



CITY OF ONALASKA

415 MAIN STREET
ONALASKA, WISCONSIN 54650-2953
www.cityofonalaska.com

Engineering Department
PHONE: (608) 781-9537
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March 4, 2022

Re: Registration of Right-of-Way Occupancy & Reporting Obligations

Dear Representative or Project Manager,

The City of Onalaska Chapter 2 of Title 6 of the Code of Ordinances was amended in 2021. This ordinance regulates the placement of facilities in City right-of-way. A copy of the ordinance can be www.cityofonalaska.com/ordinances and then clicking on Title 6 and going to Sec. 6.02.44.

Each person or company who has, or seeks to have, facilities in any right-of-way shall register with the Engineering Department and pay the fee set forth in Section 6.02.44(K).

1. **Registration-Contact Information**

a. Name, address, email address, telephone number, and facsimile numbers of a local representative or designee. Include an emergency phone number available at all times.

2. **Registration Fee** in the amount of \$80.00 to the City of Onalaska to recover the costs incurred by the City for processing and updating registration information. Checks can be made out to "City of Onalaska" and mailed to 415 Main Street, Onalaska, WI 54650. Please reference "Annual Utility Registration" with payment.

Failure to obtain a permit prior to commencing work will require the applicant to pay double the fees to the City prior to continuing. Failure to register or submit a construction and major maintenance plan may result in any or all of the following:

- a. Refusal of future permits; revocation, suspension or refusal to extend an existing permit.
- b. Forfeiture of not less than one hundred dollars (\$100) or more than six hundred dollars (\$600). Each day such violation or failure to comply continues shall be considered a separate offense.

Correspondence related to this matter should be sent to the Assistant City Engineer Kevin Schubert at kschubert@onalaskawi.gov or 415 Main Street, Onalaska, WI 54650.

agency owning or controlling any sewer, water main, conduit or other utility in or under said street or any real property abutting said street, that all such excavation work in such street must be completed within thirty (30) days. After such permanent improvement or repaving, no permit shall be issued to open or excavate said street for a period of five (5) years after the date of improvement or repaving unless, in the opinion of the Board of Public Works, conditions exist which make it absolutely essential that the permit be issued. Every effort shall be made to place gas, electric, telephone and television cable lines in street terraces.

- J. **Repair by City.** The City may elect to have the City or a contractor working for the City make the pavement repair for any street or sidewalk opening, in which case the cost of making such repair and of maintaining such repair for three (3) years shall be charged to the person making the street opening.

6.02.44 Construction, Obstructions, Occupancy and Encroachments

A. Purpose and Findings.

1. In the exercise of governmental functions, the City has priority over all uses of the public rights-of-way. The City desires to anticipate and minimize the number of obstructions and excavations taking place therein and to regulate the placement of facilities in the rights-of-way to ensure that the rights-of-way remain available for public services and safe for public use. The taxpayers of the City bear the financial burden for the upkeep of the rights-of-way and a primary cause for the early and excessive deterioration of its rights-of-way is the frequent use of such rights-of-way.
 2. The City finds increased use of the public rights-of-way and increased costs to the taxpayers of the City and that these costs are likely to continue into the foreseeable future.
 3. The City finds that occupancy and excavation of its rights-of-way causes costs to be borne by the City and its taxpayers, including but not limited to:
 - a. Administrative costs associated with public rights-of-way projects, such as registration, permitting, inspection and supervision, supplies and materials.
 - b. Management costs associated with ongoing management activities necessitated by public rights-of-way users.
 - c. Repair or restoration costs to the roadway associated with the actual excavation into the public rights-of-way.
 - d. Degradation costs defined as depreciation caused to the roadway in terms of decreased useful life due to excavations into the public rights-of-way.
 4. In response to the foregoing facts, the City hereby enacts this Section relating to the administration of and permits to excavate, obstruct and/or occupy the public rights-of-way. This Section imposes reasonable regulations on the placement and maintenance of equipment currently within its rights-of-way or to be placed therein at some future time. This Section also imposes reasonable restrictions on the placement of obstructions or other use of rights-of-way and is intended to complement the regulatory roles of state and federal agencies.
 5. The purpose of this Section is to provide the City with a legal framework within which to regulate and manage the public rights-of-way and to provide for the recovery of the costs incurred in doing so. This Section provides for the health, safety and welfare of the residents of the City as they use the rights-of-way of the City, as well as ensuring the structural integrity of the public rights-of-way.
- B. **Administration.** The City Engineer or their designee is responsible for the administration of the rights-of-way, and the permits and ordinances related thereto.
- C. **Reservation of Regulatory and Police Powers.** The City, by the granting of a permit or registration to excavate, obstruct and/or occupy the rights-of-way, or by registering a person under this Section does not surrender or in any extent lose, waive, impair, or lessen the lawful powers and rights which it has now or may be hereafter granted to the City under the Constitution and statutes of the state to regulate the use of the rights-of-way by the permittee; and the permittee by its acceptance of a permit to excavate, obstruct and/or occupy the rights-of-way or by registration under this Section agrees that all lawful powers and rights, regulatory powers, or police power, or otherwise as are or the same may be from time to time vested in or reserved to the City, shall be in full force and effect and subject to the regulatory and police powers of the City to adopt and enforce general ordinances necessary to the safety and welfare of the public and is deemed to agree to comply with all applicable general law, and ordinances enacted by the City pursuant to such powers.
- D. **Obstructions and Encroachments Prohibited.** No person shall encroach upon or in any way obstruct or encumber any street, alley, sidewalk, public grounds or land dedicated to public use, or any part thereof, or permit such encroachment or encumbrance to be placed or remain on any public way adjoining the premises of which they are the owner or occupant, except as set forth in this Section. The following are exempt from the requirements of this Section:

1. Building materials for the period authorized by the Building Inspector and City Engineer which shall not obstruct more than one-half (1/2) of the sidewalk or more than one-third (1/3) of the traveled portion of the street and which do not interfere with the flow in the gutters.
2. Excavations and openings permitted under Sections 6.02.42. and 6.02.43. of this Title.
3. Signs or clocks attached to buildings which project not more than six (6) feet from the face of such building and which do not extend below any point ten (10) feet above the sidewalk, street or alley.
4. Awnings and/or canopies which do not extend below any point eight (8) feet above the sidewalk, street or alley.
5. As allowed in Section 14.02.16.E.2. which states that projecting signs shall not extend closer than six (6) feet to the edge of the public rights-of-way or extend closer than ten (10) feet to a side parcel line. Properties located along Main Street between State Highway 35 and 4th Avenue and located along State Highway 35 from Quincy Street to Oak Forest Drive shall be allowed to install a sign where the lowest portion thereof is a minimum of ten (10) feet above the level of the public sidewalk or public pedestrian thoroughfare or extend beyond four (4) feet over the public sidewalk or public pedestrian thoroughfare.

E. Permit to Excavate in the Rights-of-Way.

1. Except as otherwise provided in this Section or other chapters of this Code, no person shall excavate any rights-of-way without first having obtained an excavation permit from the Engineering Department. The City and its contractors shall not be required to obtain a permit, provided such work is being done under the authorization of the City Engineer. A copy of any permit issued under this Section shall be made available at all times by the permittee at the indicated work site and shall be available for inspection by the Engineering or Inspection Departments upon request.
2. Application for a permit shall be made to the Engineering Department. Permit applications shall contain and will be considered complete only upon compliance with the requirements of the following provisions:
 - a. Registration with the Engineering Department if required by this Section.
 - b. Submission of a completed permit application form, including all required attachments, and scaled drawings showing the location and area of the proposed project and the location of all existing and proposed facilities that are part of applicant's proposed project.
 - c. Payment of all fees due to the City for applicable permit fees, any unpaid fees or costs from prior excavations and any loss, damage or expense suffered by the City because of applicant's prior excavations of the rights-of-way or any emergency actions taken by the City.
3. The Engineering Department shall, pursuant to Sec. 182.017(9), Wis. Stats., approve or deny a permit application no later than sixty (60) days after receipt of the application. If the Engineering Department fails to act within the specific timeframe, the application is considered approved. If the Engineering Department denies a permit application, the Engineering Department shall provide the applicant a written explanation of the reasons for the denial at the time of denial.
4. **Permit Inspections.** Permittee shall notify the Engineering Department when work under the permit is begun and completed. Permittee shall make the work site available to the department and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work. At the time of inspection, the City may order the immediate cessation of any work which poses a threat to the life, health, safety or well-being of the public. The City may issue an order to the registrant or permittee for any work that does not conform to the applicable City standards, conditions or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten (10) days after issuance of the order, the registrant or permittee shall present proof to the Engineering Department that the violation has been corrected. If such proof has not been presented within the required time, the Engineering Department may revoke the permit pursuant to Sec. 6.02.44.F.
5. **Permit Fee.** The excavation permit fee shall be established by the Engineering Department and shall be as set forth on the City of Onalaska Fee Schedule. This fee shall recover administrative and inspection costs, as well as degradation costs should the permittee choose to repair rather than restore the rights-of-way.
 - a. Payment of said fees shall be collected prior to issuance of the permit. However, the City Engineer may, with the advice and consent of the comptroller, establish a fee collection process from governmental agencies and private utilities in order to expedite the permitting system and recognize that certain excavations are deemed emergencies. Fees shall not be waived unless the work involved is a direct result of the City Engineer's demand that a plant owned by a utility be removed or relocated or unless waived by the board of public works on appeal.

- b. The fee for a permit issued after commencing work, except in cases of emergency as determined by the City Engineer, shall be double the fees set forth herein. This permit fee shall be in addition to any forfeiture provided elsewhere in this Section.
 - c. For those permit applications which provide for a substantial undertaking of excavation within the public rights-of-way attended by disruption of the general public and traffic, the City Engineer is authorized to assess the actual cost of the City staff's time engaged in the review and inspection of the anticipated work multiplied by a factor determined by the respective department to represent the City's cost for statutory expense, benefits, insurance, sick leave, holidays, vacation and similar benefits, overhead and supervision, said factor not to exceed 2.0, plus the cost of mileage reimbursed to City employees which is attributed to the work, plus all consultant fees associated with the work at the invoiced amount plus ten percent (10%) for administration.
 - d. The City and its contractors shall not pay permit or degradation fees for excavations due to general government functions.
 - e. Permit fees paid for a permit that the Engineering Department has revoked are not refundable.
6. **Compliance with Other Laws.** Obtaining a permit to excavate and/or occupy the rights-of-way does not relieve permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by any other city, county, state, or federal rules, laws or regulations. A permittee shall comply with all requirements of local, state and federal laws. A permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the rights-of-way pursuant to its permit, regardless of who does the work.
- F. **Revocations, Suspensions and Refusals to Issue or Extend Permits.**
- 1. The Engineering Department may refuse to issue a permit or may revoke, suspend or refuse to extend an existing permit if it finds any of the following grounds:
 - a. The applicant or permittee is required to be registered per Sec. 6.02.44.K and has not done so;
 - b. Issuance of a permit for the requested date would interfere with an exhibition, celebration, festival or other event;
 - c. Misrepresentation of any fact by the applicant or permittee;
 - d. Failure of the applicant or permittee to maintain required bonds and/or insurance;
 - e. Failure of the applicant or permittee to complete work in a timely manner;
 - f. The proposed activity is contrary to the public health, safety or welfare;
 - g. The extent to which rights-of-way space where the permit is sought is unavailable as determined by the City Engineer or their designee;
 - h. The competing demands for the particular space in the rights-of-way;
 - i. The availability of other locations in the rights-of-way or in other rights-of-way for the facilities of the permittee or applicant;
 - j. The applicability of ordinances or other regulations of the rights-of-way that affect location of facilities in the rights-of-way;
- G. **Rights-of-Way Repair and Restoration.**
- 1. The permittee shall be required to repair the public rights-of-way to Engineering Department specifications, subject to inspection and acceptance by the Department, and to pay a degradation fee, as per Sec. 6.02.44.H. unless the permittee elects to restore the rights-of-way pursuant to Sec. 6.02.44.I. In addition to repairing its own work, the permittee must repair the general area of the work, and the surrounding areas, including the paving and its foundations, to the specifications of the Engineering Department. The Engineering Department shall inspect the area of the work and accept the work when it determines that proper repair has been made, per specifications of the City.
 - 2. **Guarantees.** The permittee guarantees its work and shall maintain it for thirty-six (36) months following its completion. During this period, it shall, upon notification from the Engineering Department, correct all work to the extent necessary, using the method required by the Department. Said work shall be completed within ten (10) calendar days of the receipt of the notice from the Engineering Department, not including days during which work cannot be done because of circumstances constituting force majeure.
 - 3. **Failure to repair/restore.** If the permittee fails to repair/restore the rights-of-way in the manner and to the condition required by the Engineering Department, or fails to satisfactorily and timely complete all work required by the Department, the Department at its option may do such work. In that event the permittee shall pay to the City, within thirty (30) days of billing, the cost of repairing/restoring the rights-of-way to the City's standard.

- H. **Degradation.** The general formula for computing the degradation fee shall be the cost per square yard for street, overlay and seal coat multiplied by the appropriate depreciation rate for that street multiplied by the area of the patch. The area of the patch shall be calculated by adding one (1) foot to each side of the actual street cut.
- I. **Restoration in lieu of Repair and Degradation.** The permittee may elect to restore the excavation and surrounding pavement in lieu of repair and a degradation fee. The restoration shall be in accordance with the standard specifications for public works construction and the plans and specifications of the City Engineer or their designee.
- J. **Appeals.** Any person aggrieved by a decision of the Engineering Department revoking, suspending, refusing to issue or refusing to extend a permit may file a request for review with the Board of Public Works. A request for review shall be filed within ten (10) days of the decision being appealed. Following a hearing, the Board of Public Works may affirm, reverse or modify the decision of the Engineering Department.
- K. **Registration for Rights-of-Way Excavation, Construction or Permanent Occupation.**
1. Each person who has, or seeks to have, facilities located in any rights-of-way shall register with the Engineering Department on such form as set forth by the Department and pay the fee set forth on the City of Onalaska Fee Schedule. Registration will consist of providing application information and paying a registration fee. This Section shall not apply to those persons who have facilities in the rights-of-way pursuant to a franchise or other agreement.
 2. No person may construct, install, maintain, repair, remove, relocate or perform any other work on, or use any equipment or any part thereof in any rights-of-way unless that person is registered with the Engineering Department or is a prequalified contractor.
 3. Nothing herein shall be construed to repeal or amend the provisions of a City Ordinance requiring persons to plant or maintain the street terrace in the area of the rights-of-way between their property and the street curb or pavement, sidewalks or driveways or other similar activities. Persons performing such activities shall not be required to obtain any permits under this Section.
- L. **Work Done without a Permit.**
1. Each registrant shall immediately notify the City by verbal notice on an emergency phone number provided by the City of any event regarding its facilities that it considers to be an emergency. The registrant may proceed to take whatever actions are necessary to respond to the emergency. Within two (2) business days after the occurrence of the emergency the registrant shall apply for the necessary permits, pay the fees associated therewith and otherwise fully comply with the requirements of this Section.
 2. If the City becomes aware of any emergency regarding a registrant's facilities, the Engineering Department may attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. The City may take whatever action it deems necessary to protect the public safety as a result of the emergency, the cost of which shall be borne by the registrant whose facilities occasioned the emergency.
 3. Except in an emergency, any person who, without first having obtained the necessary permit, excavates a rights-of-way must subsequently obtain a permit, and shall in addition to any penalties prescribed by ordinance, pay double the normal fee for said permit, pay double all the other fees required by this Section or other chapters of this Code, deposit with the department the fees necessary to correct any damage to the rights-of-way and comply with all of the requirements of this article.
- M. **Issuance of Permit for Obstructions.**
1. The City Engineer may issue a permit which allows property owners to place certain fixtures on sidewalks which immediately adjoin their property. In determining if a permit shall be authorized, all of the following requirements must be met:
 - a. The property must be located in an area with a non-residential zoning district.
 - b. The fixture(s) shall not be physically attached to the sidewalk, any street fixture or any adjacent building, and shall be of a temporary design.
 - c. The placement of the fixture shall not impede the flow of pedestrian traffic on the sidewalk. In no event shall the fixture reduce the unobstructed sidewalk width to less than four (4) feet at any point.
 - d. The property owner shall provide the City with proof of liability insurance coverage. The insurance coverage shall be an amount of not less than One Million Dollars (\$1,000,000.00) per occurrence and the policy shall specifically state that it includes coverage for the fixtures located on the City sidewalks. In addition, the City shall be identified as a third-party insured.
 - e. The fixture(s) shall not be for sale nor shall the fixture(s) be used for the sale of merchandise, except if adjacent to the property and for no more than three (3) consecutive days up to four (4) times per calendar year for a sidewalk sale, specifically excluded are all forms of vending machines, vendors carts or tables, etc.

- f. The property owner whose property adjoins the City sidewalk shall file the permit application or authorize the occupant of the subject property to file the permit application.
 - g. The property owner or the occupant of the subject property shall display the approved permit in the window of the building so that it can be seen from the sidewalk.
 - h. Payment of a fee as set forth on the City of Onalaska Fee Schedule.
2. Upon reviewing the permit application if it is determined by the City Engineer that all of the above requirements have been met, they shall issue the permit. Said permit may be revoked by the Board of Public Works, Director of Public Works, Building Inspector or any City law enforcement officer at any time when one (1) or more of the above requirements are not complied with or if they determine that the placement of the fixture(s) endangers the safety of the pedestrians who utilize the sidewalks.
- N. Removal by City for Obstruction and Encroachments Located In City Sidewalks, Streets, Alleys, Public Grounds or Lands Dedicated for Public Use.** In addition to any other penalty imposed, if any City enforcement official determines that a City sidewalk, street, alley, public grounds or land dedicated for public use is unlawfully obstructed or encumbered in violation of this Section, they shall issue a written notice to the property owner or occupant of the premises which adjoins the obstructed public area directing that the obstruction be removed within twenty-four (24) hours.
- O. Failure to Remove Obstruction.**
- 1. If the owner or occupant fails to remove the obstruction within the time period established in Subsection N. above respectively, any City enforcement official shall cause the removal of the obstruction, keeping an account of the expense of the abatement, and such expenses shall be charged to and paid by such property owner. Notice of the bill for abatement of the obstruction shall be mailed to the owner of the premises and shall be payable within ten (10) calendar days from receipt thereof. Within sixty (60) days after such costs and expenses are incurred and remain unpaid, the City Treasurer shall enter those charges onto the tax roll as a special tax as provided by the State Statutes.
 - 2. The failure of the City Treasurer to record such claim or to mail such notice or the failure of the owner to receive such notice shall not affect the right to place the City expense on the tax rolls for unpaid bills for abating the obstruction as provided for in this Section.
- P. Discontinued Operations.** A registrant who has determined to discontinue its operations in the City must either:
- 1. Provide information satisfactory to the Engineering Department that the registrant's obligations for its facilities under this Section have been lawfully assumed by another registrant; or
 - 2. Submit to the Engineering Department a proposal and instruments for dedication of its facilities to the City. If a registrant proceeds under this Section, the City may, at its option:
 - a. Accept the dedication for all or a portion of the facilities;
 - b. Require the registrant, at its own expense, to remove the facilities in the rights-of-way at ground or above ground level; or
 - c. Require the registrant to post a bond or provide payment sufficient to reimburse the City for reasonably anticipated costs to be incurred in removing the facilities.
 - 3. However, any registrant who has unusable and abandoned facilities in any rights-of-way shall remove it from that rights-of-way within two (2) years, unless the Engineering Department waives this requirement.
- Q. Abandoned Facilities.** Facilities of a registrant who fails to comply with this Section, and which, for two (2) years, remains unused shall be deemed to be abandoned. Abandoned facilities are deemed to be a nuisance. However, this Section shall not apply to a public utility that is required to follow the provisions of Sec. 196.81, Wis. Stats. In addition, to any remedies or rights it has at law or in equity the City may, at its option:
- 1. Abate the nuisance;
 - 2. Take possession of the facilities; or
 - 3. Require removal of the facilities by the registrant, or the registrant's successor in interest.
- R. Violations.** Any person who violates this Section or fails to comply with the provisions of this Section shall be subject to a fine of not less than Two Hundred Dollars (\$200.00) nor more than Six Hundred Dollars (\$600.00). Each day such violation or failure to comply continues shall be considered a separate offense. In addition to the fine, any person who violates this Section shall be liable for any and all costs incurred by the City in removing obstructions and/or restoring the rights-of-way to its condition prior to the occupancy or obstruction.

6.02.45 Street Privilege Permit

- A. When Required.** Permits for the use of the streets, alleys, sidewalks or other public ways or places of the City may be granted to applicants by the City as per Sec. 66.0425, Wis. Stats. for the purpose of moving any building, structure, or other large items which encroaches on more than one (1) lane of