



Legislation Details (With Text)

**File #:** 46815      **Version:** 1      **Name:** Repealing and recreating the Occupancy of Rights-of-Way ordinance

**Type:** Ordinance      **Status:** Passed

**File created:** 4/11/2017      **In control:** BOARD OF PUBLIC WORKS

**On agenda:** 5/16/2017      **Final action:** 5/16/2017

**Enactment date:** 5/25/2017      **Enactment #:** ORD-17-00051

**Title:** Repealing and replacing Section 10.05 of the Madison General Ordinances entitled "Occupancy of Rights-of-Way" and amending Sec. 1.08(3)(a) to update the bond schedule.

**Sponsors:** Paul E. Skidmore, Larry Palm, Paul R. Soglin, Michael E. Verveer

**Indexes:**

**Code sections:**

**Attachments:** 1. Body, 2. Redline version of Sec. 10.05

Date	Ver.	Action By	Action	Result
5/16/2017	1	COMMON COUNCIL	Adopt	Pass
5/3/2017	1	BOARD OF PUBLIC WORKS	RECOMMEND TO COUNCIL TO ADOPT - REPORT OF OFFICER	
4/24/2017	1	FINANCE COMMITTEE	Return to Lead with the Recommendation for Approval	
4/18/2017	1	BOARD OF PUBLIC WORKS	Refer	
4/18/2017	1	COMMON COUNCIL	Refer	Pass
4/11/2017	1	Attorney's Office/Approval Group	Referred for Introduction	

**Fiscal Note**

No fiscal impact.

**Title**

Repealing and replacing Section 10.05 of the Madison General Ordinances entitled "Occupancy of Rights-of-Way" and amending Sec. 1.08(3)(a) to update the bond schedule.

**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

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