



Legislation Text

File #: 55033, **Version:** 1

Fiscal Note

The proposed ordinance creates a permit for wireless telecommunications facilities in the right-of-way. Permit fees are anticipated to be determined prior to August 1, 2019, the effective date of the ordinance. The permit fee will be set to recover the City's reasonable costs to administer the permit consistent with federal limitations.

Title

Creating Section 10.053 of the Madison General Ordinances to create a permit for wireless telecommunications facilities in the right-of-way, amending Sections 1.08(3)(a) and (4) to establish a bond schedule and allowing additional enforcement authority by the City Traffic Engineer.

Body

DRAFTER'S ANALYSIS: This ordinance would create, to the extent allowed by Federal and State laws and regulations, a wireless telecommunications facility permit.

There has been an increased demand to place small cell wireless facilities in the right-of-way on existing or new infrastructure, which demand is being driven to address the cellular data needs of the public and the forthcoming deployment of "5g" cellular networks. This new technology is based upon the deployment of a vast network of "small" wireless facilities throughout the coverage area. Several different providers have already contacted the City about the placement of these facilities in the right-of-way, collocated on existing poles, on new poles and even on City-owned infrastructure outside of the right-of-way. The City currently does not separately regulate small cell facilities, but telecommunication carriers are required to comply with Section 10.05, MGO, when placing facilities in the right-of-way.

In 2018, the Federal Communication Commission released FCC-18-133, an order interpreting federal law that limits state and local regulation of small cell placement in the right-of-way based upon federal preemption grounds. Under federal law and the order, municipal regulations are preempted if they prohibit or have the effect of prohibiting the provision of telecommunications service or personal wireless service. The order states that it is an "effective prohibition" on such service if a local regulation "materially limits or inhibits any competitor's or potential competitor's ability to compete in a fair and balanced legal and regulatory environment." This "effective prohibition" test applies to the City's regulations applicable to these type of installations, including application deadlines, fees, and other placement or aesthetic requirements. While this order is being appealed, it went into effect on January 15, 2019, and the City must comply with it.

The intent of this ordinance would be to exercise the City's authority to regulate the placement and maintenance of wireless facilities in the right-of-way to the fullest extent provided for by federal and state law. The demand for such right-of-way use is expected to increase significantly in the near future and this ordinance will provide a better framework, consistent with the requirements of federal law, for the City to exercise regulatory authority over the placement and maintenance of these facilities. Of note, under the ordinance the City Engineer will be tasked with administering this permit, which is consistent with the City Engineer's existing authority over use of the right-of-ways by registered utilities under Sec. 10.05. The ordinance will be enforceable by City Engineering, Building Inspection, the Street Superintendent, and Traffic Engineering, which is consistent with other similar right-of-way ordinances. Permit fees will need to be determined and established by the Board of Public Works, keeping in mind the presumptive reasonable fee levels established by the FCC. In addition, the City will need to establish aesthetic standards that are consistent with the order (which standards must apply to all utility facilities in the right-of-way). Finally, this ordinance notes that the City may enter into agreements to allow collocation of small cell facilities on City-

owned or City-controlled infrastructure (street lights, traffic signals, etc.). However, such collocation is not required, nor is it provided for by this ordinance. Any such use of City owned infrastructure would have to be separately approved by the Council either by agreements or by a general ordinance applicable to all providers. Of note, the FCC orders significantly limit the fees that the City may charge for locations on City-owned or City-controlled infrastructure.

In order to give the City sufficient time to develop the permit fees, the aesthetic standards, and the wireless regulations called for by the Ordinance, the effective date of this ordinance is being delayed to August 1, 2019.

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