

10.31 - PRIVILEGES IN STREETS.

(1) Privilege for an obstruction or enlargement or alteration to such obstruction beyond the lot line, or within the public street right-of-way, alley or public ground, other than by permit issued under another provision of these ordinances, for encroachments of ninety (90) days or less, shall be granted only as provided in this section. All existing encroachments which are nonconforming to the provisions of this section are to hereafter comply with the requirements of this section. No building permits shall be issued under Section 29.05 on any premises where an encroachment exists until the requirements of this section are met, unless the Director of the Department of Planning and Community and Economic Development or their designee determines that an emergency condition exists which requires immediate remedy, provided an application for privilege in streets is submitted with the application for said building permit.

(Am. by Ord. 12,522, Adopted 1-4-00)

(2) (a) Applications for privileges in streets shall be made to the Economic Development Division of the Planning and Community and Economic Development Department. A nonrefundable application and initial processing fee of seven hundred fifty dollars (\$750) shall accompany said application. There shall be no proration of the application and initial processing fee.

A Report of Ownership and a drawing or survey at a scale of not less than 1" = 10' on an 8½ × 14 size paper or in an equivalent digital file, showing the privilege in streets in relation to the owner's property shall also accompany said application. The drawing or survey shall include sufficient data to permit City staff to draft a legal description and determine the square footage of the street area occupied by the privilege in streets.

The Director of the Economic Development Division or their designee (Director) shall not recommend that the privilege be granted unless the applicant shows that the requirements of this section will be satisfied, and that applicable ordinances, resolutions and Board of Public Works and Plan Commission policies will be complied with. If the Director recommends approval of an application for a privilege in streets, the Director shall inform the applicant in writing of its recommendation and the conditions of approval. Following concurrence of the applicant with the conditions of approval, the Director, in cooperation with the City Attorney, shall prepare an agreement, setting forth the requirements and conditions under which the privilege in streets is permitted. Following execution of all the documents by the applicant, the required documents are to be executed by the Director, who shall monitor the payment of the annual fees in the event they are not collected as a special charge.

Following receipt of the insurance certificate and the first year's fee, the agreement is to be

recorded with the Dane County Register of Deeds. A copy of the recorded agreement shall be furnished to the Applicant and the City Clerk. The Risk Manager shall monitor the insurance requirements.

(Sec. 10.31(2)(a) Am. by Ord. 12,105, 4-20-98; Am. by Ord. 13,411, 9-24-03; ORD-08-00025, 3-15-08; ORD-13-00212, 12-10-13)

- (b) Appeal. In the event the Director disapproves an application for a privilege in streets, the Director shall inform the applicant, in writing, of the reasons for disapproval. The applicant or any interested party, including any City department head or alderperson, may appeal the Director's decision to the Board of Public Works within thirty (30) days after mailing of the Director's notice to the address of the applicant as shown on the application. Such appeal must be in writing, and must inform the Board of the reasons why the applicant believes the Director's decision to be in error. Failure to so appeal a denial shall result in automatic approval of the denial without further action by the Director or Board of Public Works.

Within thirty (30) days after receipt of the appeal, the Board of Public Works shall hold a hearing at which the applicant and the Director may present and question witnesses and present oral and written argument. Within twenty (20) days after the hearing, the Board shall issue a written decision which shall affirm, reverse or modify the determination of the Director. 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.

(Sec. 10.31(2) Am. by Ord. 10,969, 8-29-94; Am. by Ord. 13,411, 9-24-03)

- (3) (a) Conditions of Approval. Any privilege granted by the City of Madison shall be to the owner, agent or person obligated pursuant to a regulatory order of the property adjacent to the public area to be occupied by the privilege in streets and shall be on condition that the applicant or the applicant's heirs and assigns shall become primarily liable for damages to person or property by reason of the granting of the privilege.
- (b) Insurance. The applicant shall be required to furnish a Certificate of Insurance, providing evidence of commercial general liability insurance with the City of Madison, its officers, officials, agents and employees named as additional insureds. The insurance shall include contractual liability coverage and minimum limits of one million dollars (\$1,000,000) per occurrence. The City of Madison Risk Manager reserves the right to require higher limits and other coverage terms and conditions at their discretion. Applicant shall keep required insurance in full force and effect throughout

the term of the privilege in streets. This insurance condition may be waived for other governmental units and in those instances where the City of Madison Risk Manager, in consultation with the City Attorney's office, determines that this requirement can be waived. (Am. by Ord. 12,886, 8-24-01; ORD-14-00005, 1-14-14)

- (c) Removal of Encroachment. The applicant shall remove said encroachment or obstruction upon ten (10) days written notice by the City of Madison. Additionally, the applicant or the applicant's heirs or assigns shall be entitled to no damages for removal of the privilege in streets, and if the applicant shall not remove the same upon due notice, it shall be removed at the applicant's expense and levied as a special charge for current services rendered against the applicant's property as provided by law; if the applicant is not the owner of the property adjacent to the public area to be occupied by the privilege in streets, said applicant shall provide a bond, in such amount to cover the cost of removal of any object, structure or instrument pursuant to any privilege and the total annual fees for the estimated life of the privilege. In the event of acquisition of all or a portion of the applicant's property for a planned public improvement, no compensation will be paid to the applicant for the improvements constructed within the area on which the privilege in streets exists, for cost incurred in realigning personal property located on the area on which the privilege in streets exists, or for loss of value or damage to the remaining improvements of the applicant caused by reasons of the acquisition or taking as provided under Wis. Stat. ch. 32. In accepting the privilege, the applicant waives any and all right to contest in any manner the validity of this ordinance or Wis. Stat. § 66.0425, or the amount of compensation charged by the City of Madison. The applicant may be required to comply with additional conditions as the Director may impose, including execution of a written agreement incorporating all conditions upon which the privilege in streets is to be granted. Such agreement shall be binding upon the applicant, the applicant's heirs and assigns and shall be drafted in recordable form and recorded in the Office of the Dane County Register of Deeds, and the terms and conditions contained in the agreement or resolution shall remain in full force and effect as long as the privilege in streets exists. The privilege may be terminated by the applicant at any time by providing the Director written notice of its desire to terminate this privilege. Following removal of the privilege in streets and restoration of the public area on which the privilege in streets existed to the satisfaction of the City Engineer and the Director of Planning and Community and Economic Development, the Director shall record in the Dane County Register of Deeds office a suitable document terminating the privilege. A copy of the document shall be furnished to the applicant and the City Clerk. (Am. by

Ord. 13,411, 9-24-03)

(d) Fee Schedule.

1. An annual minimum fee of five hundred dollars (\$500) or an amount established hereinafter, shall be charged for the privilege of encroaching into street right-of-way. The annual fee may be levied as a special charge for current services rendered against the applicant's property as provided by law. The agreement may provide for alternative means of payment of annual fees in excess of ten thousand dollars (\$10,000). An annual fee for less than twelve (12) months shall be prorated according to the number of months or fraction thereof for which the privilege in streets is issued. There shall be no proration upon termination of any privilege in streets.
2. For every use of public space permitted as a privilege under the terms of this chapter, the following annual rental fee shall apply:
 - a. For each story above or below the surface, the fee shall be fixed at five percent (5%) of the square foot value per story, as last fixed by the City Assessor, of the lot directly abutting such use, multiplied by the square footage of the use of space, or if more than one lot abuts such use, five percent (5%) of the average of the square foot value of the lots directly abutting such use, as last fixed by the City Assessor, multiplied by the square footage of the use of space or five hundred dollars (\$500), whichever is greater.
 - b. If such use of space involves utilization of the surface by the applicant, the fee for such surface use shall be fixed at ten percent (10%) of the square foot value, as last fixed by the City Assessor, of the lot directly abutting such use, multiplied by the square footage of the use of space, or, if more than one lot abuts such use, ten percent (10%) of the average of the square foot value of the lots directly abutting such use, as last fixed by the City Assessor, multiplied by the square footage of the use of space or five hundred dollars (\$500), whichever is greater.
 - c. Every five (5) years the Director shall re-calculate the fee using current property values as fixed by the City Assessor.
 - d. Monitoring wells and other multiple location privileges: annual fee of five hundred dollars (\$500) for the first encroachment plus one hundred dollars (\$100) for each additional location.
 - e. If such use is for fiber optic for a non-public utility use, the fee shall be two dollars (\$2) per lineal foot for two inch (2") diameter duct and four dollars (\$4)

per lineal foot for four inch (4") diameter duct. (Cr. by Ord. 13,411, 9-24-03)

(Sec. 10.31(3)(d) Am. by Ord. 11,888, 6-27-97; ORD-13-00212, 12-10-13)

- (e) Existing street encroachments shall be subject to the terms and provisions of this ordinance upon renewal. (Cr. by Ord. 13,411, 9-24-03)
- (f) Although subject to the provisions of this section, there shall be no application fee or annual fee (if encroachment is approved) for the following:
 - 1. Neighborhood Identification Signs.
 - 2. Bicycle racks.
 - 3. Decorative Pavement Painting Design Permit under Sec. 10.42, MGO. (Cr. by CHA-13-00003, 6-26-13, Eff. 8-19-13)
 - 4. Little Free Libraries. (Cr. by ORD-13-00212, 12-10-13)
 - 5. Bus Shelters and Transit Seating.
 - a. For the purposes of this paragraph, "Bus Shelters" means a privately owned and maintained shelter, approved by Metro Transit and Traffic Engineering, adjacent to a bus stop and intended to provide temporary shelter for bus passengers.
 - b. For the purposes of this paragraph "Transit Seating" means a privately owned and maintained seating area, approved by Metro Transit and Traffic Engineering, adjacent to a bus stop and intended to provide a temporary seating area for bus passengers. Transit Seating includes the seating itself, as well as any site work needed to support the seating, such as a concrete pad.

(Sec. 10.31(3)(f)5. Cr. by ORD-15-00087, 9-11-15; Am. by ORD-20-00098, 11-2-20)

(Sec. 10.31(3)(f) Cr. by Ord. 13,411, 9-24-03)

- (g) Although subject to the provisions of this Section, there shall be no annual fee (if encroachment is approved) for existing architectural features that contribute to the historic character of buildings that have been designated a Madison Landmark. (Cr. by ORD-09-00131, 9-18-09)

(Sec. 10.31(3) Am. by Ord. 10,969, 8-29-94)

(4) Construction, Reconstruction, Abandonment and Maintenance of Underground Sidewalk Vaults.

- (a) In addition to the requirements of this section, no vault under any sidewalk, in any street or alley in the City of Madison shall be constructed, reconstructed or repaired unless plans prepared by a registered professional engineer have been submitted to

and approved by the City Engineer and the Director of Planning and Community and Economic Development and a permit has been obtained from the Director of Planning and Community and Economic Development. No vault shall be abandoned without first obtaining a Street Opening Permit, as issued under Section 10.03, Madison General Ordinances, and a building permit if alterations to the building are involved in the abandonment.

- (b) All vaults under sidewalks shall be constructed or reconstructed in accordance with the State of Wisconsin Administrative Code, the City of Madison General Ordinances, other applicable Building Codes, and plans and specifications of any City project. Loading requirements for all vaults within the right-of-way shall be as follows:
1. Sidewalks with no vehicular restrictions: 250 pounds/square foot or 12,000 pound concentrated load in any position.
 2. Sidewalks with partial vehicular restriction: 115 pounds/square foot or 10,000 pound concentrated load, plus 30% impact factor. Concentrated load distributed as a four-wheel vehicle with 5,200 pounds on each rear wheel, 1,300 pounds each front wheel.
 3. Sidewalks with total vehicular restriction: 100 pounds/square foot.
 4. The most severe distribution and concentration shall govern.
 5. Vehicular restrictions shall be permanently fixed barriers. In addition, no cover or door to any such vault, constructed in any sidewalk, shall contain any open spaces greater than one-half inch ($\frac{1}{2}$ ") in width. Wherever possible, vaults shall be constructed or reconstructed so that the outside vault wall encroaches no more than six (6) feet into the right-of-way.
- (c) All vaults and covers or doors to any such vault in the City of Madison, which encroach on the public right-of-way, shall be maintained in a safe condition, and capable of carrying the loadings required in Section 10.31(4)(b), Madison General Ordinances. If the Director of Planning and Community and Economic Development finds at any time that the above mentioned ordinances, laws and codes are not being complied with, they shall serve written notice on the property owner. The property owner shall then have twenty (20) days to indicate in writing their intention to remove, replace or repair the vault. The Director of Planning and Community and Economic Development and City Engineer may require interim measures to protect the public safety, at the owner's expense.

If the property owner elects to retain the vault, to repair or replace it for continued use, or to abandon the vault, they shall complete such repairs, replacement or abandonment within

eighty (80) days of the original notice. The total cost of certification, reconstruction, replacement or abandonment shall be the responsibility of the property owner.

The City may, if it finds it to be in its best interest, participate in the vault abandonment. The City's share shall not exceed one half the cost of removing the vault, closing any existing accesses to the vault, and backfilling, nor shall it exceed \$10,000 per parcel of land. The property owner's share shall be treated as other special assessments. All other costs to prepare the vault for abandonment, such as relocating utilities or storage space, shall be the responsibility of the property owner.

(Sec. 10.31(4)(c) Am. by Ord. 11,945, 10-14-97)

(d) Cellar Doors and Covers of Vaults on Sidewalks Not to Be Kept Open. No person shall keep or leave open any cellar door or cover of any vault on any highway or sidewalk, or suffer the same to be left or kept open except when necessary for purposes of moving material or merchandise to or from such cellar or vault, and whenever the same shall be open it shall be properly guarded to protect persons using the sidewalk or highway from any danger. It shall be unlawful for any person to permit any such cellar door and cover of a vault in any public sidewalk in front of the premises owned or occupied by them, or any part of such sidewalk, to become or continue so broken as to be dangerous to persons traveling on such sidewalks.

(5) Any person causing or maintaining any obstruction or excavation contrary to this section shall be subject to a forfeiture of not less than \$25 nor more than five hundred dollars (\$500). Each day such violation continues shall be considered a separate offense.

(Sec. 10.31 Am. by Ord. 7730, 5-28-82)