

..Number

060661

..Version

PROPOSED SUBSTITUTE

..Reference

..Sponsor

ALD. BAUMAN

..Title

A substitute ordinance relating to procedures for placement of above ground utility boxes in the public right-of-way.

..Sections

115-3 rp

115-3.5 rp

115-4 rp

115-3 cr

..Analysis

This ordinance revises code provisions relating to permits for excavations and installations in public ways and public places to provide an exception for the permitting process for above ground utility box installations which contain at least one dimension at least 4 feet, and provides the permitting procedure for such above ground utility box installations.

Applications for utility permits for the location of above ground utility box installations which contain at least one dimension at least 4 feet shall be submitted to the department of public works, and the application shall be referred by the commissioner to the common council member in whose district the permit is sought. The commissioner and the common council member shall make a recommendation as to whether the requested permit should be granted. In all cases, the standard for determining the appropriateness, location and size of any utility installation shall be the public health, safety and welfare; specific examples are provided in the text.

If both the common council member and the commissioner recommend in favor of an application, the commissioner shall issue the permit. If either the common council member or the commissioner recommends against an application, no permit shall be issued unless the applicant requests, in writing, an appeal before the appropriate committee of the common council, the committee makes a recommendation to the council, and the council grants the permit. An appeal shall be requested no more than 10 working days after the date on which the applicant was notified of the recommendation of the commissioner and the common council member, and a due process hearing shall be held by the committee.

..Body

Whereas, The common council recognizes that rights-of-way within the city are assets held in trust for the city's residents; and,

Whereas, The common council also recognizes that it is in the public's interest that the use and regulation of rights-of-way be carried on in a fair, efficient and uniform manner, while recognizing such regulation must reflect public health, safety and welfare considerations; and,

Whereas, There are many factors which affect the accommodation of utility installations, and such factors must be reviewed according to their potential impacts on public health, safety and welfare; and,

Whereas, The height, width and depth of a utility installation may have consequences on public health, safety and welfare, as an installation may create blockages of sight lines and increased risks to pedestrians, bystanders and motorists, and therefore such an installation must receive additional scrutiny and review; now, therefore,

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

Part 1. Section 115-3 to 115-4 of the code is repealed.

Part 2. Section 115-3 of the code is created to read:

**115-3. Permits for Excavation and Installations in Public Ways and Public Places.**

**1.REQUIRED.** No person shall make any excavation or installation in any public way or public place for any purpose whatsoever unless he or she possesses a currently-valid permit therefor from the commissioner, except where required by contract with the city for constructing, paving, or reconstructing a street. City forces charged with the duty of repairing or reconstructing streets and city forces charged with the duty of installing, replacing or removing street lighting, alarm systems or traffic control signal devices, poles or standards are not required to secure a permit, except that where electrical conduit is laid in the public way, a permit shall be taken out. If any work for which a permit has been issued has not been started, resumed or completed by the expiration date of the permit, the permit shall lapse and be void, and no work shall be begun, resumed or completed until a new permit is obtained and the appropriate fee paid.

**2.WHEN PERMITS NOT ISSUED.** Except in an extreme emergency, the commissioner shall not issue a permit for a street excavation which would interfere with traffic that has been rerouted.

**3.APPLICATION.** Any person, firm, corporation or organization desiring a permit for excavation or installation in public ways or public places shall file a written application with the department of public works on a form provided therefor.

**4.GRANTING OF PERMITS.** a. Upon application for a permit for excavation or installation, or both, in a public way or public place and payment of the fees and deposits required in s. 115-7, the commissioner may, where not inconsistent with any other provision of the code, issue a permit to excavate or disturb the surface of any public way or place, with the exception of above ground utility box installations

which contain at least one dimension at least 4 feet, which are subject to the procedure described in sub. 5.

b. The permit shall state the name of the applicant, the nature, purpose and location of the excavation or installation, the amount of the permit and inspection fees, and the number of days for which the permit shall remain in force.

c. Whenever a permit for excavation or installation in a public way or public place is granted, the permit holder shall, as a condition of permit issuance, be required to serve written notice of the impending excavation or installation work to each occupant of abutting private property at least 48 hours prior to commencement of work if the excavation or installation will be in progress for more than 96 hours, impede or obstruct access to abutting private property, or result in interruption of utility service to abutting private property. The commissioner shall provide similar notice to the common council member in whose district the excavation or installation work will occur. The notice shall include a name and telephone number of a person who is affiliated with the permit holder and directly responsible for and knowledgeable of the work to be performed. No notification shall be required for emergency public way excavation, such as but not limited to an excavation relating to a gas, water or steam leak or an electrical outage, or for an excavation carried out in conjunction with minor maintenance activities, such as but not limited to manhole adjustments, hydrant or valve repairs or work on utility services to individual properties.

#### **5. ISSUANCE OF CERTAIN ABOVE GROUND INSTALLATION PERMITS.**

a. Applications for utility permits for the location of above ground utility box installations which contain at least one dimension at least 4 feet shall be referred by the commissioner to the common council member in whose district the permit is sought. The commissioner shall cause an investigation to be made and prepare a recommendation to the common council as to whether the requested permit should be granted. In addition, the common council member in whose district the permit is sought shall file his or her recommendation with respect to the requested permit with the commissioner. In all cases, the standard for determining the appropriateness, location and size of any above ground utility installation shall be the public health, safety and welfare.

b. In preparing their recommendations the commissioner of public works and the common council member may consider any of the following:

b-1. The extent to which right-of-way space where the permit sought is available, including the consideration of competing demands for particular space in the right-of-way.

b-2. The availability of other locations in the right-of-way or in other rights-of-way for the installation sought in the permit application.

b-3. The applicability of code provisions or other regulations of the right-of-way that affect location of equipment on the right-of-way.

b-4. Safety concerns related to the location of equipment on the right-of-way.

b-5. Degree of disruption of vehicular visibility.

b-6. Degree of disruption to ordinary travel over the right-of-way.

c. If both the common council member and the commissioner recommend in favor of an application, the commissioner shall issue the permit. If either the common council

member or the commissioner recommends against an application, no permit shall be issued unless the applicant requests, in writing, an appeal before the appropriate standing committee of the common council, the committee makes a recommendation to the council, and the council grants the permit. An appeal shall be requested no more than 10 working days after the date on which the applicant was notified of the recommendation of the commissioner and the common council member. Appeals shall be forwarded to the city clerk for referral to the appropriate committee of the common council for its recommendation as to whether a permit should be granted. The committee shall hold a hearing on whether to grant a permit for which an appeal has been requested. No hearing shall be heard unless the city clerk's office has provided written notice to the applicant. The notice shall be served upon the applicant so that the applicant has at least 3 working days' notice of the hearing. The notice shall contain:

c-1. The date, time and place of the hearing.

c-2. A statement to the effect that the possibility of denial of the permit application exists and the reasons for possible denial.

c-3. A statement that an opportunity will be given to the applicant to respond to and challenge any reason for denial and to present witnesses under oath and to confront and cross-examine opposing witnesses under oath.

c-4. A statement that the applicant may be represented by an attorney of the applicant's choice at the applicant's expense, if the applicant so wishes.

d. At the hearing, the committee chair shall open the meeting by stating that a notice was sent and read the notice into the record unless the applicant admits notice. The chair shall advise the applicant that the applicant has an option to proceed with a due process hearing, represented by counsel, with all testimony both direct and cross-examination under oath, or that the applicant may simply make a statement to the committee.

e. A due process hearing shall be conducted in the following manner:

e-1. All witnesses will be sworn in.

e-2. The chair shall ask those opposed to the granting of the permit to proceed first.

e-3. The applicant shall be permitted an opportunity to cross-examine.

e-4. After the conclusion of the opponents' testimony, the applicant shall be permitted to present the applicant's own witnesses, subject to cross-examination.

e-5. Committee members may ask questions of witnesses.

e-6. Both proponents and opponents shall be permitted a brief summary statement.

f. The recommendations of the committee regarding the applicant must be based on evidence presented at the hearing. Probative evidence concerning whether the permit should be granted may be presented on the following subjects:

f-1. Whether the applicant meets the municipal requirements.

f-2. Any of the factors enumerated in par. b.

g. The committee may make a recommendation immediately following the hearing or at a later date. Written notice of the committee's decision will be provided if the decision is made at a later date or if the applicant was not present or represented. The committee shall forward its recommendation in writing to the common council for vote at the next meeting at which such matter will be considered.

h. It shall be the duty of the commissioner, whenever a permit for excavation and installation in public ways and public places shall be issued by the common council, and the applicant shall have produced and filed with the department a receipt showing payment of the sum required for such permit to the city treasurer, to prepare and deliver to such applicant a permit in accordance with this section.

**6. VIOLATIONS.** The commissioner may issue a citation for any violation of this section pursuant to s. 50-25.

..LRB

APPROVED AS TO FORM

\_\_\_\_\_  
Legislative Reference Bureau

Date: \_\_\_\_\_

..Attorney

IT IS OUR OPINION THAT THE ORDINANCE  
IS LEGAL AND ENFORCEABLE

\_\_\_\_\_  
Office of the City Attorney

Date: \_\_\_\_\_

..Requestor

..Drafter

LRB06460-3

LCS

10/13/06

