



# City of West Allis

## Legislation Text

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**File #:** O-2016-0048, **Version:** 1

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Ordinance to Repeal and Replace Section 11.11 of the West Allis Revised Municipal Code Relating to High Voltage Wires and Poles.

The Common Council of the City of West Allis do ordain as follows:

PART I. Section 11.11 of the Revised Municipal Code of the City of West Allis is hereby Repealed and Replaced to read as follows:

### 11.11 RIGHT-OF WAY MANAGEMENT.

#### (1) Registration for Right-of-Way Occupancy.

(a) Registration. Each service, utility service or Right-of-Way user who occupies, uses, or seeks to occupy or use, the Right-of-Way, including by lease, sublease or assignment, or who has, or seeks to have, Facilities located in any Right-of-Way shall register with the City Engineer and pay the fee set forth in Section 11.11 (3) of this Code. Registration consists of providing application information and paying a registration fee. This section shall not apply to those persons exclusively utilizing Facilities provided by another Right-of-Way user.

(b) Registration Prior to Work. No persons may construct, install, repair, remove, relocate, or perform any other work on, or use any Facilities or any part thereof in any Right-of-Way without first being registered with the City Engineer.

#### (2) Registration Information.

(a) Information Required. The information provided to the City Engineer at the time of registration shall include, but not be limited to:

Each registrant's name, Diggers Hotline registration certificate number, address and e-mail address, if applicable, and telephone and facsimile numbers.

The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee 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 the registration.

All Right-of Way users shall demonstrate to the satisfaction of the City the financial capability to cover any liability that might arise out of their presence in the Right-of-Way. If the person is a corporation, a Limited Liability Company or Limited Liability Partnership, a copy of any certificate required to be filed under Wisconsin Statutes as recorded and certified to by the Secretary of State.

A copy of the person's certificate of authority from the Public Service Commission of Wisconsin or other applicable state or federal agency, where the person is lawfully required to have such certificate from said commission or other State or Federal agency.

Execution of an indemnification agreement in a form prescribe by the City Engineer, which is consistent with, and shall not exceed the obligations provide in, Section 11.11(12)

(b) Annual Report to be Filed. Any person occupying or using in, upon, or beneath the surface of any Right-of-Way within the City of West Allis any Facilities and/or underground construction, as herein set forth, in pursuance of any permit, resolution, ordinance or franchise, is hereby directed to file with the City Engineer complete drawings, plans and profiles showing the location, character and extent of all Facilities and/or underground construction on or before the first day of April each year.

(c) Notice of Changes. The registrant shall keep all of the information listed above current at all times by providing to the City Engineer information as to changes within fifteen (15) days following the date on which the registrant has knowledge of any change.

### (3) Registration Fee

(a) Annual Registration Fee. Each registrant shall annually renew its registration or discontinue and properly abandon its Facilities. The City Engineer shall establish the registration fee in an amount sufficient to recover the costs incurred by the City for processing registrants. This fee shall be computed as the average of labor cost, indirect costs, and other costs associated with the registration.

(b) Fee Computation. The City Engineer may recalculate and establish a new Registration Fee each year as established in Section 11.18.

(4) Permit Requirement.

(a) Special Right-of-Way Permit Required. Except as otherwise provided in Section 11.11, or other Chapters of the Revised Municipal Code, no person shall excavate, obstruct or occupy the Right-of Way or place Facilities in a Right-of-Way without first obtaining a Special Right-of-Way permit (see Sub-Section 11.18 (3)) from the City Engineer. No person shall engage or continue in construction in the Right-of-Way beyond the date or area specified in the permit, unless such person makes application for a permit to perform such additional work before the expiration of the initial.

(b) Permit Display. A copy of any permit issued under Section 11.11 shall be made available at all times by the Permittee (person to whom a permit to excavate or occupy a Right-of-Way has been granted by the City under Section 11.11) at the indicated work site and shall be available for inspection by the City Engineer upon request.

(5) Permit Application

(a) Application for a permit shall be made to the City Engineer. Permit applications shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:

i) Registration with the City Engineer as required by Sub-Section 11.11(1);

ii) Submission of a completed permit application form, including the following:

(A) If the proposed project involves the installation of poles or towers the applicant shall submit scaled drawings of the poles or towers and all proposed attachments. Details with descriptions of all attachments shall

be shown on submitted drawings.

(B) The applicant shall submit drawings, plans and profiles identifying in detail the location of the proposed project and any affected Right-of-Way, public utility easements, and the location of all existing and proposed Facilities within the project area in addition to installation details;

(C) If the proposed project involves the installation of poles or towers in the Right-of-Way, the applicant must submit evidence sufficient to demonstrate that the applicant is prohibited from using existing poles or towers (either owned by the applicant or a third party) because such use is technically infeasible, economically prohibitive, or prohibited by law.

(D) If the proposed project involves the installation of poles or towers in the Right-of-Way that are greater than 10 (ten) feet taller than existing poles or towers nearby in the Right-of-Way, the applicant must submit evidence to demonstrate that;

1. the greater height is required to accomplish the applicant's purpose;
2. the applicant is prohibited from using existing poles or towers (either owned by applicant or a third party) to accomplish its purposes because such use is technically infeasible, economically prohibited, or prohibited by law; and
3. The pole or tower, due to its height and size, poses no greater danger to health, safety, and welfare of the public than existing poles or towers nearby in the Right-of-Way.

iii) Payment of all money due to the City for:

(A) Applicable permit fees and costs as established in Section 11.18;

(B) Unpaid fees or costs for prior permits or construction by the applicant; or

(C) Any loss, damage, or expense suffered by the City including any emergency actions taken by the City because of applicant's prior permits or construction in the Right-of-Way.

(D) A certified check or cashier's check in an amount to be determined by the City Engineer, payable to the City of West Allis. This check will be returned after the proper restoration of the Right-of-Way has been completed. The applicant must inform the City Engineer when all restoration work has been completed and allow the City Engineer 3 business days for final inspection. This provision may be waived by the City Engineer when circumstances deem it appropriate.

iv) A statement that the applicant will comply with all local, State and Federal codes including but not limited to safety, building, traffic control codes and the Federal Highway Administration Manual of Uniform Traffic Control devices (MUTCD) and Wisconsin Supplement to the Manual of Uniform Traffic Control

Devices.

- v) Furnish a certificate of liability insurance compliant with standards of the City Engineer.

(6) Right-of-Way Repair and Restoration. In addition to repairing its own work, the permittee must restore the general area of the work and the surrounding areas, including the paving and its foundations, if any, to the specifications of the City. The City shall inspect the area of the work and accept the work when it determines that proper restoration has been made per specifications of the City.

(a) Standards. The permittee shall perform repairs and restoration according to the specifications and with the materials specified by the City. The City shall have the authority to prescribe the manner and extent of the restoration and may do so in written procedures of general application or on a site-specific basis.

(b) Guarantees. The permittee guarantees its work and shall maintain it for thirty-six (36) months following its completion, except for organic material, which shall be maintained for twelve (12) months. During either period, the permittee shall, upon notification from the City, correct all repair work to the extent completed within ten (10) calendar days of the receipt of the notice from the City, not including days during which work cannot be done because of circumstances constituting force majeure.

(c) Failure to Restore. If the permittee fails to restore the Right-of-Way in the manner and to the condition required by the City or fails to complete satisfactorily and timely all restoration required by the City, the City at its option may do such work. In that event the permittee shall pay to the City, within 30 days of billing, the cost of restoring the Right-of-Way. If the permittee fails to pay as required, the City will apply the amount filed by the permittee under Sub-Section 11.11(5)(a)(iii)(B) above to the cost of restoration and may exercise its right to refuse future permits.

(7) Inspection.

(a) Notice of completion. When the work under any permit issued hereunder is completed, the permittee shall notify the City Engineer.

(b) Site inspection. The permittee shall make the work site available to the City and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.

(c) Authority of City Engineer. 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 for any work which does not conform to the applicable 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 shall present proof to the City Engineer that the violation has been corrected. If such proof has not been presented within the required time, the City may revoke the permit.

(8) Revocations, Suspensions, and Refusals to Issue Permits.

(a) Grounds. The City may refuse to issue a permit or may revoke or suspend an existing permit if it finds any of the following grounds:

- i) The applicant or permittee is required by Section 11.11(1) to be registered and has not done so or the permit application is otherwise incomplete;
- ii) The applicant or permittee is seeking to perform work not included in its permit application (see Section 11.11(5)) which work was reasonably foreseeable by the applicant or permittee at the time said permit was filed;
- iii) Issuance of a permit for the requested date would interfere with an exhibition, celebration, festival, or other event;
- iv) Misrepresentation of any fact by the applicant or permittee;
- v) Failure of the applicant or permittee to complete work in a timely manner;
- vi) Failure of the permittee to maintain the Facility in an acceptable condition;
- vii) The proposed activity is contrary to the public health, safety or welfare;
- viii) The extent to which space is available in the Right-of-Way for which the permit is sought and/or the competing demands for the particular space in the Right-of-Way;
- ix) The availability of other locations in the Right-of-Way or in other Rights-of-Way for the Facilities of the permittee or applicant;
- x) If the permittee or applicant proposes to install a new pole or tower in the Right-of-Way, the availability

of other existing poles or towers owned by the permittee or applicant or by a third party;

xi) The applicability of ordinances or other regulations of the Right-of-Way that affect location of Facilities in the Right-of-Way;

xii) The condition and age of the Right-of-Way, and whether and when it is scheduled for total or partial reconstruction; or

xiii) The applicant or permittee is otherwise not in full compliance with the requirements of Section 11.11 or State or Federal law.

(b) Appeals. Any person aggrieved by a decision to revoke, suspend or refuse to issue a permit may file a request for review first with the City Engineer and then with the Board of Public Works. A request for review by the City Engineer shall be filed within ten (10) days of the decision being appealed. An appeal to the Board shall be filed within five (5) days of receipt of the City Engineer's determination. The Board, in its discretion and depending on the circumstances, may conduct a hearing. On appeal, the initial decision may be affirmed, reversed or modified.

(9) Fall Radius/ Breakaway Requirements.

(a) Poles and other utility structures over 60 (sixty) feet in height shall be located so that all residential, commercial, retail or other occupied buildings are outside the fall radius of the structure.

(b) Rigid non-breakaway poles and other utility structures shall be located a minimal of 10 (ten) feet from roadway curbs or shoulders and behind existing or future sidewalks.

(10) Relocation of Facilities. Except as prohibited by State or Federal law, a registrant must promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its Facilities in the Right-of-Way whenever the City Engineer requests such removal and relocation, and shall restore the Right-of-Way to the same condition it was in prior to said removal or relocation. The City Engineer may make such request to prevent interference by the Company's Facilities: (a) when public health, safety and welfare require it, (b) when the safety and convenience of ordinary travel over the Right-of-Way requires it, (c) with a public improvement undertaking by the City, (d) with a present or future City use of the Right-of-Way, or (e) with an economic development project in which the City has an interest or investment.

Notwithstanding the foregoing, a registrant shall not be required to remove or relocate its Facilities from any Right-of-Way which has been vacated in favor of a non-governmental entity unless and until the reasonable

costs thereof are first paid to the registrant therefor.

(11) **Interference with Other Facilities during Municipal Construction.** When the City performs work in the Right-of-Way and finds it necessary to maintain, support, shore, or move a registrant's Facilities, the City shall notify the local representative. The registrant shall meet with the City's representative within 24-hours and coordinate the protection, maintenance, supporting, and/or shoring of the registrant's Facilities. The registrant shall accomplish the needed work within 72-hours, unless the City agrees to a longer period. In the event the registrant does not proceed to maintain, support, shore, or move its Facilities, the City may arrange to do the work and bill the registrant, said bill to be paid within thirty (30) days. The City may also impose alternate delay damage charges.

(12) **Indemnification.** By accepting a permit under Section 11.11, the person or persons to whom a permit is issued agrees to indemnify, defend, and hold harmless the City, its officers, boards, committees, commissions, elected officials, employees and agents ( collectively, "Indemnified Parties"), from and against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon an Indemnified Party for damages because of bodily injury, including death, at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the person or persons to whom a permit is issued acts or omissions in exercise of its right under this permit, whether caused by or contributed to by the City or its agents or employees.

(13) **Abandoned Facilities**

(a) **Discontinued Operations.** A registrant who has determined to discontinue its operations in the City must either:

i) Provide information satisfactory to the City Engineer that the registrant's obligations for its Facilities under Section 11.11 have been lawfully assumed by another registrant; or

ii) Submit to the City Engineer a proposal and instruments for dedication of its Facilities to the City. If the registrant proceeds under this clause, the City may, at its option:

(A) accept the dedication for all or portion of the Facilities; or

(B) require the registrant, at its own expense, to remove the Facilities in the Right-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.

However, any registrant who has unusable and abandoned Facilities in any Right-of-Way shall remove it from that Right-of-Way within two years, unless the City Engineer waives this requirement.

(b) Abandoned Facilities. Facilities of a registrant who fails to comply with Section 11.11(13)(a), and which for two (2) years remain unused, shall be deemed as abandoned. Abandoned Facilities are deemed to be a nuisance. In addition to any remedies or rights it has at law or in equity, the City may, at its option(i) abate the nuisance, (ii) take possession of the Facilities, or (iii) require removal of the Facilities by the registrant, or the registrant's successor in interest.

(c) Public Utilities. Section 11.11 (12) shall not apply to a Public Utility that is required to follow the provisions of Wisconsin Statute §196.81.

#### (14) Reservation of Regulatory and Police Powers.

The City, by the granting of a permit to excavate, obstruct and/or occupy the Right-of-Way, or by registering a person under Section 11.11, does not surrender or to any extent lose, waive, or impair, 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 of Wisconsin to regulate the use of the Right-of-Way by the permittee; and the permittee by its acceptance of a permit to excavate, obstruct and/or occupy the Right-of-Way or of registration under Section 11.11 agrees that all lawful powers and rights, regulatory power, 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 exercise thereof by the City at any time. A permittee or registrant is deemed to acknowledge that its rights are 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.

#### (15) Severability.

If any section, subsection, sentence, clause, phrase, or portion of Section 11.11 is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

PART II. All ordinances or parts of ordinances contravening the provisions of this ordinance are hereby repealed.

PART III. This ordinance shall take effect and be in force from and after its passage and publication.