabling the City to better recover its costs for administering this ordinance;
- Extending the requirements to obtain an excavation permit to the person causing the work to be done;
- Codifying existing practices regarding modifications of permits, specifically giving the City Engineer the ability to allow minor changes or require a supplemental permit, and the payment of street excavation permits, allowing them to be paid after the issuance of the permits;
- Clarifying a Permittee's obligations regarding repair or restoration following the work and allowing the recovery of any City costs arising from a failure to do the work against the property served by the work;
- Giving the City additional grounds to deny a permit to excavate, including where other nearby locations are available or where the installation is sought in an undergrounding area;
- Giving the City the ability to establish facility corridors within the right-of-way, to better allow future right-of-way planning;
- More clearly establishing when the City can require the relocation of facilities, while also providing the City the ability to have the work performed if the Registrant does not timely comply with the order to relocate the facilities;
- Codifying the City's current indemnification clause, which is already required as a condition of the permit and as a condition of registration;
- Updating the obligations for owners of discontinued facilities;
- Allowing the City to declare facilities unused or unclaimed by a registered person for one year to be abandoned; and,
- Updating the general penalty for a violation of this ordinance.

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

1. Section 10.05 entitled "Occupancy of Rights-of-Way of the Madison General Ordinances is repealed and recreated to read as follows:

"10.05 OCCUPANCY OF RIGHTS-OF-WAY.

(1) General Provisions.

(a) Purpose and Findings. In the exercise of its 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 in the public rights-of-way to ensure that the rights-of-way remain available for public services and 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 the public rights-of-way is the frequent excavation by persons who place facilities therein.

The City finds that there has been an increase in the use of the public rights-of-way and, as a result, 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 direct and indirect 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; and,
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, and pursuant to its authority under Wis. Stat. §§ 62.11(5), 86.16, 182.017, and 196.58, the City hereby enacts this ordinance relating to the 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 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 the recovery of costs incurred by the City 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 of the City, as well as to ensure the structural integrity of the public rights-of-way.

Under this section, all persons who excavate, obstruct and/or occupy the public rights-of-way will reimburse the City's administrative, inspection, ongoing management and degradation costs. Right-of-way

users will bear a fair share of the financial responsibility for the integrity of the public rights-of-way.

(b) Definitions. For the purposes of this section the following definitions apply:

Applicant means any person requesting permission to excavate, obstruct and/or occupy a right-of-way.

City means the City of Madison, Wisconsin, a Wisconsin municipal corporation.

Degradation means the accelerated depreciation of the right-of-way, caused by an excavation of the right-of-way, resulting in the need to reconstruct such right-of-way earlier than would be required if the excavation did not occur.

Department means the City Engineering Division.

Emergency means a condition that (1) poses a clear and immediate danger to life or health, or of a significant loss of property; or (2) requires immediate repair or replacement in order to restore service to a customer.

Engineer means the City Engineer or his/her designee.

Excavate means to dig into or in any way remove or physically disturb or penetrate any part of a right-of-way.

Facilities means all equipment owned, operated, leased or subleased in connection with the operation of a service or utility service, and shall include, but is not limited to, poles, wires, pipes, cables, underground conduits, ducts, manholes, vaults, fiber optic cables, lines and other structures and appurtenances.

In, when used in conjunction with "right-of-way," means over, above, in, within, on or under a right-of-way.

Local Representative means a local person or persons, or designee of such person or persons, authorized by a Registrant to accept service and to make decisions for that Registrant regarding all matters within the scope of this section.

Obstruct means to place any object in a right-of-way so as to hinder free and open passage in that or any part of the right-of-way.

Occupy means to locate facilities in the public right-of-way.

Permittee means any person to whom a permit to occupy, excavate or obstruct a right-of-way has been granted by the City under this section.

Person means municipality, corporation, company, including a "Company" as defined in Wis. Stat. § 182.017(1g)(b), association, firm, partnership, limited liability company, limited liability partnership and individuals and their lessors, transferees and receivers.

Pole or Tower has its usual meaning, except that it does not include poles used for governmental operations such as traffic signals or traffic control devices, street lights, and emergency alert signals, or high-voltage transmission lines.

Prequalified Contractor means a contractor or public utility approved by the Department on an annual basis to work in the right-of-way pursuant to Section 33.07(7).

PSCW means the Public Service Commission of Wisconsin.

Public Utility has the meaning provided in Wis. Stat. §196.01(5).

Registrant means any Person who has registered with the City under this section to either have its facilities located in any right-of-way or to use or seek to occupy or use the right-of-way or any facilities in the right-of-way.

Repair means to perform construction work necessary to make the right-of-way useable for travel, according to Department specifications, or to return facilities to an operable condition.

Restore or Restoration means the process by which an excavated right-of-way and surrounding area, including pavement and foundation is reconstructed, per Department specifications.

Right-of-Way means the surface and space above and below the entire width of an improved or unimproved public roadway, highway, street, bicycle lane, terrace, shoulders, side slopes, and public sidewalk in which the City has an interest, including any other dedicated rights-of-way for travel purposes.

Right-of-Way User means a person owning or controlling a facility in the public right-of-way, or seeking to own or control a facility in the public right-of-way.

Service or Utility Service includes services such as municipal sewer and water services and services provided by a Public Utility or a Company subject to Wis. Stat. § 182.017 and other similar services.

Supplementary Application means an application made to excavate or obstruct more of the right-of-way than permitted, or to extend a permit that has already been issued.

- (c) Administration. The Engineer is responsible for the administration of the rights-of-way under this section, and the permits and ordinances related thereto.

(2) Registration for Right-of-Way Occupancy.

- (a) Registration. Each service, utility service or right-of-way user who occupies, uses, or seeks to occupy or use, the right-of-way or any facilities in the right-of-way, including by lease, sublease or assignment, or who has, or seeks to have, facilities located in any right-of-way shall register with the Department and pay the fee set forth in Subsection (4). Registration will consist of providing application information and paying a registration fee. This section shall not apply to those persons exclusively utilizing facilities provided by another registered right-of-way user.
- (b) Annual Registration Required. Each Registrant shall annually renew its registration or discontinue and properly abandon its facilities as provided for under Subsection (17).
- (c) Registration Prior to Work. No person may construct, install, maintain, repair, remove, relocate, or perform any other work on, or use any facilities or any part thereof in any right-of-way unless that person is registered with the Department or is a prequalified contractor.
- (d) Exceptions. Nothing herein shall be construed to repeal or amend the provisions of a City ordinance requiring persons to plant or maintain the terrace in the area of the right-of-way between their property and the street curb or pavement, construct sidewalks or driveways, or perform other similar activities. Persons performing such activities shall not be required to obtain any permits under this section.

(3) Registration Information.

- (a) Information Required. The information provided to the Department at the time of registration shall include, but not be limited to:
 1. Each person's name, Diggers Hotline registration certificate number, address, e-mail address, and telephone and facsimile numbers.
 2. The name, address, e-mail address, and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.

3. A certificate of insurance on a form prescribed by the Department and the Risk Manager, sufficient to demonstrate to the satisfaction of the City that the person has the capability to cover any liability that might arise out of their presence in the right-of-way.
 4. If the person is a corporation or other limited liability entity, a copy of any certificate required to be filed under Wisconsin Statutes as recorded and certified to by the Secretary of State.
 5. A copy of the person's certificate of authority from the PSCW or other applicable state or federal agency, where the person is lawfully required to have such certificate from said commission or other state or federal agency.
 6. Execution of an indemnification agreement in a form prescribed by the Department, which is consistent with, and shall not exceed the obligations provided in, Subsection (16) below.
- (b) Notice of Changes. The Registrant shall keep all of the information listed above current at all times by providing to the Department information as to changes within fifteen (15) working days following the date on which the Registrant has knowledge of any change.
- (4) Registration Fee.
- (a) Registration Fee. The Department shall charge a registration fee to recover the costs incurred by the City for processing Registrants and updating registration information. This fee shall be paid annually.
 - (b) Fee Computation. This registration fee shall be computed as the average of labor costs, indirect costs, and other costs associated with registration, including costs attributable to late or untimely registration. The registration fee shall be established by the Board of Public Works.
- (5) Reporting Obligations. It is in the best interests of all affected parties to attempt to coordinate construction in the public right-of-way whenever it is reasonably possible. Therefore, periodic reporting by the Registrant of known construction plans will be useful to achieve this objective.
- (a) Every Registrant shall, at the time of registration and no later than January 1 of each year, file a construction and major maintenance plan with the Department. The Registrant's plan shall be submitted on a form prescribed by the Department and shall contain the information determined by the Department to be necessary to facilitate the coordination and reduction in the frequency of excavations of rights-of-way. The plan shall include, but shall not be limited to, the following information:
 1. The locations and the estimated beginning and ending dates of all projects planned to be commenced during the next calendar year; and,
 2. The tentative locations and estimated beginning and ending dates for all projects contemplated for the two years following the next calendar year.
 - (b) The Department shall make available at the time of registration, and on January 15 of each year, the Department's construction and major maintenance plan.
 - (c) By February 15 of each year, the Department will have available for inspection in its office a composite list of all projects of which the Department has been informed. All Registrants are responsible for keeping themselves informed of the current status of this list.
 - (d) After submittal, each Registrant may change any project in its list, but must notify the Department of all such changes in said list. The Department will make all such changes available for inspection in its office. Notwithstanding the foregoing, a Registrant may at any time join in

a project of another Registrant or undertake any maintenance or construction project not listed in Registrant's plan.

(6) Excavation Permit Requirement.

(a) Excavation Permit Required.

1. Except as otherwise provided in these Ordinances, no person shall excavate any right-of-way or place facilities in a right-of-way, or cause another person to do so, without a valid excavation permit issued by the Department under this subsection.
2. No person shall excavate the right-of-way or maintain an excavation in the right-of-way except as specified in the permit. If the Permittee needs to modify the date or area specified in the permit, then the person shall first notify the Department of the change. If requested by the City Engineer, the person shall be required to make a supplementary application pursuant to Subdivision (c) below.
3. Permit Display. A copy of any permit issued under this subsection shall be made available at all times by the Permittee at the indicated work site and shall be available for inspection by the Department upon request.

(b) Excavation Permit Application. Application for a 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. Registration with the Department as required by this section.
2. Submission of a completed permit application form, including the following:
 - a. If the proposed project involves the installation of a pole or tower in the right-of-way, the applicant must submit scaled drawings of the proposed pole or tower and all proposed attachments, and the location of the pole or tower in reference to the nearest occupied building.
 - b. The applicant shall identify in detail the location of the proposed project and any affected right-of-way, public utility easements, and the location of all existing and proposed facilities within the project area in addition to installation details, traffic control plans and other details requested by the Department.
 - c. If the proposed project involves the installation of a pole or tower in the right-of-way, the applicant must submit evidence sufficient to demonstrate that the applicant is prohibited from using an existing pole or tower (either owned by the applicant or a third party) because such use is technically infeasible, economically prohibitive, or prohibited by law.
 - d. If the proposed project involves the installation of a pole or tower in the right-of-way that is greater than ten (10) feet taller than existing poles or towers in nearby right-of-way, the applicant must submit evidence sufficient to demonstrate that:
 - i. The greater height is required to accomplish the applicant's purposes;
 - ii. The applicant is prohibited from using existing poles or towers (either owned by applicant or a third party) to accomplish its purposes because such use is technically infeasible, economically

advice and consent of the Finance Director, establish a fee collection process in order to expedite the permitting system and recognize that certain excavations are deemed emergencies.

- (e) City Exemption. The City and its contractors shall not pay degradation fees for excavations due to general government functions.
 - (f) Coordinated Work. Registrants who join in a scheduled excavation performed by the City are not required to pay the degradation or inspection portion of the excavation permit fee.
 - (c) Non-Refundable. Excavation permit fees, once paid, are not refundable, even if the permit is revoked.
- (8) Right-of-Way Repair/Restoration.
- (a) Timing of Work and Repair/Restoration. The work to be done under the excavation permit, and the repair or restoration of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the Permittee or when work was prohibited as unseasonable or unreasonable under Subsection (11)(b).
 - (b) Repair or Restoration Required. The Permittee shall be required to either repair the public right-of-way and to pay a degradation fee, or restore the right-of-way. It is the Permittee's election whether to restore the excavation and surrounding pavement in lieu of repair and a degradation fee. In addition to repairing its own work, the Permittee must repair the general area of the work, and the surrounding areas, including the paving and its foundations, to the specifications of the Department.
 - (c) Standards. The Permittee shall perform repairs or restoration according to the Standard Specifications for Public Works Construction, the plans and specifications of the Department, and in accordance with the conditions specified in the permit. The Department shall have the authority to prescribe the manner and extent of the repair or restoration and may do so in written procedures of general application or on a case-by-case basis.
 - (d) Acceptance of Work. Upon completion of the work, the Department shall inspect the area of the work and accept the work when it determines that proper repair or restoration has been made.
 - (e) Guarantees. The Permittee guarantees its work and shall maintain it for thirty-six (36) months following its completion. During either period, the Permittee shall, upon notification from the Department, correct all repair and restoration work to the extent necessary, using the method required by the Department. Said work shall be completed within ten (10) calendar days of the receipt of the notice from the Department, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable under Subsection (11)(b).
 - (f) Failure to Repair/Restore. If the Permittee fails to repair and/or restore the right-of-way in the manner and to the condition required by the Department, or fails to satisfactorily and timely complete all work required by the Department, the Department, at its option, may do such work. In that event, the Permittee shall pay to the City, within thirty (30) days of billing, the cost of repairing and/or restoring the right-of-way. If the work associated with the permit is directly attributable to a specific property, or properties, the unpaid bill shall become a special charge against the properties served by the repair and/or restoration work.
 - (g) Degradation. The general formula for computing the degradation fee shall be the cost per square yard for street, overlay and seal coat multiplied by the appropriate depreciation rate for that street, multiplied by the area of the patch.

- (9) Inspection.
- (a) Notice of Completion. When the work under any permit issued hereunder is completed, the Permittee shall notify the Department.
 - (b) Site Inspection. The Permittee shall make the work 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 work.
 - (c) Authority of Department. At the time of inspection, the City may order the immediate cessation of any work that poses a threat to the life, health, safety, or well-being of the public. The City may issue an order to the Registrant or Permittee for any work that does not conform to the applicable standards, conditions, or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten (10) days after issuance of the order, the Registrant or Permittee shall present proof to the Department that the violation has been corrected. If such proof has not been presented within the required time, the Department may revoke the permit pursuant to Subsection (12).
- (10) Location and Marking Requirements.
- (a) Poles and towers over 50 (fifty) feet in height shall be located so that all residential, commercial, retail or other occupied buildings are outside the fall radius of the structure.
 - (b) Rigid non-breakaway poles and other utility structures shall be located to meet American Association of State Highway Transportation Officials (AASHTO) requirements regarding pole location.
 - (c) Underground facilities in the terrace area of the right-of-way may be marked with flush mounted caps only, unless other marking are allowed by the Department.
- (11) Other Obligations.
- (a) Compliance with Other Laws. Obtaining a permit to excavate and/or occupy the right-of-way does not relieve a Registrant or Permittee of its duty to obtain 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. A Registrant or Permittee shall comply with all requirements of local, state and federal laws. A Permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who does the work.
 - (b) Prohibited Work. Except in an emergency, or with the approval of the Department, no right-of-way excavation may be done when seasonally prohibited or when conditions are unreasonable for such work, as determined by the Engineer.
 - (c) Utility Locating Obligations.
 1. Digger's Hotline Compliance. All Registrants and Permittees shall comply with the Digger's Hotline requirements set forth in Wis. Stat. § 182.0175, if applicable.
 2. Planning. The Department may seek information on existing facility locations for planning purposes. It shall be the obligation of Registrants to locate facilities to enable planning by the City. Facility locations shall be represented in the field during field surveys or by providing maps of utilities within the planning areas.
 3. Non-Compliance with Locating Requirements. No person shall fail to locate facilities as required under Wis. Stat. § 182.0175(2m). Additionally any Registrant who fails to locate facilities shall be responsible for all costs due to delays caused to City projects. Repeated failure to locate facilities may result in

suspension of permits for the Registrant and/or increased fines. Repeated failure to locate facilities shall be defined as more than 2 occurrences within 12 months or more than 3 within 24 months.

(12) Revocations, Suspensions, Refusals to Issue or Extend Permits.

(a) Grounds. The Department may refuse to issue a permit or may revoke, suspend or refuse to extend an existing permit if it finds any of the following grounds:

1. The applicant or Permittee is required to be registered under Subsection (2) and has not done so, or the permit application is otherwise incomplete;
2. The applicant or Permittee is seeking to perform work not included in its construction and major maintenance plan required under Subsection (5), which work was reasonably foreseeable by the applicant or Permittee at the time said plan was filed;
3. Issuance of a permit for the requested date would interfere with an exhibition, celebration, festival or other event;
4. Misrepresentation of any fact by the applicant or Permittee;
5. Failure of the applicant or Permittee to maintain required bonds and/or insurance;
6. Failure of the applicant or Permittee to complete work in a timely manner;
7. The proposed activity is contrary to the public health, safety or welfare;
8. The extent to which space is available in the right-of-way for which the permit is sought;
9. The competing demands for the particular space in the right-of-way;
10. The availability of other locations in the right-of-way or in other rights-of-way for the facilities of the Permittee or applicant;
11. If the Permittee or applicant proposes to install a new pole or tower in the right-of-way, the availability of other existing poles or towers owned by the Permittee or applicant or by a third party;
12. The applicability of ordinances or other regulations of the right-of-way that affect location of facilities in the right-of-way;
13. The new pole or tower would be located in an undergrounding area as defined under Section 19.16(3);
14. The condition and age of the right-of-way, and whether and when it is scheduled for total or partial reconstruction; or,
15. The applicant or Permittee is otherwise not in full compliance with the requirements of this section or state or federal law.

(b) The Department shall not deny a Registrant an excavation permit because of a dispute between the City and the Registrant related to Subsections (6)(b)3.b. or 3.c. above if:

1. The dispute has been adjudicated in favor of the Registrant; or,
2. The dispute is the subject of an appeal filed by the Registrant and no decision in the matter has at yet been rendered.

(c) Discretionary Issuance. Notwithstanding the provisions of Subdivision (a), the Department may issue a permit where issuance is necessary to prevent substantial economic hardship to a customer of the Permittee or applicant, or to allow such customer to materially improve its utility service, or to allow the Permittee or applicant to comply with federal, state, County or City laws or ordinances or an order of a court or administrative agency.

(d) Appeals. Any person aggrieved by a decision of the Department revoking, suspending, refusing to issue or refusing to extend 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.

(13) Work Done Without a Permit.

(a) Emergency Situations. Each Registrant shall immediately notify the City by verbal notice on an emergency phone number provided by the City of any event regarding its facilities that it considers to be an emergency. The Registrant may proceed to take whatever actions are necessary to respond to the emergency. Within two business days after the occurrence of the emergency, the Registrant shall apply for the necessary permits, pay the fees associated therewith, and otherwise fully comply with the requirements of this section.

If the City becomes aware of an emergency regarding a Registrant's facilities, the Department may attempt to contact the local representative of each Registrant affected, or potentially affected, by the emergency. The City may take whatever action it deems necessary to protect the public safety as a result of the emergency, the cost of which shall be borne by the Registrant whose facilities occasioned the emergency.

(b) Non-Emergency Situations. Except in an emergency, any person who, without first having obtained the necessary permit, excavates a right-of-way must subsequently register and apply for an excavation permit, and shall in addition to any penalties prescribed by ordinance, pay double the normal fee for said permit, pay double all the other fees required by this section or other sections of the Madison General Ordinances, deposit with the Department the fees necessary to correct any damage to the right-of-way and comply with all of the requirements of this section. If no application is made, this subsequent permit application is denied or is not approved, the Registrant, or person causing the work to be done, shall discontinue and abandon the facilities.

(14) Location of Facilities.

(a) Undergrounding. Unless in conflict with state or federal law, except when existing aboveground facilities are used, the installation of new facilities and replacement of existing facilities shall be done underground or contained within buildings or other structures in conformity with applicable codes.

(b) Limitation of Space. To protect health, safety, and welfare, or when necessary to protect the right-of-way and its current use, the Department may prohibit or limit the placement of new, replacement or additional facilities within the right-of-way if there is insufficient space to accommodate all of the requests of Persons to occupy and use the right-of-way. In making such decisions, the Department 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 utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way, and future City plans for public improvements and development projects which have been determined to be in the public interest.

(c) Attachment to Bridges. Whenever an applicant or Permittee under this section requests permission to attach facilities to any City bridge structure, the applicant shall provide a structural analysis prepared by a licensed State of Wisconsin professional engineer and pay a fee of one thousand dollars (\$1,000) upon the granting of such permission to help defray administrative expense in the analysis and inspection of such

installation. The owner of such pipes, conduits, cables or wires shall be entitled to no compensation for removal or relocation of the same in the case of repair, removal, or replacement of said bridge structure by the City.

- (d) Corridors. The Department may assign specific corridors within the right-of-way, or any particular segment thereof as may be necessary, for each type of facility that is or, pursuant to current technology, the City expects will someday be located within the right-of-way. All excavation, obstruction, or other permits issued by the City involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue consistent with the Department's assignment.

Any Registrant who has facilities in the right-of-way in a position at variance with the corridors established by the City under this subdivision shall, no later than at the time of the next reconstruction or excavation of the area where the facilities are located, move the facilities to the assigned position within the right-of-way, unless this requirement is waived by the City for good cause shown, upon consideration of such factors as the remaining economic life of the facilities, public safety, customer service needs and hardship to the Registrant.

(15) Relocation and Protection of Facilities.

- (a) Requirement. Except as prohibited by State or Federal law, a Registrant must, promptly and at its own expense, 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 action to prevent interference by the Company's facilities with the following:

1. A present or future City use of the right-of-way;
2. A public improvement undertaken by the City;
3. An economic development project in which the City has an interest or investment;
4. When the public health, safety and welfare require it; or,
5. When necessary to prevent interference with the safety and convenience of ordinary travel over the right-of-way.

- (b) Order. 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.

- (c) City's Right to Self-Help. In the event that a Registrant does not proceed to maintain, support, protect or relocate its facilities as ordered in this subsection, the City may arrange to do the work and bill the Registrant, said bill to be paid within thirty (30) days.

- (d) Additional Cost Recovery. The City may bill the Registrant for any additional costs incurred as a result of the failure of the Registrant to accomplish the needed work within the time specified in the order.

- (e) Exception. 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.

- (f) Penalty. If a Registrant fails to perform the required 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.

- (16) Indemnification Requirement. By registering with the City, or by accepting a permit under this section, a Registrant or Permittee, as the case may be, agrees to indemnify, defend, and hold harmless the City, its officers, boards, committees, commissions, elected officials, employees and agents (collectively, "Indemnified Parties"), from and against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon an Indemnified Party for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the Registrant's or Permittee's acts or omissions in the exercise of its rights under this Ordinance, whether caused by or contributed to by the City or its agents or employees.
- (17) Abandoned Facilities.
- (a) Discontinued Operations. A Registrant who has discontinued or who plans to discontinue its operations in the City, either in full or in part, must do one of the following:
1. Provide information satisfactory to the Department that the Registrant's obligations for its facilities under this Subdivision have been lawfully assumed by another Registrant.
 2. Submit to the Department a proposal and instruments for dedication of its facilities under this Subdivision to the City. If a Registrant proceeds under this clause, the City may, at its option:
 - a. Accept the dedication for all or a portion of the facilities;
 - b. Require the Registrant, at its own expense, to remove the facilities in the right-of-way at ground or above ground level; or,
 - c. Require the Registrant to post a bond or provide payment sufficient to reimburse the City for reasonably anticipated costs to be incurred in removing the facilities.
 3. Remove its facilities under this Subdivision within two years, unless the Department waives this requirement or provides a later deadline.
- (b) Abandoned Facilities. Facilities of a Registrant who fails to comply with Subdivision (a) or facilities that are not claimed by any registered person and which remain either unclaimed by a registered person or unused for one (1) year, shall be deemed to be abandoned. Abandoned facilities are declared to be a nuisance. In addition to any remedies or rights it has at law or in equity, the City may, at its option, do any of the following:
1. Abate the nuisance;
 2. Take possession of the facilities; or,
 3. Require removal of the facilities by the Registrant, or the Registrant's successor in interest, or other person responsible for the facilities.
- (c) Public Utilities. This Subsection shall not apply to a Public Utility that is required to follow the provisions of Wis. Stat. § 196.81.
- (18) Reservation of Regulatory and Police Powers. The City, by the granting of a permit to excavate, obstruct and/or occupy the right-of-way, or by registering a Person under this section, does not surrender or to any extent lose, waive, impair, or lessen the lawful powers and rights which it has, or may be hereafter granted, under the Constitution and statutes of the State of Wisconsin to regulate the use of the right-of-way; and the Permittee, by its acceptance of a permit to excavate, obstruct and/or occupy the right-of-way, and the Registrant, by registration under this section, agrees that all lawful powers and rights, regulatory power, or 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 Permittee or Registrant is deemed to acknowledge that its rights are subject to the regulatory and police powers of the City to adopt and enforce general ordinances necessary to the safety and welfare of the public and is deemed to agree to comply with all applicable general law, and ordinances enacted by the City pursuant to such powers.

- (19) Penalty. Except as otherwise provided in this section, any person who violates this section or fails to comply with the provisions of this section shall be subject to a forfeiture of not less than two hundred and fifty dollars (\$250) nor more than one thousand dollars (\$1000). Each day such violation or failure to comply 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 as follows:

<u>“Offense</u>	<u>Ord. No./Adopted Statute No.</u>	<u>Deposit</u>
Failure to abide by right-of-way occupancy requirements.	10.05(20 19)	\$250, 1st w/in 3 yrs. \$1,000, 500, 2nd w/in 3 yrs. \$2,500, 1,000, 3rd+ w/in 3 yrs.”

EDITOR’S NOTES:

1. New or revised bail deposits must be approved by the Municipal Judge prior to adoption. These deposits have been so approved.
2. Sec. 10.05 currently reads as follows:

10.05 OCCUPANCY OF RIGHTS-OF-WAY.

(1) General Provisions.

(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 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.

(b) Definitions. The following definitions apply in this ordinance. References hereafter to “sections” are unless otherwise specified references to sections in this ordinance. Defined terms remain defined terms whether or not capitalized.

“Applicant” means any person requesting permission to excavate, obstruct and/or occupy a right-of-way.

“City” shall mean the City of Madison, Wisconsin, a Wisconsin municipal corporation.

“Degradation” means the decrease in the useful life of the paved portion of the right-of-way, excluding the sidewalk right-of-way, caused by an excavation of the right-of-way, resulting in the need to reconstruct such right-of-way earlier than would be required if the excavation did not occur.

“Department” means the Department of Public Works of the City.

“Emergency” means a condition that (1) poses a clear and immediate danger to life or health, or of a significant loss of property; or (2) requires immediate repair or replacement in order to restore service to a customer.

“Engineer” means the City Engineer or his/her designee.

“Excavate” means to dig into or in any way remove or physically disturb or penetrate any part of a right-of-way.

“Facilities” means all equipment owned, operated, leased or subleased in connection with the operation of a service or utility service, and shall include but is not limited to poles, wires, pipes, cables, underground conduits, ducts, manholes, vaults, fiber optic cables, lines and other structures and appurtenances.

“In”, when used in conjunction with “right-of-way”, means over, above, within, on or under a right-of-way.

“Local representative” means a local person or persons, or designee of such person or persons, authorized by a registrant to accept service and to make decisions for that registrant regarding all matters within the scope of this Chapter

“Obstruct” means to place any object in a right-of-way so as to hinder free and open passage over that or any part of the right-of-way
“Permittee” shall mean any Person to whom a permit to occupy, excavate or obstruct a Right-of-Way has been granted by the City under Chapter 10 of the ordinances.

“Person” shall mean corporation, company, association, firm, partnership, limited liability company, limited liability partnership and individuals and their lessors, transferees and receivers.

“Prequalified Contractor” means a contractor approved by the Department on an annual basis to work in the right-of-way.

“Public Utility” has the meaning provided in Wis Stats 196.01(5).

“Registrant” means any person who has registered with the City to have its facilities located in any right-of-way.

“Repair” means to perform construction work necessary to make the right-of-way useable for travel according to Department specifications, or to restore equipment to an operable condition.

“Restore or Restoration” means the process by which an excavated right-of-way and surrounding area, including pavement and foundation is reconstructed, per Department specifications.

“Right-of-Way” means the surface and space above and below an improved or unimproved public roadway, highway, street, bicycle lane and public sidewalk in which the City has an interest, including other dedicated rights-of-way for travel purposes.

- (c) Administration. The Engineer or his/her designee is responsible for the administration of the rights-of-way, and the permits and ordinances related thereto.
- (2) Registration for Right-of-Way Occupancy.
 - (a) Each person who has, or seeks to have, facilities located in any right-of-way shall register with the Department and pay the fee set forth in Section 10.05(4). Registration will consist of providing application information and paying a registration fee. This section shall not apply to those persons who have facilities in the right-of-way pursuant to a franchise or other agreement.
 - (b) No person may construct, install, maintain, repair, remove, relocate or perform any other work on, or use any equipment or any part thereof in any right-of-way unless that person is registered with the Department or is a prequalified contractor.
 - (c) Nothing herein shall be construed to repeal or amend the provisions of a City ordinance requiring persons to plant or maintain the tree lawn in the area of the right-of-way between their property and the street curb or pavement, construct sidewalks or driveways or other similar activities. Persons performing such activities shall not be required to obtain any permits under this Chapter.
- (3) Registration Information. The information provided to the Department at the time of registration shall include, but not be limited to:
 - (a) Each registrant’s name, Diggers Hotline registration certificate number, address and e-mail address, if applicable, and telephone and facsimile numbers.
 - (b) The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.
 - (c) A certificate of insurance on a form prescribed by the Department.

- (d) If the registrant is a corporation, a LLC or LLP, a copy of any certificate required to be filed under Wisconsin Statutes as recorded and certified by the Secretary of State.
 - (e) A copy of the registrant's certificate of authority from the Wisconsin Public Service Commission or other applicable state or federal agency, where the person is lawfully required to have such certificate from said commission or other state or federal agency.
 - (f) Execution of an indemnification agreement in a form prescribed by the Department.
 - (g) The registrant shall keep all of the information listed above current at all times by providing to the Department information as to changes within fifteen (15) working days following the date on which the registrant has knowledge of any change.
- (4) Registration Fee. The Department shall charge an annual Registration Fee in an amount of \$65 to recover the costs incurred by the City for processing and updating registration information.
- (5) Reporting Obligations. It is in the best interests of all affected parties to attempt to coordinate construction in the public right-of-way whenever it is reasonably possible. Therefore, periodic reporting by the registrant of known construction plans will be useful to achieve this objective.
- (a) Every registrant shall, at the time of registration and no later than January 1 of each year, file a construction and major maintenance plan with the Department. The Department shall make available at the time of registration, and on January 15 of each year the Department's construction and major maintenance plan. The registrant's plan and the Department's plan shall be submitted on a form prescribed by the Department and shall contain the information determined by the Department to be necessary to facilitate the coordination and reduction in the frequency of excavations of rights-of-way. The plan shall include, but shall not be limited to, the following information:
 - 1. The locations and the estimated beginning and ending dates of all projects planned to be commenced during the next calendar year; and
 - 2. The tentative locations and estimated beginning and ending dates for all projects contemplated for the two years following the next calendar year.
 - (b) By February 15 of each year, the Department will have available for inspection in its office a composite list of all projects of which the Department has been informed in the annual plans. All registrants are responsible for keeping themselves informed of the current status of this list.
 - (c) Thereafter, by February 1, each registrant may change any project in its list and must notify the Department of all such changes in said list. The Department will make all such changes available for inspection in its office. Notwithstanding the foregoing, a registrant may at any time join in a project of another registrant listed by the other registrant or undertake any maintenance or construction project not listed in registrant's plan.
- (6) Permit to Excavate in Right-of-Way Required.
- (a) Excavation Permit Required. Except as otherwise provided in this Chapter or other Chapters of the Madison General Ordinances, no person shall excavate any right-of-way without first having obtained an excavation permit from the Department. A copy of any permit issued under this Chapter shall be made available at all times by the Permittee at the indicated work site and shall be available for inspection by the Department upon request.

(b) Excavation Permit Application. Application for a 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. Registration with the Department if required by this Chapter.
2. Submission of a completed permit application form, including all required attachments, and scaled drawings showing the location and area of the proposed project and the location of all existing and proposed facilities that are part of applicant's proposed project.
3. Payment of all money due to the City for:
 - a. applicable permit fees and costs as set forth below;
 - b. subject to Section 10.05(6)(b)4., unpaid fees or costs due for prior excavations; or
 - c. subject to Section 10.05(6)(b)4., any loss, damage, or expense suffered by the City because of applicant's prior excavations of the rights-of-way or any emergency actions taken by the City.
4. The Department shall not deny an applicant an excavation permit because of a dispute between the City and the applicant, related to Section 10.053(6)(b)3.a. or c. if:
 - a. the dispute has been adjudicated in favor of the applicant;
 - b. the dispute is the subject of any appeal filed by the applicant and no decision in the matter has as yet been rendered.

(7) Excavation Permit Fee. The Excavation Permit Fee shall be established by the Department in an amount sufficient to recover the costs incurred by the City. This fee shall recover administrative and inspection costs, as well as degradation costs should the permittee choose to repair rather than restore the right-of-way. Payment of said fees shall be collected prior to issuance of the permit. However, the Engineer may, with the advice and consent of the Finance Director, establish a fee collection process from governmental agencies and private utilities in order to expedite the permitting system and recognize that certain excavations are deemed emergencies.

(a) Waiving of Fees. Fees shall not be waived unless the work involved is a direct result of the Engineer's demand that a plant owned by a utility be removed or relocated or unless waived by the Board of Public Works on appeal.

(b) Fee Schedule. The minimum fee for each excavation permit for multiple addresses shall be seventy-five dollars (\$75); plus an additional twenty dollars (\$20) per 100 square feet for excavation and sixty cents (\$.60) per lineal foot for boring. Excavation permits for utility work in new subdivisions and within the limits of public works projects, where the work is undertaken prior to the installation of pavement, shall only be charged the minimum fee. The fee for a permit issued after commencing work, except in cases of emergency as determined by the Engineer, shall be double the fees set forth herein. This permit fee shall be in addition to any forfeiture provided elsewhere in this ordinance.

For those permit applications which provide for a substantial undertaking of excavation within the public right-of-way attended by disruption of the general public and traffic, the Engineer is authorized to assess the actual cost of the City employee's time engaged in the review and inspection of the anticipated work multiplied by a factor determined by the respective department to represent the City's cost for statutory expense, benefits, insurance, sick leave, holidays, vacation and similar

benefits, overhead and supervision, said factor not to exceed 2.0, plus the cost of mileage reimbursed to City employees which is attributed to the work, plus all consultant fees associated with the work at the invoiced amount plus ten percent (10%) for administration.

- (c) City Exemption. The City and its contractors shall not pay degradation fees for excavations due to general government functions.
 - (d) Permit fees paid for a permit that the Department has revoked are not refundable.
- (8) Right-of-Way Repair/Restoration.
- (a) The Permittee shall be required to repair the public right-of-way to Department specifications, subject to inspection and acceptance by the Department, and to pay a degradation fee, as per Section 10.05(8)(d), unless the Permittee elects to restore the right-of-way pursuant to Section 10.05(8)(e). In addition to repairing its own work, the Permittee must repair the general area of the work, and the surrounding areas, including the paving and its foundations, to the specifications of the Department. The Department shall inspect the area of the work and accept the work when it determines that proper repair has been made, per specifications of the Department.
 - (b) Guarantees. The Permittee guarantees its work and shall maintain it for thirty-six (36) months following its completion. During this period it shall, upon notification from the Department, correct all work to the extent necessary, using the method required by the Department. Said work shall be completed within ten (10) calendar days of the receipt of the notice from the Department, not including days during which work cannot be done because of circumstances constituting force majeure.
 - (c) Failure to Repair/Restore. If the Permittee fails to repair/restore the right-of-way in the manner and to the condition required by the Department, or fails to satisfactorily and timely complete all work required by the Department, the Department at its option may do such work. In that event the Permittee shall pay to the City, within thirty (30) days of billing, the cost of repairing/restoring the right-of-way.
 - (d) Degradation. The general formula for computing the degradation fee shall be the cost per square yard for street, overlay and seal coat multiplied by the appropriate depreciation rate for that street multiplied by the area of the patch. The area of the patch shall be calculated by adding one foot to each side of the actual street cut. Degradation fee schedule is provided in Figure 1 at the end of the ordinance.
 - (e) Restoration in Lieu of Repair and Degradation. The Permittee may elect to restore the excavation and surrounding pavement in lieu of repair and a degradation fee. The restoration shall be in accordance with the Standard Specifications for Public Works Construction and the plans and specifications of the Department. The Permittee shall then also comply with Section 10.05(8)(b) and (c).
- (9) Inspection.
- (a) Notice of Completion. When the work under any permit hereunder is begun and completed, the Permittee shall notify the Department.
 - (b) Site Inspection. Permittee shall make the work 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 work.
 - (c) Authority of Department. At the time of inspection the City may order the immediate cessation of any work which poses a threat to the life, health, safety or well being of the public. The City may issue an order to the registrant or Permittee for any work that does not conform to the applicable City standards, conditions or codes. The order shall state that

failure to correct the violation will be cause for revocation of the permit. Within ten (10) days after issuance of the order, the registrant or Permittee shall present proof to the Department that the violation has been corrected. If such proof has not been presented within the required time, the Department may revoke the permit pursuant to Section 10.05(12).

- (10) Ongoing Management Fees.
The cost of trimming trees around facilities is an ongoing cost to the City. The specific cost will be determined and a fee to offset those costs may be assessed in the future.
- (11) Compliance with Other Laws. Obtaining a permit to excavate and/or occupy the right-of-way does not relieve Permittee of its duty to obtain 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. A permittee shall comply with all requirements of local, state and federal laws. A permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who does the work.
- (12) Revocations, Suspensions, Refusals to Issue or Extend Permits.
- (a) The Department may refuse to issue a permit or may revoke, suspend or refuse to extend an existing permit if it finds any of the following grounds:
1. The applicant or Permittee is required to be registered and has not done so;
 2. Issuance of a permit for the requested date would interfere with an exhibition, celebration, festival or other event;
 3. Misrepresentation of any fact by the applicant or Permittee;
 4. Failure of the applicant or Permittee to maintain required bonds and/or insurance;
 5. Failure of the applicant or Permittee to complete work in a timely manner;
 6. The proposed activity is contrary to the public health, safety or welfare;
 7. The extent to which right-of-way space where the permit is sought is available;
 8. The competing demands for the particular space in the right-of-way;
 9. The availability of other locations in the right-of-way or in other rights-of-way for the facilities of the Permittee or applicant;
 10. The applicability of ordinances or other regulations of the right-of-way that affect location of facilities in the right-of-way;
- (b) Discretionary Issuance. The Department may issue a permit where issuance is necessary (a) to prevent substantial economic hardship to a customer of the Permittee or applicant, or (b) to allow such customer to materially improve its utility service, or (c) to allow the Permittee or applicant to comply with state or federal law or city ordinance or an order of a court or administrative agency.
- (c) Appeals. Any person aggrieved by a decision of the Department revoking, suspending, refusing to issue or refusing to extend 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.
- (13) Work Done Without a Permit.
- (a) Emergency Situations. Each registrant shall immediately notify the City by verbal notice on an emergency phone number provided by the City of any event regarding its facilities that it considers to be an emergency.

The registrant may proceed to take whatever actions are necessary to respond to the emergency. Within two business days after the occurrence of the emergency the registrant shall apply for the necessary permits, pay the fees associated therewith and otherwise fully comply with the requirements of this Chapter.

If the City becomes aware of any emergency regarding a registrant's facilities, the Department may attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. The City may take whatever action it deems necessary to protect the public safety as a result of the emergency, the cost of which shall be borne by the registrant whose facilities occasioned the emergency.

- (b) Non-Emergency Situations. Except in an emergency, any person who, without first having obtained the necessary permit, excavates a right-of-way must subsequently obtain a permit, and shall in addition to any penalties prescribed by ordinance, pay double the normal fee for said permit, pay double all the other fees required by this Chapter or other Chapters of the Madison General Ordinances, deposit with the Department the fees necessary to correct any damage to the right-of-way and comply with all of the requirements of this Chapter.
- (14) Location of Facilities.
- (a) Undergrounding. Unless in conflict with state or federal law, except when existing aboveground facilities are used, the installation of new facilities and replacement of old facilities shall be done underground or contained within buildings or other structures in conformity with applicable codes.
 - (b) Limitation of Space. The Department may prohibit or limit the placement of new or additional facilities within the right-of-way if there is insufficient space to accommodate all of the requests of persons to occupy and use the right-of-way. In making such decisions, the Department shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but may prohibit or limit the placement of new or additional facilities when required to protect the public, health, safety or welfare.
 - (c) Attachment to Bridges. Whenever an applicant or Permittee under this section requests permission to attach pipes, conduits, cables or wires to any City bridge structure, the applicant shall pay a fee of \$1,000 upon the granting of such permission to help defray administrative expense in the analysis and inspection of such installation. The owner of such pipes, conduits, cables or wires shall be entitled to no compensation for removal or relocation of the same in the case of repair, removal, or replacement of said bridge structure by the City.
- (15) Relocation and Protection of Facilities. A registrant must, promptly and at its own expense, 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 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.

- (16) City's Right to Self-Help. In the event that a registrant does not proceed to maintain, support, protect or 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. (Am. by ORD-15-00100, 9-28-15)
- (17) Abandoned Facilities.
- (a) Discontinued Operations. A registrant who has determined to discontinue its operations in the City must either:
1. Provide information satisfactory to the Department that the registrant's obligations for its facilities under this Chapter have been lawfully assumed by another registrant; or
 2. Submit to the Department a proposal and instruments for dedication of its facilities to the City. If a registrant proceeds under this clause, the City may, at its option:
 - a. accept the dedication for all or a portion of the facilities; or
 - b. require the registrant, at its own expense, to remove the facilities in the right-of-way at ground or above ground level; or
 - c. require the registrant to post a bond or provide payment sufficient to reimburse the City for reasonably anticipated costs to be incurred in removing the facilities.
- However, any registrant who has unusable and abandoned facilities in any right-of-way shall remove it from that right-of-way within two years, unless the Department waives this requirement.
- (b) Abandoned Facilities. Facilities of a registrant who fails to comply with Section 10.05(17)(a)1., and which, for two (2) years, remains 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 (i) abate the nuisance, (ii) take possession of the facilities, or (iii) require removal of the facilities by the registrant, or the registrant's successor in interest.
- (c) Public Utilities. This section shall not apply to a public utility, as defined by Section 196.01(5), Wis. Stats, that is required to follow the provisions of Section 196.81, Wis. Stats.
- (18) Reservation of Regulatory and Police Powers. The City, by the granting of a permit to excavate, obstruct and/or occupy the right-of-way, or by registering a person under this Chapter does not surrender or in any extent lose, waive, impair, or lessen the lawful powers and rights, which it has now or maybe hereafter granted to the City under the Constitution and statutes of the State of Wisconsin to regulate the use of the right-of-way by the permittee; and the permittee by its acceptance of a permit to excavate, obstruct and/or occupy the right-of-way or of registration under this Chapter agrees that all lawful powers and rights, regulatory powers, or 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 regulatory and police powers of the City to adopt and enforce general ordinances necessary to the safety and welfare of the public and is deemed to agree to comply with all applicable general law, and ordinances enacted by the City pursuant to such powers.
- (19) Severability. If any section, subsection, sentence, clause, phrase, or portion of this Chapter is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

- (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 two hundred and fifty dollars (\$250) nor more than one thousand dollars (\$1000). Each day such violation or failure to comply continues shall be considered a separate offense.”