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..Sponsor
THE CHAIR

..Title
A substitute ordinance relating to use and occupancy of the city-owned conduit system.

..Section
81-38.2 cr
98 rc

..Analysis
This ordinance makes various revisions and updates to the city's regulations for use and occupancy of the city-owned conduit system, including:

1. Updating fees to support full cost recovery. This includes automatic annual fee adjustments based on inflation.
2. Clarifying registration requirements and procedures for both new and existing occupants of the conduit system. This includes requirements for submission of operations plans and annual reports to the department of public works.
3. Updating language relating to enforcement of the conduit-occupancy regulations by the department of public works. This includes authorizing the department to issue orders, establish timelines for correction of violations, and assess penalties for unabated violations.

..Body
The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Section 81-38.2 of the code is created to read:

81-38.2. Conduit System Registration Permit. The fee for a first-time registration for usage of any amount of city conduit space shall be \$1,500.
(See s. 98-11.)

Part 2. Section 98 of the code is repealed and recreated to read:

CHAPTER 98 USE AND OCCUPANCY OF CITY-OWNED CONDUIT SYSTEM

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98-1. Purpose. The city of Milwaukee owns and operates an underground conduit system to provide an efficient means of installing and maintaining cable infrastructure for city of Milwaukee communications systems. Where there is excess capacity within the conduit system, the city may permit persons to occupy the conduit system pursuant to this chapter. The use of the underground conduit system by the city and authorized persons reduces the need for costly and disruptive street cuts and trench excavation within the right-of-way.

98-3. Definitions. In this chapter:

1. COMMISSIONER means the commissioner of public works or the commissioner's designee.
2. CONDUIT SYSTEM means any city-owned reinforced passage or opening capable of containing transmission facilities now existing or hereinafter constructed to accommodate a permittee's transmission facilities in, on, under or through the ground and includes, but is not limited to, all of the following:
 - a. Main line conduit and manhole system.
 - b. Laterals extending into buildings, pull-boxes, handholes or terminus location.
3. CONDUIT DUCT means a standard 4-inch, or other custom size, passage or opening within the conduit system.
4. DEPARTMENT means the department of public works.
5. LICENSEE means any person who is authorized to occupy city-owned conduit pursuant to an approved conduit occupancy license agreement.
6. OCCUPIABLE SPACE means the area within a conduit duct that is available for installation of transmission facilities and which shall not exceed 60% of the conduit duct cross-section.

7. PERMITTEE means any person to whom a permit to install transmission facilities within city-owned conduit has been granted under this chapter.

8. PERSON means a corporation, company, association, firm, partnership, limited liability company, limited liability partnership, unit of government other than the city, university or other educational institution, or individual and their lessor, transferee or receiver.

9. SERVICE is used in its broadest and most inclusive sense.

10. TRANSMISSION FACILITY is used in its most inclusive sense and means any cables, wires, lines, optical fibers or other fiber optic cables, or any associated equipment or facilities.

98-5. Use to be Approved by Commissioner. 1. The commissioner shall manage the use of the conduit system and may enter into conduit occupancy license agreements, including amendments to such agreements, consistent with this chapter.

2. The commissioner shall have the power to prohibit or limit the placement of new or additional facilities within the conduit system if the commissioner determines that there is insufficient space to accommodate the needs of the city or of all the requests of persons to occupy and use the conduit system. In making such determination, the commissioner shall be guided primarily by considerations of public interest, the condition of the conduit system, the protection of existing facilities in the conduit system, and future city plans for public improvements and development projects that have been determined to be in the public interest. The installation of splice cases or cable coils not previously grandfathered is prohibited.

98-7. Registration. Except as otherwise provided in this section, any person who seeks to occupy the conduit system shall register with the department, pay the required registration fee, execute a conduit occupancy license agreement, and pay the required conduit occupancy license fees. Any person who has an existing conduit occupancy license agreement as of the effective date of this ordinance [city clerk to insert date] shall register with the department and execute a new 3-year conduit occupancy license agreement upon expiration of the existing agreement.

98-9. Registration Information. The information provided to the department at the time of registration shall include, but not be limited to:

1. CONTACT INFORMATION:

a. The registrant's name, address, e-mail address, telephone number, and evidence of registration with the state of Wisconsin one-call system, also known as "digger's hotline".

b. The name, address, e-mail address, and telephone number of a local representative. The local representative shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.

c. The name, address, e-mail address, and telephone number of the person responsible for accounts payable.

2. CERTIFICATE OF INSURANCE:

a. Verifying that an insurance policy has been issued to the registrant by an insurance company licensed to do business in Wisconsin.

b. Verifying that the registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the:

b-1. Use and occupancy of the city's conduit system or other facilities by the registrant, the registrant's officers, agents, employees, and permittees.

b-2. Placement and use of equipment in the right-of-way by the registrant, the registrant's officers, agents, employees, and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground equipment, and collapse of property.

c. Indicating comprehensive liability coverage, automobile liability coverage, and umbrella coverage in amounts established by the city attorney.

d. Naming the city as an additional insured as to whom the coverage required is in force and applicable and for whom defense will be provided as to all such coverage.

e. Requiring that the city attorney be notified in writing at least 30 days in advance of cancellation of the policy.

3. CORPORATE APPLICANT. If the person is a corporation, a copy of the certificate of status issued by the Wisconsin department of financial institutions.

4. OPERATIONS PLAN. For each person who seeks to occupy the conduit system and has not previously submitted an annual report required under s. 98-17, an operations plan as part of its registration process, in a format designated by the department, and consisting of:

a. One of more maps showing the location of all transmission facilities installed, or to be installed, in the conduit system by or on behalf of the person.

b. The total linear footage of conduit occupied, or to be occupied, by the facilities identified in par. a.

c. The specific locations and the beginning and end dates of all installation projects to be commenced during the next calendar year.

d. Any other information that the department deems necessary to be included in the operations plan.

98-11. Initial Registration Fee. The registrant shall submit, with its first registration, payment of the initial registration fee required in s. 81-38.2.

98-13. Conduit Occupancy License Agreement. No person may use or occupy city-owned conduit without a conduit occupancy license agreement approved by the commissioner. The agreement shall have a 3-year term and require the payment of the conduit system occupancy fees set forth in s. 98-15. The commissioner shall have authority to execute amendments to the license agreement to accommodate new permitted installations authorized under s. 98-21.

98-15. Conduit System Occupancy Fees. 1. A use and occupancy fee shall be paid on a per-linear-foot basis on the share of occupiable space, according to the following use classes:

a. CLASS 1: The minimum fee for conduit occupancy shall be:

a-1. \$2.15 per foot per year for occupancy of up to one-third of the occupiable space.

a-2. \$2.48 per foot per year for occupancy of more than one-third but less than two-thirds of the occupiable space.

a-3. \$2.81 per foot per year for occupancy of two-thirds or more of the occupiable space.

b. CLASS 2: The minimum fee for conduit duct occupancy for transmission facilities within any conduit duct that crosses under any river, railroad, freeway or other obstruction or is attached to a bridge, with measurement of such class 2 conduit occupancy being made from manhole to manhole on each side of the river or other obstruction, shall be as follows:

b-1. \$8,250 for up to one-third of the occupiable space plus \$16.50 per foot per year for the first 200 feet, then \$8.25 per foot per year for the next 300 feet, then \$2.20 per foot per year for any additional linear footage.

b-2. \$16,500 for up to two-thirds of the occupiable space plus \$22 per foot per year for the first 200 feet, then \$11 per foot per year for the next 300 feet, then \$2.75 per foot per year for any additional linear footage.

b-3. \$19,250 for two-thirds or more of the occupiable space plus \$27.50 per foot per

year for the first 200 feet, then \$13.75 per foot per year for the next 300 feet, then \$3.30 per foot per year for any additional linear footage.

2. Class 1 occupancy fees shall not be applicable to any transmission facilities within any portion of the conduit system that is identified in sub. 1-b.

3. The occupancy fee shall be paid to the city on January 31 and July 31 of each calendar year in advance for the succeeding 6-month period. The fee shall be based upon the total linear distance of conduit then used or occupied with a back payment, prorated on a daily basis, made for conduit used or occupied since the last billing period. No new conduit occupancy permit shall be issued under s. 98-21 if there is any outstanding balance on conduit occupancy fees. Unpaid conduit occupancy bill balances shall incur a 1% monthly charge and any bill outstanding after 90 days shall be referred to an authorized party for collection.

4. Beginning January 1, 2027, the fees specified in sub. 1 shall be subject to an annual inflationary adjustment. This adjustment shall occur on the first calendar day of each subsequent year based on the prior year's consumer price index, Midwest region, issued by the U.S. bureau of labor statistics.

98-17. Annual Reports. 1. REQUIREMENT. Beginning December 1, 2026, and no later than December 1 of each year thereafter, each person whose facilities have been installed in the conduit system shall report annually to the department, in the format that the department requires. Each report shall consist of:

a. One or more maps showing the location of all transmission facilities installed in the conduit system by or on behalf of the person.

b. The total linear footage of conduit occupied by the facilities mapped under sub. 1.

c. The use class assigned to the linear footage of transmission facilities under s. 98-15 and the diameter and fiber count of those facilities.

d. The specific locations and the beginning and end dates of all installation projects to be commenced during the next calendar year.

e. Any other changes to the registration information submitted under s. 98-9.

f. Any other information that the department deems necessary for inclusion in the report.

2. LICENSE AGREEMENT AMENDMENT. Upon acceptance of the annual report by the department, the conduit occupancy license agreement shall be amended to include additional installations not identified in the existing agreement.

98-19. Material Misstatements. 1. DEFINITION. "Material misstatements" means

significant inaccuracies, as determined by the commissioner, as to any of the following information contained in an operations plan or annual report:

- a. The nature or location of the person's transmission facilities that have been installed in the conduit system.
- b. The total linear feet of conduit occupied by those facilities and the corresponding use class of those installations.
- c. Any other material information provided in the operations plan or annual report.

2. PENALTIES. If the commissioner determines that an operations plan or annual report contains material misstatements, the department may take all appropriate action, including, but not limited to, withholding new permits, charging for unpaid occupancy fees, ordering removal of unauthorized installations under s. 98-25, or terminating the conduit occupancy license agreement.

98-21. Additional Installations. 1. No person may install transmission facilities within the conduit system without obtaining all required permits from the department.

2. For any new conduit occupancy installation, the permit applicant shall pay a conduit occupancy permit review fee of \$500 per manhole within the limits of the proposed installation. The department shall determine the availability of excess capacity in the conduit system and the time and manner for such use or occupancy. The department shall specify installation requirements in the approved permit, and shall prohibit the installation of splice cases or cable coils. The conduit occupancy license agreement shall be amended to include the new permitted installation.

3. The permittee shall be responsible for make-ready work and conduit pulling costs on all approved installations.

4. No later than 30 days after completion of the permitted installation, the permittee shall provide all as-built plans to the department. Such plans shall be submitted using a format designated by the department and shall contain the information determined by the department to be necessary to facilitate record keeping and conduit occupancy billing. Failure to provide the as-built plans may result in denial or withholding issuance of any new permits under this section.

5. If any installation for which a permit has been issued has not been started within 90 days from the date of issuance of the permit, or if installation has ceased for more than 90 days, the permit shall lapse and be void, and the installation shall not be started or resumed until a new permit is obtained and the fee prescribed in sub. 2 is paid.

6. Where work is started without first obtaining the required permits, the department may require removal of the installation, or any part thereof, or may authorize the work to continue and the installation to remain. If the department authorizes the installation, the

fee prescribed in sub 2. shall be doubled. Payment of the doubled fee shall not relieve any person from fully complying with all requirements of this chapter.

7. If the department determines that the installation was not made in compliance with the permit requirements, the department may take action under s. 98-25.

98-23. Installation Removals. 1. No person may remove transmission facilities within the conduit system without obtaining all required permits from the department.

2. The permittee shall be responsible for all costs of removing cables and sealing manhole walls upon lateral removals, per terms and conditions of the permit.

3. Upon completion of the permitted removals, the permittee shall provide all as-built plans to the department. These plans shall be submitted using a format designated by the department and shall contain the information determined by the department to be necessary to facilitate recordkeeping and conduit occupancy billing. Upon the department's acceptance of the as-built plans, the conduit occupancy license agreement shall be amended and no occupancy fees shall be charged for the installations removed. The licensee shall continue to be liable for the occupancy fees, notwithstanding removal of the installations, until the as-built plans are approved by the department.

98-25. Unauthorized Occupancy. 1. If the department determines that transmission facilities have been installed without the authorizations required in this chapter, the department may require removal or modification of the facilities, or any part thereof, or may authorize the facilities to remain.

2. In all cases, the department shall notify the owner of the facilities in writing and shall charge for all conduit occupancy fees owed. The owner shall pay the amount owed within 60 days of the date of the notice, along with the fee prescribed in s. 98-21-2, which shall be doubled. If the amounts owed are not paid within 60 days, the department may remove the unauthorized transmission facilities and the owner shall be liable to the city for all expenses related to the removal and any consequent repairs to be made to the conduit system deemed necessary by the department. Unpaid conduit occupancy bill balances shall incur a 1% monthly charge. Any bill outstanding after 90 days shall be referred to an authorized party for collection. The department may withhold all new permits for additional installations under s. 98-21 until the amounts owed are paid. If the department authorizes the facilities to remain, even if modified, the conduit occupancy license agreement shall be amended to include the previously unauthorized installation.

3. If the department determines that removal of the unauthorized facilities is in the public interest under the criteria in s 98-5-2, the department shall order the removal under the procedure set forth in sub. 4. The owner shall remain liable to the city for all conduit occupancy fees owed, notwithstanding the removal order.

4. If the department determines that an installation has been installed in violation of the permit requirements, or to have caused damage to the conduit system, the department shall notify the person responsible for the installation in writing and order its removal or any corrective action deemed necessary by the department. The person responsible for the installation shall comply with the order within 60 days of the date of the notice. If the installation is not removed or corrective work is not completed within the required period, the department may remove the installation and the person responsible for the installation shall be liable to the city for all expenses related to the removal and any consequent repairs to be made to the conduit system deemed necessary by the department. The department may withhold all new permits for additional installations under s. 98-21 until the unauthorized installation is remedied to the satisfaction of the department.

Part 3. This ordinance is effective January 1, 2026.

..LRB

APPROVED AS TO FORM

K. Broadnax

Legislative Reference Bureau

Date: September 9, 2025

..Attorney

IT IS OUR OPINION THAT THE ORDINANCE
IS LEGAL AND ENFORCEABLE

Office of the City Attorney

Date: _____

..Requestor

Department of Administration

..Drafter

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Jeff Osterman

09/09/2025