

**CHAPTER 98
USE AND OCCUPANCY OF CITY-OWNED CONDUIT
AND OTHER FACILITIES**

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98-1. Definitions. In this chapter:

1. **ALTERNATIVE TELECOMMUNICATIONS UTILITY** has the meaning given in s. 196.01(1d), Wis. Stats.
2. **CABLE OPERATOR** or **OPEN VIDEO SYSTEM OPERATOR** means any person who delivers cable service.
3. **CABLE SERVICE** has the meaning given in 47 USC 522 (5).
4. **CABLE TELEVISION SYSTEM** or **CABLE SYSTEM** has the meaning given under 47 U.S.C. 522 (7).
5. **CABLE TELEVISION TELECOMMUNICATIONS SERVICE PROVIDER** means a person who provides one or more telecommunications services.
6. **COMMUNICATIONS CONDUIT SYSTEM** or **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: main conduit, underground dips such as short sections of conduit under or along roadways, driveways, bridges, parking lots; and similar conduit installation; laterals to poles or into buildings; ducts; sweeps and manholes.
7. **CONDUIT DUCT** means a standard 4-inch passage or opening within the communications conduit system.

8. **FRANCHISE** or **LICENSE** means an initial authorization or renewal thereof, issued by the state, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a video services system.

9. **OPEN VIDEO SYSTEM** shall mean a facility consisting of a set of transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community and which is regulated under 47 U.S.C. 573.

10. **PERMITTEE** shall mean any person to whom a permit to occupy city-owned conduit has been granted under this chapter.

11. **PERSON** means a corporation, company, association, firm, partnership, limited liability company, limited liability partnership and individuals and their lessors, transferees and receivers.

12. **PUBLIC SERVICE CORPORATION** has the meaning given under s. 184.01(2), Wis. Stats.

13. **PUBLIC UTILITY** has the meaning given under s. 196.01 (5), Wis. Stats.

14. **SERVICE** is used in its broadest and most inclusive sense.

15. **TELECOMMUNICATIONS** means the transmission between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

16. **TELECOMMUNICATIONS CARRIER** means any person who owns, operates or controls any plant or equipment used to furnish telecommunications services within the state directly or indirectly to the public but does not provide basic local exchange service, except on a resale basis. "Telecommunications carrier" does not include an alternative telecommunications utility, a cellular mobile radio telecommunications utility or any other mobile radio telecommunications utility as such terms are defined in s. 196.01, Wis. Stats.

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17. TELECOMMUNICATIONS PROVIDER means any person who provides telecommunications services.

18. TELECOMMUNICATIONS SERVICE means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used. "Telecommunications service" does not include cable television service or broadcast service.

19. TELECOMMUNICATIONS UTILITY has the meaning given under s. 196.01 (10), Wis. Stats.

20. TRANSMISSION FACILITY is used in its most inclusive sense and means any cables, wires, lines, towers, wave guides, optical fibers or other fiber optic cables, laser equipment and any associated equipment or facilities designed and constructed for the purpose of producing, receiving, amplifying, transmitting or distributing audio, video, data and other forms of electronic signals or light waves to and from persons or locations within the city.

21. VIDEO SERVICE has the meaning given in s. 66.0420(2)(y), Wis. Stats.

22. VIDEO SERVICE PROVIDER has the meaning given in s. 66.0420(2)(zg), Wis. Stats.

98-3. Applicability. This chapter applies to all transmission facilities used by any person who provides cable services, video services or telecommunications services, including but not limited to alternative telecommunications utilities; public utilities; telecommunications utilities; telecommunications carriers and telecommunications providers; public service corporations; cable television telecommunications service providers; cable television service providers; video service providers; and open video system service providers.

98-5. Use to be Approved By Common Council. Before any person uses or occupies any city-owned conduit duct for the purpose of providing cable services or telecommunications services, such person shall register and submit to department of public works the location of the lines of the facilities to be used or occupied. The department of public works shall determine

the availability of excess capacity in the conduit system, and the time and manner for such use or occupancy, and shall forward the registration to the common council. No portion of the conduit system may be used or occupied without having first obtained permission from the common council.

98-7. Registration. Any person who seeks to occupy or use a city-owned conduit or facility shall register with the department of public works. Registration shall consist of payment of the registration fee required by s. 98-11 providing information to and as required by the department, execution of a written agreement to pay an occupancy and use fee, and compliance with the provisions of the agreement and city code relating to the use of rights-of-way.

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

1. The registrant's name, address and e-mail address, if applicable, telephone number, facsimile number and evidence of diggers hot line registration.

2. The name, address and e-mail address, if applicable, and telephone and facsimile 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.

3. A 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

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completed operations, damage of underground equipment and collapse of property.

b-3. Indicating comprehensive liability coverage, automobile liability coverage and umbrella coverage in amounts established by the city attorney.

b-4. 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.

b-5. Requiring that the city attorney shall be notified 30 days in advance of cancellation of the policy.

c. If the person is a corporation, a copy of the certificate required to be filed under Wisconsin statutes as recorded and certified to by the secretary of state.

4. The class or classes of service to be provided on the registrant's transmission facility and the specific locations or areas within the city in which each class of service will be available:

- a. During the next calendar year; and
- b. For the 5 years following the next calendar year.

5. Contemplated conduit occupancy locations:

a. Specific locations and the beginning and ending dates of all projects to be commenced during the next calendar year.

b. Tentative locations and beginning and ending dates for all projects contemplated for the 5 years following the next calendar year.

6. Evidence of authorization from the federal communications commission or the Wisconsin public service commission to operate a telecommunication service, or evidence of authorization from the state of Wisconsin to operate a cable service, video service or an open video system.

7. The permittee shall keep all of the information listed in this section current at all times by providing to the department of public works by December 1 of each year an operations plan. Such plan shall be submitted using a format designated by the commissioner of public works and shall contain the information determined by the commissioner to be necessary to facilitate the coordination of conduit occupancy use and the frequency of excavations and obstructions of rights-of way.

8. The permittee shall notify the department of public works of any projects

which have been or are to be deleted from the conduit occupancy operations plan. Notification of changes in any information listed in this subsection shall be submitted to the department of public works within 15 days following the date on which the permittee has knowledge of any change.

98-11. Registration Fee; Fee in Addition to Conduit System Occupancy Fees.

1. Registration review and processing costs shall be paid at the time of registration with the department of public works for conduit occupancy.

2. Make-ready and conduit pulling costs for approved occupancy shall be separately reimbursable.

98-13. Conduit System Occupancy Fees.

A use and occupancy fee shall be paid for each class of service delivered on all or a portion of the transmission system. If more than one class of service is delivered over a transmission facility, an occupancy registration and use agreement shall be obtained for each class of service. For purposes of calculating occupancy fees pursuant to this chapter, linear distance shall be defined as the point-to-point linear distance of each portion of the facility used to deliver each class of service. The following minimum use and occupancy fees shall apply for conduit occupancy agreements having a term of 15 years:

1. CLASS ONE: The minimum fee for conduit system occupancy for transmission facilities used for the delivery of cable services or video services, pursuant to a franchise or license agreement and subject to payment of a franchise or license fee, shall be:

a. \$1.65 per foot per year for sub-duct occupancy of up to one-third of a conduit duct.

b. \$1.95 per foot per year for sub-duct occupancy of more than one-third but less than two-thirds of a conduit duct.

c. \$2.25 per foot per year for full occupancy of a conduit duct.

d. Class one occupancy fees are not applicable to any portion of the conduit system which crosses under any river or is attached to a bridge.

2. CLASS TWO: The minimum fee for conduit duct occupancy for transmission facilities used for the delivery of

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telecommunications services not subject to payment of a franchise or license fee shall be:

a. \$1.95 per foot per year for sub-duct occupancy of up to one-third of a conduit duct.

b. \$2.25 per foot per year for sub-duct occupancy of more than one-third but less than two-thirds of a conduit duct.

c. \$2.55 per foot per year per occupied conduit duct.

d. Class two occupancy fees are not applicable to any portion of the conduit system which crosses under any river or is attached to a bridge.

3. CLASS THREE: The minimum fee for conduit duct occupancy for transmission facilities under common or affiliated ownership or control and used for the delivery of both class one and class two services shall be:

a. \$2.25 per foot per year for sub-duct occupancy of up to one-third of a conduit duct.

b. \$2.55 per foot per year for sub-duct occupancy of more than one-third but less than two-thirds of a conduit duct.

c. \$2.85 per foot per year for full occupancy of a conduit duct.

d. Class three occupancy fees are not applicable to any portion of the conduit system which crosses under any river or is attached to a bridge.

e. For purposes of this subsection, "affiliated", when used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with such person.

4. CLASS FOUR: The minimum fee for conduit duct occupancy for transmission facilities delivering either class one or class two services in conduit which crosses under any river, railroad, freeway or other obstruction or is attached to a bridge shall be:

a. There shall be a base fee of \$7,500 for up to one-third of a conduit duct occupancy plus \$15 per foot per year for the first 200 feet, then \$7.50 per foot per year for the next 300 feet, then \$2 per foot per year for any additional space.

b. There shall be a base fee of \$15,000 for up to two-thirds of a conduit duct occupancy plus \$20 per foot per year for the first 200 feet, then \$10 per foot per year for

the next 300 feet, then \$2.50 per foot per year for any additional space.

c. There shall be a base fee of \$17,500 for two-thirds or more of a conduit duct occupancy plus \$25 per foot per year for the first 200 feet, then \$12.50 per foot per year for the next 300 feet, then \$3 per foot per year for any additional space.

d. For purposes of this subsection, measurement of such conduit occupancy shall be from manhole to manhole on each side of the river or other obstruction.

5. The commissioner of public works shall have the power to establish rates by auction or negotiation for new or additional conduit system capacity or its occupancy if there is insufficient space to accommodate all of the anticipated requests of permittees or persons to occupy and use the existing conduit system.

6. The commissioner of public works shall have the power to establish rates and negotiate occupancy agreements for terms of less than 15 years, subject to s. 98-5.

98-15. Grant of Right; Payment of Occupancy Fee.

1. Any person required to register under s. 98-7, who furnishes telecommunications, video services or cable services or who occupies or uses the city's conduit system is granted a right to do if and only so long as authorized to do so by the city, and the person pays the occupancy fee as provided in s. 98-11 and complies with all other requirements of law, including the execution of a written agreement and receipt of a registration certificate and permit to occupy the conduit system.

2. The fee shall be paid to the city on January 1 and July 1 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.

3. The grant of such right is expressly conditioned on, and is subject to continuing compliance with all provisions of law, including this chapter.

4. The commissioner of public works shall have the power to prohibit or limit the placement of new or additional facilities within the conduit system if there is insufficient

space to accommodate the needs of the city or of all the requests of registrants or persons to occupy and use the conduit system. In making such decision, the commissioner shall be guided primarily by considerations of public interest, the condition of the conduit system, the public's needs for the particular service, the protection of existing facilities in the conduit system, and future city plans for public improvements and development projects which have been determined to be in the public interest.

98-17. Reservation of Regulatory and Police Powers. The city, by the granting of a registration certificate and permit to occupy city-owned conduit under this chapter, does not surrender or to any extent lose, waive, impair or lessen the lawful powers and rights, which it has now or may be hereafter vested in the city under federal law, the Wisconsin constitution, the statutes of the state of Wisconsin, or charter of the city; and the permittee by its acceptance of occupancy permit or of registration under this chapter 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 the permittee or registrant's right 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 laws and ordinances enacted by the city pursuant to such powers. Any conflict between the provisions of a registration or a conduit occupancy permit and any other present or future lawful exercise of the city's regulatory or police powers shall be resolved in favor of the latter.

**98--(HISTORY) Use and Occupancy of City-Owned
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**LEGISLATIVE HISTORY
CHAPTER 98**

Abbreviations:

am = amended

cr = created

ra = renumbered and amended

rc = repealed and recreated

rn = renumbered

rp = repealed

<u>Section</u>	<u>Action</u>	<u>File</u>	<u>Passed</u>	<u>Effective</u>
Ch. 98	cr	970451	7/25/97	8/13/97
98-1-3	rc	080429	7/30/2008	8/16/2008
98-1-8	am	080429	7/30/2008	8/16/2008
98-1-21	cr	080429	7/30/2008	8/16/2008
98-1-22	cr	080429	7/30/2008	8/16/2008
98-3	am	080429	7/30/2008	8/16/2008
98-9-6	am	080429	7/30/2008	8/16/2008
98-13-1-0	am	080429	7/30/2008	8/16/2008
98-13-1-a	am	020593	11/8/2002	1/1/2003
98-13-1-b	am	020593	11/8/2002	1/1/2003
98-13-1-c	am	020593	11/8/2002	1/1/2003
98-13-2-a	am	020593	11/8/2002	1/1/2003
98-13-2-b	am	020593	11/8/2002	1/1/2003
98-13-2-c	am	020593	11/8/2002	1/1/2003
98-13-3-a	am	020593	11/8/2002	1/1/2003
98-13-3-b	am	020593	11/8/2002	1/1/2003
98-13-3-c	am	020593	11/8/2002	1/1/2003
98-13-4	rc	070406	9/25/2007	10/12/2007
98-13-4-a	am	020593	11/8/2002	1/1/2003
98-13-4-b	am	020593	11/8/2002	1/1/2003
98-13-4-c	am	020593	11/8/2002	1/1/2003
98-15-1	am	080429	7/30/2008	8/16/2008

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