



## Legislation Details (With Text)

**File #:** 39784      **Version:** 1      **Name:** Right-of-way occupancy facilities  
**Type:** Ordinance      **Status:** Passed  
**File created:** 8/19/2015      **In control:** BOARD OF PUBLIC WORKS  
**On agenda:** 9/15/2015      **Final action:** 9/15/2015  
**Enactment date:** 9/29/2015      **Enactment #:** ORD-15-00100  
**Title:** Amending Sections 10.05(1)(a), (15), (16), (20) and Section 1.08(3)(a) of the Madison General Ordinances to update the right-of-way occupancy facility relocation requirements.  
**Sponsors:** Paul R. Soglin, Larry Palm, Paul E. Skidmore  
**Indexes:**  
**Code sections:**  
**Attachments:** 1. Body

| Date      | Ver. | Action By                        | Action   | Result |
|-----------|------|----------------------------------|--|--------|
| 9/15/2015 | 1    | COMMON COUNCIL                   | Adopt  | Pass   |
| 9/2/2015  | 1    | BOARD OF PUBLIC WORKS            | RECOMMEND TO COUNCIL TO ADOPT<br>- REPORT OF OFFICER |        |
| 9/1/2015  | 1    | COMMON COUNCIL                   | Referred   | Pass   |
| 8/19/2015 | 1    | Attorney's Office/Approval Group | Referred for Introduction                            |        |

### Fiscal Note

If the ordinance is adopted, penalties will be able to be imposed on such delays to add incentives for public utilities to comply with the City's existing ordinance and reduce such project exposure in the future. Revenue received from any penalties is expected to be minimal (a couple of thousand dollars a year) and will go to into the general fund to support general City operations. Costs to implement the ordinance change are expected to be covered by existing resources. Should delays lead to costs that cannot be recovered from the utility or covered by adopted project budgets, budget amendments may be necessary in the future. No appropriation is required at this time.

### Title

Amending Sections 10.05(1)(a), (15), (16), (20) and Section 1.08(3)(a) of the Madison General Ordinances to update the right-of-way occupancy facility relocation requirements.

### Body

**DRAFTER'S ANALYSIS:** This ordinance updates the right-of-way occupancy ordinance and corresponding bond schedule to give the City greater enforcement tools to better address a registrant's failure to timely relocate facilities.

Under state law, the City is limited in its ability to regulate public utility use of the municipal right-of-ways, and any such regulation is subject to review by the Public Service Commission. Any regulation or penalty imposed upon public utilities must be reasonable and nondiscriminatory. The City may not recover more than the actual costs to the City of regulating utility use of the right-of-ways. Among the City's powers is the ability to require a public utility to relocate its facilities during public improvement projects. Most public utilities work closely with the City and timely coordinate their work to ensure that the City's project is not delayed. However, over the last several years, certain public utilities have expressed a pattern of not timely complying with relocation schedules associated with major public works projects, despite verbal agreements about the schedule to be employed. As a result, multiple public works projects have commenced only to find that public utility facilities remain in the right-of-way. This has resulted in substantial delays or inefficiencies, and has greatly increased

the costs to the City to complete these projects. These delays have also cost other public utilities, who may have to wait themselves to timely and efficiently relocate their facilities. Efforts to work with these non-complying public utilities has proven difficult, and it does not appear that the City's existing enforcement options are sufficient to ensure timely utility compliance with lawful facility removal or relocation orders. Indeed, despite recent issues that have increased the City's costs by hundreds of thousands of dollars on certain projects, the response of these non-complying public utilities to the City's concerns has been indifferent.

Hence, because the City cannot recover the additional project costs incurred as a result of utility delays through our ordinance, staff feels that it is necessary to increase the enforcement options available to the City as a means to gain registrants compliance with the City's reasonable relocation or removal requirements. Accordingly, this ordinance updates the right-of-way occupancy ordinance and corresponding bond schedule to clarify the process that must be followed when public utility facilities in the right-of-way must be maintained, supported, protected or relocated to allow for public work. The failure to perform the work by the due date is subject to a penalty that significantly increases with multiple violations. Moreover, the failure to meet a deadline, or otherwise comply with any requirement of this ordinance, can now be addressed by the issuance of a citation by the Engineering Division. By increasing the City's enforcement options, it is expected that public utilities will more timely adhere to the City's reasonable relocation schedules, and the public's interests will be better served.

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The Common Council of the City of Madison do hereby ordain as follows:  
Please see "Body" in Attachments.