



## Legislation Text

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**File #: 931885, Version: 1**

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931885  
SUBSTITUTE 1  
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GORDON, NARDELLI, SCHRAMM AND MURPHY  
A substitute ordinance relating to outdoor pay telephones.  
81-79 cr  
98 cr  
115-39 rp  
200-53 cr  
- Analysis -

This ordinance repeals the existing code provisions relating to the placement of public telephone booths on public property (s. 115-39). It creates a new requirement that the owner of any outdoor pay telephone to be placed on public property enter into a contract with the city (through the commissioner of public works) which grants the privilege allowing such placement. It further specifies the terms and conditions to be included in such contracts, including the provision that the commissioner of public works shall review and approve each location of a telephone installed pursuant to a contract. The ordinance also specifies the factors that the commissioner is to consider when reviewing proposed telephone locations, such as obstruction of pedestrian traffic and creation of visual clutter. It further specifies the agencies and officials, including the local common council member, that the commissioner is to notify when reviewing a proposed location of an outdoor telephone on public property. Also required for installation of an outdoor pay telephone on public property is payment of a \$10 administrative fee per telephone. This fee is intended to be commensurate with the city's cost of administering the outdoor pay telephone regulations.

In addition to requirements for outdoor pay telephones placed on public property, this ordinance also establishes a requirement that outdoor pay telephones on private property be registered with the commissioner of building inspection or the commissioner's designee. A completed registration form is to be accompanied by a fee of \$10 per telephone. Again, this fee is intended to be commensurate with the costs incurred by the city in regulating outdoor pay telephones. Following receipt of the registration form and required fee, the commissioner is to notify the police chief and the local common council member of the proposed placement of an outdoor telephone on private property.

This ordinance also sets forth a procedure for police investigation of complaints from citizens, city departments and common council members regarding outdoor pay telephones. It specifies the conditions which make a particular telephone a nuisance, as well as the remedies that may be used to eliminate such a nuisance.

The ordinance further provides a procedure for ordering the removal of illegal outdoor pay telephones, an appeals process and the penalty for violations of the contract or registration requirements.

All outdoor pay telephones located on private property must comply with the requirements of this ordinance by July 1, 1994; outdoor pay telephones on public property must be in compliance by October 1, 1994.

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

Part 1. Section 81-79 of the code is created to read:

81-79. Outdoor Pay Telephones. 1. The fee for review of a proposed location of an outdoor pay telephone on public property shall be \$10. (See s. 98-3.)

2. The fee for registration of an outdoor pay telephone to be placed on private property shall be \$10. (See s. 98-5.)

Part 2. Chapter 98 of the code is created to read:

### CHAPTER 98 OUTDOOR PAY TELEPHONES

98-1. Definitions. In this chapter:

1. COMMISSIONER OF BUILDING INSPECTION means the commissioner of building inspection or a designated representative.

2. COMMISSIONER OF PUBLIC WORKS means the commissioner of public works or a designated representative.

3. OUTDOOR PAY TELEPHONE means any self-service, coin-operated or credit card-operated telephone which is available at all hours for use by the general public and is located outside of a building or structure used for residential or commercial purposes in addition to use of the

telephone. This term includes outdoor telephone booths, stands, drive-up and walk-up units, as well as telephones which are mounted on the exterior walls of buildings and structures.

4. OWNER means a person in whom is vested ownership, dominion, title or control of an outdoor pay telephone.
5. POLICE CHIEF means the chief of police or a designated representative.
6. PRIVATE PROPERTY means all real property except public right-of-way or other real property owned or controlled by the city of Milwaukee.
7. PUBLIC PROPERTY means public right-of-way or other real property owned or controlled by the city of Milwaukee.
8. SPECIAL TELEPHONE SERVICE FEATURES include the blocking of incoming calls to a telephone, installation of rotary telephones or telephones that do not permit "touch tone" dialing, restricting coin access to a telephone during late evening and night hours and such other service features as are acceptable to the commissioner of public works or the commissioner of building inspection.

98-3. Placement of Outdoor Pay Telephones on Public Property. 1. GENERAL PROHIBITION ON PLACEMENT. No person shall install, place or maintain an outdoor pay telephone on public property unless the owner of the telephone has entered into a contract with the city that grants to such owner the privilege of installing and maintaining outdoor pay telephones on public property.

2. COMMISSIONER OF PUBLIC WORKS AUTHORIZED TO ENTER INTO CONTRACTS. The commissioner of public works shall have the authority to enter into contracts that grant to one or more owners the privilege of installing and maintaining outdoor pay telephones on public property, subject to the terms and conditions set forth in the contract and in this section.

3. CONTRACT TERMS AND CONDITIONS. Any contract entered into pursuant to sub. 2 shall include the following terms and conditions:

a. The commissioner of public works shall approve the location of any outdoor pay telephone to be installed and maintained pursuant to the contract. Each request for review of a proposed telephone location shall be accompanied by a sketch showing the proposed location in relation to adjacent street, sidewalk and building lines. In determining whether to approve the installation and maintenance of an outdoor pay telephone at a particular location, the commissioner shall consider the following factors:

- a-1. Obstruction of pedestrian or vehicular traffic.
- a-2. The size of the telephone and any booth, stand or pole accompanying the telephone.
- a-3. The degree of accessibility of the proposed outdoor pay telephone to disabled persons.
- a-4. The amount of visual clutter that will result from installation of the proposed outdoor pay telephone.
- a-5. Any other factors specified in the contract.

b. When reviewing any proposed outdoor telephone location, the commissioner of public works shall notify the police chief, the city engineer, the division of traffic engineering and electrical services and the division of bridges and public buildings, as well as the common council member in whose district the telephone will be located, of the proposed telephone installation and inquire whether these officials and agencies know of any reasons why the installation of the outdoor pay telephone should not be approved.

c. Any outdoor pay telephone installed and maintained in accordance with the contract shall:

- c-1. Be well lighted at all times.
- c-2. Allow a "direct dial" of 911 without the need to first use a coin or a credit card or to dial the operator.
- c-3. Have a functioning coin return mechanism.
- c-4. Have affixed in a readily visible place a notice setting forth the name of the owner, the owner's telephone number for repair and the telephone number or serial number of the outdoor pay telephone.
- c-5. Have affixed in a conspicuous place and in large type the telephone numbers of the police department and the fire department.
- c-6. Be maintained in a properly functioning, clean, neat and attractive condition, free of rust and free of danger of electrical shock.
- c-7. Not be used for advertising signs or publicity of any sort.

d. A fee established under ch. 81 shall be paid prior to review of proposed telephone locations.

e. The commissioner of public works shall issue a permit for each telephone installation approved under the contract.

f. As part of the contract, the owner shall hold the city harmless from any and all liability for any reason whatsoever, occasioned upon the installation and use of such telephone, other than liability arising from any negligent act or omission which is solely attributable to the city, and

shall furnish, at the owner's expense, such general commercial liability insurance as shall protect the owner and the city from all claims for damage to property or bodily injury, including death, which may arise from installation, maintenance and operation of the telephone or in connection therewith. The policy shall name the city as an additional insured, shall be in an amount to be determined by the commissioner of public works, but not less than \$100,000 combined single limit for any injury to persons and/or damage to property, and shall provide that the insurance- coverage shall not be cancelled or reduced by the insurance carrier without 30 days' prior written notice to the city. A certificate of such insurance shall be provided to the commissioner at the time of execution of the contract and shall be maintained before and during the installation of any telephone in accordance with the contract and throughout the period that the contract for any telephone is in effect.

g. If the commissioner disapproves the installation of an outdoor public telephone at a particular location, the commissioner shall provide the owner with written notification of the reason or reasons for such disapproval and inform the owner of the appeal provisions of 98-9.

98-5. Registration of Outdoor Pay Telephones on Private Property. 1. GENERAL PROHIBITION ON PLACEMENT. No person shall install, place or maintain an outdoor pay telephone on private property unless the telephone has been registered in accordance with the requirements of this section.

2. APPLICATION FOR REGISTRATION. a. Prior to the installation or placement of an outdoor pay telephone on private property, the owner of the telephone shall submit to the commissioner of building inspection, on a registration form provided by the department of building inspection, the following information:

a-1. The name, address and telephone number of the owner of the telephone and the owner of the real property on which the telephone is to be located.

a-2. The serial number or telephone number, location and dimensions of each outdoor pay telephone and the dimensions of any telephone enclosure for which the registration is being made.

a-3. A description of the services provided to users of the outdoor pay telephone, including any special telephone service features.

a-4. The signature of the owner.

a-5. An affidavit that the proposed outdoor pay telephone or telephones will be in compliance with all relevant Wisconsin public service commission regulations.

b. One registration form may be submitted to include any number of outdoor pay telephones.

c. A fee established under ch. 81 shall accompany the registration form. Payment of this fee shall not be required for the registration of outdoor pay telephones located on property owned or controlled by governmental units other than the city of Milwaukee.

d. Upon receipt of the information required by par. a. and payment of the required fee, the commissioner of building inspection shall notify the police chief, as well as the common council member in whose district the telephone will be located, of the proposed telephone installation and inquire whether these officials know of any reasons why the installation of the outdoor pay telephone should not be approved.

e. Upon approving the registration of an outdoor pay telephone on private property, the commissioner of building inspection shall provide written verification to the owner that the telephone identified on the form has been registered with the city and shall provide the owner with a label identifying the registration number and location of the telephone. One such label shall be affixed to each telephone registered in accordance with this section.

f. The owner shall promptly notify the commissioner of building inspection in writing of any change in the information required by par. a. If the owner proposes to change the location of an outdoor pay telephone, a new registration form, together with the fee established under ch. 81, must be filed prior to the change in location.

g. If the commissioner denies a request for registration of an outdoor pay telephone, the commissioner shall provide the owner with written notification of the reason or reasons for such denial and inform the owner of the appeal provisions of 98-9.

98-7. Removal of Nuisance or Illegal Outdoor Pay Telephones. 1. TELEPHONES CONSTITUTING A PUBLIC NUISANCE. Upon receipt of a complaint from a citizen, the police department, the department of public works or the department of building inspection concerning an outdoor pay telephone, or upon request of the common council member in whose district an outdoor pay telephone is located, the police chief shall conduct an investigation into whether the installation and maintenance of the outdoor pay telephone constitutes a public nuisance. Upon determination by the police chief that a particular outdoor pay telephone which has been installed and maintained in accordance with s. 98-3 or 98-5, as the case may be, constitutes a public nuisance, the commissioner of public works (in the case of a telephone on public property) or the commissioner of building inspection (in the case of a telephone on private property) shall order that the telephone be removed at the owner's expense within 30 days or, provided the police chief concurs, that such special telephone service features as are acceptable to the commissioner shall be provided by the outdoor pay telephone within 30 days. Notification of such an order shall be sent by certified mail to the owner of the telephone and, in the case of a telephone on private property, the owner of such property. A particular outdoor pay telephone shall constitute a public nuisance when the police chief determines that one or more of the following conditions exist:

a. The outdoor pay telephone has been used in the commission of illegal drug transactions or other criminal activity.

b. The existence of the outdoor pay telephone has resulted in the congregation of persons who have made loud noises and other disturbances

that have disrupted persons residing near the telephone or have disrupted business enterprises located near the telephone.

c. The existence of the outdoor pay telephone has resulted in the congregation of persons who have interfered with pedestrian or vehicular traffic in the public right-of-way near the telephone.

d. Usage of the outdoor pay telephone between the hours of 1:00 a.m. and 5:00 a.m. is significantly and repeatedly above normal usage for similarly situated outdoor pay telephones during the same hours so as to indicate that the telephone is being used in the commission of illegal drug activity or other criminal activity.

2. ILLEGALLY INSTALLED OR MAINTAINED TELEPHONES. Any outdoor pay telephone installed or maintained in violation of the contract or registration requirements of this chapter shall be subject to an order issued by the commissioner of public works or the commissioner of building inspection requiring immediate removal at the owner's expense. Notification of an order of immediate removal shall be sent by certified mail to the owner of the telephone and, in the case of a telephone on private property, the owner of such property. The owner shall remove the outdoor pay telephone within 10 working days of issuance of the order and, in the case of a telephone on public property, shall restore the public property to its original condition.

3. REMOVAL OF TELEPHONE BY CITY. Any outdoor pay telephone which is not removed or retrofitted with special telephone service features within 30 days, as ordered in accordance with the provisions of sub. 1, or which is not removed within 10 working days, as ordered in accordance with the provisions of sub. 2, shall be subject to immediate removal by the city at the owner's expense. The owner shall reimburse the city for the cost of removing and storing the telephone before the telephone may be reclaimed by the owner. Such costs shall also include the cost of removing any installation ancillary to the outdoor pay telephone and the cost of restoring the public property to its original condition.

98-9. Appeals. 1. REQUEST FOR REVIEW OF ORDER OR DETERMINATION; SUBSEQUENT APPEAL. The owner of an existing or proposed outdoor pay telephone may appeal a removal or special feature installation order issued pursuant to s. 98-7 or a determination of the commissioner of public works or the commissioner of building inspection regarding approval of a contract, an individual telephone location or a telephone registration request by first requesting, in writing and within 30 days of the date on which such order or determination was made, that the city officer who made such order or determination review the order or determination. The owner may appeal the city officer's decision on such review to the administrative review appeals board within 30 days of receipt of notice of the city officer's decision on review. The board hearing shall be held within 15 days of the filing of the appeal. The board shall render a written decision to affirm, overturn, or grant exception from the order, requirement, decision or determination to which the appeal relates. All appeals made under this section shall be in conformance with the relevant provisions of s. 320-11 of this code and ch. 68, Wis. Stats.

2. AFFIRMATION OF ORDER TO REMOVE. If the administrative review appeals board affirms an order of the commissioner issued pursuant to s. 98-7, the owner shall have 3 working days to remove the outdoor pay telephone in question; if the owner fails to correct the violation within that time, the outdoor pay telephone may be removed by the appropriate commissioner at the owner's expense.

3. STAYING OF ORDERS. An order to remove a telephone or to install special telephone service features shall be stayed while the city officer is reviewing the initial order or while an appeal to the board is pending.

98-11. PENALTY. Whoever violates ss. 98-3-1 or 98-5-1 shall forfeit not more than \$100 for a first offense and not more than \$500 for a second or subsequent offense. Each day's violation constitutes a separate offense.

Part 3. Section 115-39 of the code is repealed.

Part 4. Section 200-53 of the code is created to read:

200-53. Registration of Outdoor Pay Telephones on Private Property. No person shall install, place or maintain an outdoor pay telephone on private property unless said telephone has been registered with the commissioner in accordance with the provisions of ch. 98.

Part 5. Implementation Dates. 1. a. No person may install or place an outdoor pay telephone on public property on or after the effective date of this ordinance [city clerk to insert date] unless the installation is made pursuant to a contract entered into in accordance with s. 98-3.

b. Beginning October 1, 1994, no outdoor pay telephone may remain on public property other than pursuant to a contract entered into in accordance with s. 98-3.

2. a. No person may install or place an outdoor pay telephone on private property on or after the effective date of this ordinance [city clerk to insert date] unless the telephone has been registered in accordance with s. 98-5.

b. Beginning July 1, 1994, no outdoor pay telephone may remain on private property unless it is registered in accordance with s. 98-5.

APPROVED AS TO FORM

Legislative Reference Bureau

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

IT IS OUR OPINION THAT THE ORDINANCE  
IS LEGAL AND ENFORCEABLE

Office of the City Attorney

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

LRB93489.2

JDO:jdo

3/15/94h s. 98-5.

APPROVED AS TO FORM

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3/15/94