

CITY OF MADISON, WISCONSIN

AN ORDINANCE _____

PRESENTED May 3, 2011
REFERRED BPW, BOE

Amending Sec. 19.16 of the Madison General Ordinances to allow for the establishment of Underground Utility Districts, and Sec. 1.08 to set a bond schedule for this amended section along with providing Engineering citation authority over violations thereof.

LEGISTAR # 22236

Drafted by: Doran Viste

Date: April 26, 2011

SPONSOR: Ald. Rummel and Ald. Verveer

DRAFTER'S ANALYSIS: This ordinance amends Sec. 19.16, MGO, to allow for the establishment of Underground Utility Districts. These amendments are consistent with the Common Council's March 29, 2011 approval and adoption of the Policy for Funding the Undergrounding of Overhead Utility Lines (RES-11-00256). The purpose of this ordinance is to complement the Undergrounding Policy by giving the City the authority to require specified properties to modify electrical service so that undergrounding projects may fully proceed. Under these amendments, after providing property owners notice and a public hearing, the Common Council can establish Underground Utility Districts in which all properties are required to modify electrical services to accept underground service within twenty-four (24) months of the establishment of the District, and all new buildings, structures, signs or signals constructed in the District must be built to accept underground service. The failure to meet this deadline subjects the property owner to a forfeiture, which may be enforced, through the amendments to Subsections 1.08(3)(a) and (4), by citations issued by the City Engineer or Director of Building Inspection (note: the Director of Building Inspection already has enforcement authority over Chapter 19, so no further amendments are necessary to grant him this power in regards to these amendments). In addition, the City Engineer is given the authority to extend the compliance deadline under specified conditions, and each property required to modify service is eligible for a reimbursement from the City of 50% of the costs incurred, up to \$1,000 (adjusted annually in accordance with the Construction Cost Index). Finally, property owners may also agree to have the City modify the service, in which case the City may have the modifications done and impose the costs thereof against the property as a special charge.

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

1. Section 19.16 entitled "Underground Utility Entrance Facilities" of the Madison General Ordinances is amended to read as follows:

"19.16 UNDERGROUND UTILITY ENTRANCE FACILITIES.

- (1) Purpose. The Common Council of the City of Madison does hereby declare it to be the public policy of the City of Madison to favor underground electrical and communications facilities. The exercise of police power to implement this public policy is based on the public benefit received including (but not limited to) the following reasons:
- (a) Clearing scenic views;
 - (b) Improving civic appearance;
 - (c) Removing safety hazards which are a danger to pedestrians and motorists;

Approved as to form:

- (d) Overcoming the threat of temporary loss of service due to high winds and ice conditions;
- (e) Eliminating damage to overhead equipment by wildlife;
- (f) Eliminating damage to wildlife by overhead equipment;
- (g) Eliminating trimming of street trees required to prevent damage to overhead wires.

This ordinance is adopted to facilitate the orderly replacement and/or transfer from overhead facilities consistent with desirable aesthetic goals and sound economic practices. The Common Council of the City of Madison finds the utilities and other entities furnishing major utility services and other services transmitted by wire or coaxial cable have previously adopted policies of converting from overhead service to underground service.

(2) Definitions. In this section the following definitions shall apply:

- (a) The term “underground entrance facilities” shall mean the conductors, cable, conduit and/or equipment necessary to transmit electrical or communications energy from the aerial or underground distribution system of the supplier to the main disconnect, junction or protector panel in or on the customer’s premises and shall include all electric, communications, signal and CATV facilities.
- (b) The term “electrical services” as used in this section shall mean the conductors and equipment for delivering energy from the electrical supply system to the wiring system of the premises served.
- (c) The term “permanent electrical service” as used in this section shall mean electrical services which are anticipated to remain in place or actually remain in place for more than a ninety (90)-day period of time, provided however that the term “permanent electrical service” shall not include overhead services of a temporary nature which are installed to provide electrical service during construction, remodeling, renovation, repair or demolition of bridges, structures, equipment or similar activities, or during emergencies or for tests or experiments relating to the public safety.

(3) Areas of Application.

- (a) Central City Area. The requirements of Subsection (4) shall apply in that part of the City of Madison lying between Lake Monona and Lake Mendota bounded by the Yahara River on the northeast, and the line comprising the intersecting centerlines of Drake Street, Garfield Street, Monroe Street, Breese Terrace, University Avenue and Babcock Drive on the southwest. The reason for such application is because it is recognized that within this area the present overhead electric distribution system and telephone system are old by comparison with most of the rest of the distribution systems. Such systems are inadequate in capacity to supply new buildings which will ultimately replace old existing buildings and, because it is further recognized that the buildings in this area are the oldest in the City and are being replaced by new buildings on a gradual basis.
- (b) Major Street Area. The provisions of this section shall also apply to buildings situated on property fronting on the following major streets, excepting those properties receiving utility or communication services from rear or side streets:
 - 1. John Nolen Drive - Blair Street to Beltline;
 - 2. Gammon Road - Mineral Point Road to Old Sauk Road;
 - 3. Milwaukee Street - Walter Street to Stoughton Road;
 - 4. Milwaukee Street - Stoughton Road to I-90;
 - 5. Old Sauk Road - Old Middleton Road to Gammon Road;
 - 6. University Avenue - Bassett Street to westerly city limits;
 - 7. South Gammon Road - Seybold Road to Park Ridge Drive;
 - 8. Fish Hatchery Road - Wingra Drive to Greenway Cross;
 - 9. Mineral Point Road - Racine Road to West Beltline Highway;
 - 10. Raymond Road - McKenna Boulevard to westerly city limits.

(c) Underground Utility Districts. The requirements of Subsection (4) shall apply to properties located in Underground Utility Districts, as determined under Subsection (6).

(4) General.

- (a) Any new building, sign, signal or structure requiring a separate permanent electrical service constructed in the areas described in Subsection (3) above after the effective date of this section shall be constructed with underground entrance facilities.
- (b) Every existing building, sign, signal or structure requiring permanent electrical service in the area described in Subsection (3) above, which is being remodeled, and where the cost of such remodeling is estimated to exceed or actually exceeds fifty percent (50%) of the Assessor's full market value of said building, shall be constructed with underground entrance facilities. Except for properties located in an Underground Utility District, where the utilities' verified estimated costs to the customer of installing underground entrance facilities exceeds five percent (5%) of the total remodeling cost, the underground entrance facilities requirement of this subdivision (b) will be waived upon request to and the furnishing of written proof of qualification to the Building Inspection Division of the Department of Planning and Community and Economic Development. Said estimated customer costs must be verified with written estimates from the utilities which have been furnished to the Building Inspection Division of the Department of Planning and Community and Economic Development.
- (c) Every existing building, sign, signal or structure in the area described in Subsection (3) above requiring permanent electric service, which has received or is eligible to receive a subdivision (b) waiver or in which electrical remodeling includes replacement of the entrance equipment, shall be constructed or reconstructed with entrance equipment sufficient to enable said building, sign, signal or structure to be connected with underground entrance facilities without further modification.
- (d) ~~In any such event~~ Installation of underground entrance conductors facilities for all other services, transmitted by wires, coaxial cable, or any other conductors shall be made at the same time as any required electrical service modifications made pursuant to this Section.
- (5) Throughout the City of Madison, when the total estimated electrical demand exceeds fifty (50) kw in any new building or any building which is being remodeled, and when the cost of remodeling is estimated, or exceeds fifty percent (50%) of the Assessor's full market value of said building, the owner shall provide vault space or space for pad-mounted transformers in accordance with applicable provisions of the Wisconsin Electrical Code and all applicable service rules of the electric utility providing service for such building.
- ~~(6) Severability Provision. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by reason of a decision of any court of competent jurisdiction, such decision shall not affect the validity of any other section, subsection, sentence, clause or phrase thereof.~~
- (6) Underground Utility Districts.
 - (a) Declaration of Policy. Pursuant to the adopted Policy for Funding the Undergrounding of Overhead Utility Lines (RES-11-00256), or said policy as it is amended from time-to-time, the City may pursue the undergrounding of utility services in designated districts in combination with other capital improvement projects. While some properties in a district may already be served underground or have the facilities needed to accept underground service, some buildings in a district that are being served overhead will not be ready for underground service without a modification of the entrance facilities or internal wiring of the building. The purpose of this Subsection is to establish a mechanism that will give property owners sufficient time to ensure that their property can accept underground service, and provide these property owners with a portion of the funding for the necessary service modifications. The establishment of Underground Utility Districts under this Subsection represents an exercise of the police power of the City of Madison.
 - (b) Establishment of Underground Utility District.
 - 1. To establish an Underground Utility District, the Common Council shall adopt a resolution declaring the boundaries of the District and its intention to place overhead utility services underground in the District. This resolution shall describe the undergrounding project, the limits of

- the proposed District, a list of all the properties affected by the undergrounding project, and the estimated number of affected properties that are served overhead and are not ready to receive underground service.
2. Before adopting this resolution, a notice shall be published in the official newspaper stating that the Board of Public Works will hold a public hearing on the creation of the Underground Utility District. Such notice shall be published as a Class I notice, under Chapter 985, Wisconsin Statutes, and mailed to every interested person whose post office address is known or can be ascertained with reasonable diligence, along with a summary of the requirements of property owners in Underground Utility Districts under this Subsection. The hearing shall commence not less than ten (10) days and not more than forty (40) days after such publication and mailing.
 3. The Board of Public Works shall hold a public hearing on the resolution and at the conclusion of the public hearing shall make a recommendation to the Common Council to take an action on the resolution.
 4. Upon adoption of the resolution by the Common Council, the Underground Utility District shall be deemed established. A copy of the resolution adopted by the Common Council shall be mailed to every interested person whose post office box is known or can be ascertained with reasonable diligence, along with a summary of the requirements of property owners in Underground Utility Districts under this Subsection.
- (c) Requirement to Modify Service. Every property owner in an Underground Utility District must modify the property's electrical services to accept underground service within twenty-four (24) months of the establishment of the District, unless the property owner is granted a modification deadline extension by the City Engineer under Subdivision (d), in which case the property owner has until the deadline established by the City Engineer to modify the property's electrical service. Any person who fails to modify the property's electrical service to accept underground service within this time period shall be subject to a forfeiture of not less than twenty-five (\$25) dollars and no more than one-hundred dollars (\$100). Each day a violation continues shall be considered a separate offense.
- (d) Modification Deadline Extension. A property owner may apply to the City Engineer for an extension of the time in which to modify electrical service as required under Subdivision (c). This application must be made within the twenty-four (24) month period and no extension will be granted if the application is made after this period. The City Engineer may grant an extension of time for compliance with the requirements of this Subsection if either of the following conditions are met:
1. The property owner meets the criteria for eligibility for loans for payment of special assessments or special charges as set forth in Subdivisions 4.082(2)(a)-(c) and (e), MGO.
 2. The cost of service modification is greater than three (3) times the maximum amount that the City will reimburse the property owner under Subdivision (e).
- (e) Reimbursement for Undergrounding Service Modifications.
1. Reimbursement. The City will reimburse an eligible property owner for fifty percent (50%) of all costs incurred by the property owner to modify the entrance facilities or internal wiring of the building to comply with the requirements of this Subsection, up to one-thousand dollars (\$1,000) adjusted annually on January 1 in accordance with the Construction Cost Index as published by the Engineering News Record or a similar index if the Engineering News Record index does not exist. The City Engineer shall maintain the annual maximum reimbursement amount.
 2. Eligibility. All properties in the Underground Utility District that, upon creation of the District, are served by overhead electrical service and are not ready to accept underground service without a modification of the entrance facilities or internal wiring of the building are eligible for

reimbursement of the service modification costs under Paragraph 1, provided the modifications are made and completed, and an approved inspection is made, within twenty-four (24) months of the creation of the District, unless the City Engineer grants an extension under Subdivision (d), in which case the property owner has until the end of the extension period to make and complete the service modifications to be eligible for reimbursement under Paragraph 1.

3. Application Requirements. An application for reimbursement under Paragraph 1 must include, as documentation of replacement and cost, a payment receipt from a licensed electrician for modifying the entrance facilities or internal wiring of the building to comply with the requirements of this Subsection, as well as documentation of an approved inspection by a City Electrical Inspector. Disputes regarding eligibility for a reimbursement may be appealed to the Board of Public Works.

(f) City-Authorized Modifications. A property owner may request that the City, through a City-approved contractor, modify the electrical service to comply with the requirements of this Subsection. If the request is approved, the costs incurred by the City, less the eligible reimbursement amount under Subdivision (e), shall be a special charge against the property and treated as such in accordance with the Section 4.09, MGO. As a condition of granting this request, the property owner must agree not to dispute the amount of the special charge, and to fully indemnify the City for any liability that may arise from the service modifications. Requests under this Subdivision shall be made to the City Engineer.”

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 therein the following:

“Failure to Modify Electrical Service	19.16(6)(c)	\$50 1 st
		\$100 2 nd + 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:

<u>“Enforcement Official</u>	<u>Ordinance Chapter or Section and Title</u>
City Engineer or her/his designee.	Chapter 37; Section 19.16(6)(c), Failure to Modify Electrical Service.”

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