



Legislation Text

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**Fiscal Note**

No appropriation is required.

**Title**

CHARTER ORDINANCE Creating Section 10.42 and Section 10.31(3)(f)3. of the Madison General Ordinances to allow decorative painting on pavement.

**Body**

DRAFTER'S ANALYSIS: This Charter ordinance creates a new permit that would allow eligible organizations to paint decorative designs on the surface of local streets with a speed limit of 25 miles per hour or less. A Charter ordinance is required to deviate from state statute and regulations of the Department of Transportation that would otherwise prohibit signage in the highway right-of-way. To the extent such decorative designs might be considered a sign, the City elects not to be governed by such statute and regulations.

This ordinance establishes a process that includes an application through Privileges in Streets, Traffic Engineer approval, and a Street Use Permit to close the street when the design will be painted. Eligible applicants are neighborhood associations and other non-profit organizations that would be eligible for a neighborhood grant through the City Planning Division.

The decorative design must be applied with acrylic water based traffic marking paint that includes anti-skid material, or the applicant may choose to do a temporary installation with water-soluble chalk. The design itself can include decorative designs and patterns only - no text, numerals, symbols, overt messages or any images designed to convey a message of any kind, including commercial messages. The design must not mimic any official traffic control signs, create a traffic hazard or interference, and must be reviewed and approved by the Traffic Engineer. The applicant, not the city, is responsible for maintaining the design. If the design fades or is damaged and the applicant fails to repair it, the City may require the applicant to remove it or remove it at the applicant's expense.

If adopted, the Charter provisions of this ordinance shall take effect 60 days from the date of passage and publication, subject to the referendum procedures of Wis. Stat. § 66.0101(5).

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

The City of Madison elects not to be governed by the provisions of Wis. Stat. § 86.19 and administrative regulations adopted thereto. This election is made pursuant to Wis. Stat. § 66.0101(4).

1. Section 10.42 entitled "Decorative Pavement Painting Design Permit" of the Madison General Ordinances is created to read as follows:

**"10.42 DECORATIVE PAVEMENT PAINTING DESIGN PERMIT.**

- (1) Purpose. The purpose of this ordinance is to permit the painting of the roadway on certain local streets by granting a permit for neighborhood associations and others with a stake in the neighborhood to paint the pavement as provided herein. By permitting decorative application of paint the City of Madison does not intend to create a forum for speech nor to convert the surface of the highway right of way into a forum for speech, nor does the City intend such paintings to be an official traffic control device. Decorative designs hereunder shall be intended to enhance the appearance of the roadway and work in connection with the ordinary uses of the roadway, and shall not be designed to draw pedestrians, or cyclists into portions of the roadway that are not intended for their use.
- (2) Charter Ordinance. Certain state statutes and administrative rules, specifically Wis. Stat. § 86.19, and administrative regulations adopted pursuant to that statute, raise doubts about

whether such painted designs may be located on a roadway within the limits of highway rights-of-way. The determination of whether to allow local neighborhood and business associations to apply decorative paint to a local street as described in this ordinance is a local affair of the government of the City of Madison. Therefore, the City of Madison, through its Common Council, hereby determines that, to the extent Wis. Stat. § 86.19 and related Wisconsin Administrative Code regulations restrict the City's ability to approve the decorative application of paint within the limits of any street or highway right of way, the City will not be governed by sec. 86.19 to that extent. Any signs not authorized by this Ordinance shall remain subject to regulation pursuant to state and local law. This Charter Ordinance shall not apply to State Trunk Highways as defined in Wis. Stat. § 84.02. This Section 10.42 is a Charter Ordinance adopted pursuant to Wis. Stat. § 66.0101 and Article XI, Sec. 3 of the Wisconsin Constitution.

(3) Eligible Applicants. A Neighborhood Association or Neighborhood Planning Council recognized as such by the City, or a business association or other non-profit community organization that would be eligible for a neighborhood grant administered by the Planning Division, may apply for a permit to apply a decorative painted design to the surface of a local City roadway within the area served by the organization.

(4) Application through Privileges in Streets.

- (a) Application shall be made to the Economic Development Division of the Planning and Community and Economic Development Department using the procedure for Privileges in Streets in Sec. 10.31. The designee of that division shall notify the City Traffic Engineer upon receipt of the application. The application form shall include:
1. Full legal business name of the applicant association, and type of association.
  2. Registered Agent for applicant, if applicable.
  3. Name and contact information of a person with primary responsibility for the application.
  4. Scale, color drawing showing the detailed design and proposed location meeting the requirements of Sec. 10.31.
  5. Petition with a signature from not less than sixty percent (60%) of the total number of residential dwelling units, businesses, and non-residential properties within a two hundred (200) foot radius from the proposed design location, indicating approval of the project and location. The petition area can be expanded at the discretion of the City Traffic Engineer up to a radius of six hundred (600) feet (approximate distance of a standard City block). Each dwelling unit, business and non-residential property is entitled to one signature.
  6. Statement that the alderperson for the district in which the painting project is proposed has been notified and given a copy of the application by regular mail or electronic mail.
  7. Any other information required by Sec. 10.31.
  8. Any additional information deemed necessary by the Traffic Engineer.

(b) Application Fee. The fee to apply for a permit to paint the pavement under this section shall be one hundred and fifty dollars (\$150) and nonrefundable. This does not include the separate application fee for the Street Use Permit required by sub. (9) to close the street for the painting project. However, applicants are exempt from the application fee and annual fee for a privilege in streets, under Sec. 10.31(3)(f).

(c) Temporary Chalk Applications. An application to paint the pavement with water-soluble chalk that meets the criteria of Sec. 23.06(6) shall be made using the same criteria of sub. (a) except that such applications are not reviewed under Section 10.31 and may be administratively approved or denied by the Traffic Engineer. All provisions of this ordinance shall apply to the City Traffic Engineer's review and to any permit issued, except those provisions that expressly incorporate Sec. 10.31.

(5) Eligible Locations:

- (a) A painted intersection design may be located at the intersection of two streets both with

- a functional classification of “local” or a mid-block location on a street with a functional classification of “local,” only on streets with a speed limit of not more than twenty-five (25) miles per hour, and shall not be located within two hundred (200) feet of an intersection with a street with a higher functional classification. State Trunk Highways, County Highways and federally funded mass transit ways are not eligible. The location must be within the area served by the applicant association.
- (b) The City Traffic Engineer must approve the proposed location. Whether a proposed location meets the above criteria, including the functional classification of the street, shall be determined by the City Traffic Engineer.
- (6) Paint and Design Elements.
- (a) The proposed painting shall include decorative designs and patterns only, and shall contain no text, numerals, symbols, overt messages or any images designed to convey a message of any kind, including commercial messages.
- (b) Prohibited paint or design features:
1. No retroreflectivity.
  2. The paint and resulting design shall not include any relief or texture (except anti-skid texturizing material under sub. (6)(d) herein, if approved by the City Traffic Engineer.)
  3. The design shall not create a three-dimensional or multi-dimensional effect or other optical illusion.
  4. The design shall not include any element that mimics or imitates an official traffic control device or marking or would be confused with the same.
  5. The design shall not include any element that interferes with or hinders the visibility of an official traffic control device or marking already in place, such as stop lines, marked cross walks, edge lines, lane markers, bike lane markers, etc.
  6. The design shall not include any feature or element that, in the opinion of the City Traffic Engineer, would create a safety hazard for vehicles or pedestrians.
  7. Nothing about the design shall violate any applicable city, state or federal law.
- (c) The City Traffic Engineer shall review the proposed design to determine compliance with the criteria of this ordinance, and shall take into account the proposed design in relation to the configuration of the intersection or roadway, including but not limited to: the overall shape and size of the intersection or roadway, the presence and location of stop lines and marked and unmarked crosswalks, and whether or not the proposed design would interfere with such markings or is likely to confuse motor vehicle drivers, bicycle operators or pedestrians using the roadway.
- (d) Acceptable Paint Materials.
1. Only acrylic water-based traffic marking paint may be used, in the colors traditionally available (white, yellow, blue, red, and black) or other colors that may be achieved by mixing the traditional colors.
  2. Paint must not result in a slippery surface. To accomplish this, the traffic marking paint must contain an anti-skid additive approved by the City Traffic Engineer.
  3. Paint must not be retroreflective.
  4. A temporary chalk design applied entirely with water-soluble chalk that meets the criteria of Sec. 23.06(6) may be used instead of paint and shall be subject to all design and location criteria herein.
- (7) Approval Criteria. All applications shall be reviewed according to the procedures for privileges in streets in Sec. 10.31, however no permit shall be issued without the review and express approval of the City Traffic Engineer who shall apply the criteria of this ordinance to all such applications.
- (8) Appeal Process. Appeals of a decision to approve or deny an application under this section shall be available as provided in Sec. 10.31(2)(b), and any such appeal may also include a review of the decision of the City Traffic Engineer under this ordinance.

- (9) Project Installation Procedure. Once the design has been fully approved under this ordinance, the applicant must apply for and obtain a Street Use Permit under Sec. 10.056 for permission to close the affected street(s) for the date(s) and times of the painting project. No work may be performed on the painting project within the roadway or on a bike path without an approved Street Use Permit for the date(s) and time(s) of the work. All requests to close the street are subject to Sec. 10.056 and the decision of the Street Use Staff Commission as provided in that ordinance.
- (10) Insurance and Indemnification. If a permit is approved the applicant shall agree to indemnify the City of Madison and provide proof of insurance as required by Sec. 10.31. Compliance with Sec. 10.31 shall be sufficient for the insurance and indemnification requirements of this section.
- (11) Repair and Maintenance of the Design. The applicant shall be solely responsible for maintaining the design in good condition and repair. If the design should become deteriorated or damaged and in the opinion of the City, the design is repairable, the applicant must repair it or make arrangements for the repair within sixty (60) days of written notice by the City. "Repair" shall mean restoring the original design to the originally-approved specifications. All repairs or maintenance, whether voluntary or in response to a notice under this section, shall be in compliance with all requirements of this ordinance and shall require a Street Use Permit as described in sub. (9). If the design is not repaired according to the notice. The City may cause the design to be removed and restore the roadway to its previous condition, at the expense of the applicant. The procedures in this paragraph for maintenance and removal may be exercised in addition to the procedure for removal of an encroachment in Sec. 10.31(3)(c). Removal and charges for costs associated with removal shall be as allowed by Sec. 10.31. The bond requirement in Sec. 10.31(3)(c) may be waived upon the recommendation of the City Risk Manager.
- (12) No Renewals. Once issued, a permit under this section authorizes the design as approved for as long as the design exists, as long as the design does not change and it is repaired and maintained as required by sub. (11). A request to change the originally-approved design will require an application for a new permit and a new permit fee and be processed as a new application.
- (13) Damage, Removal. In granting a permit under this ordinance, the City of Madison shall not be responsible for any maintenance or repairs or removal of the design; any damage to the design regardless of cause, including but not limited to damage caused by any utility or contractor performing work in the right-of-way or resulting from street surface maintenance such as street cleaning, plowing and road treatment for snow and ice. Utility work or roadwork by the City or a utility may result in damage to the design requiring the design to be permanently removed. Additionally, if any portion of the design creates a hazard in the sole opinion of the City, the City may remove the design without notice to the applicant. The permit shall be considered terminated upon removal of the design for any reason by the City or the applicant.
- (14) Permit Revocation. A permit under this section may be revoked by the City at any time if the applicant violates the conditions of the approved permit, including but not limited to installing something other than the approved design, modification of the design subsequent to the initial installation, or violations of the terms of the encroachment agreement under Sec. 10.31. Prior to revocation of a permit under this subsection, the City shall send written notice to the applicant, except that if the encroachment agreement is terminated according to the procedures in that agreement or in Sec. 10.31, the permit under this section automatically terminates. The permit shall also be considered terminated upon removal of the design for any reason under subs. (11) or (13) herein.

Section 10.42 is a Charter Ordinance adopted pursuant to Wis. Stat. § 66.0101, and Article XI, Sec. 3

of the Wisconsin Constitution and shall be effective upon sixty (60) days from passage and publication, subject to the referendum procedures of Wis. Stat. § 66.0101(5).”

2. Paragraph 3. of Subdivision (f) of Subsection (3) of Section 10.31 entitled “Privileges in Streets” of the Madison General Ordinances is created to read as follows:

“3. Decorative Pavement Painting Design Permit under Sec. 10.42, MGO.

Section 10.31(3)(f)3. is a Charter Ordinance adopted pursuant to Wis. Stat. § 66.0101, and Article XI, Sec. 3 of the Wisconsin Constitution and shall be effective upon sixty (60) days from passage and publication, subject to the referendum procedures of Wis. Stat. § 66.0101(5).”