

## **UTILITY ORDINANCE OF MARCH 12, 2012: TO BE CHAPTER 82, ARTICLE III OF CODE**

THE COUNCIL OF THE CITY OF MADISON HEREBY ORDAINS:

An Amendment to the City Code of Madison, Georgia adding Article III, entitled: "UTILITY SYSTEMS USING CITY RIGHT OF WAY" to Chapter 82.

WHEREAS, the City Code may be amended by the Mayor and Council, who find the following amendment promotes the health, safety, morals, convenience, order, prosperity and general welfare of the City; and

WHEREAS, the City of Madison, Georgia ("City") allows either via agreement, ordinance or per statewide franchises, telecommunications, telephone, electric, water, sewer and other utility systems ("System") in, upon, across, along, above, over, and under the public ways of the City, for the purpose of rendering utility service, and wishes to provide for the conditions thereof and for other purposes;

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council that the Code is hereby amended by adding Article III entitled "UTILITY SYSTEMS USING CITY RIGHT OF WAY" to Chapter 82, to read as shown below.

### **SECTION 82-7 6 - SHORT TITLE**

This Ordinance shall be known as the "UTILITY SYSTEMS USING CITY RIGHT OF WAY ORDINANCE." This shall apply to all Utilities and Facilities occupying City property and rights of way.

### **SECTION 82-77 - DEFINITIONS**

The following terms, phrases, words, and their derivations, shall have the meaning given herein.

- a) "City" is the City of Madison, Georgia.
- b) "Company" a/k/a Utility is any utility provider in Madison.
- c) "Council" is the Mayor and Council of the City of Madison, Georgia.
- d) "Facility or Facilities" means any tangible thing, including but not limited to a Utility's poles, wires, optical fibers, cables, electrical conductors, Conduits, Ducts, Inner ducts, pipes, subways, manholes, fixtures, appliances, appurtenances and other equipment and technology.
- e) "Facilities Representative(s)" means the specifically identified agent(s)/employee(s) of a Utility who are authorized to direct field activities of that Utility and serve as official notice agent(s) for Facilities related information. Utility shall be required to make sure at least one (1) of its Facilities Representatives is available at all times to receive notice of, and immediately direct response to, Facilities related emergencies or situations.
- f) "Person" is any person, firm, partnership, association, corporation, company, or organization of any kind.
- g) "Public ways" means streets, avenues, alleys, bridges, rights-of-way, easements, grounds and other public places owned or controlled by, leased to or granted to the City.
- h) "Service Area" means the Company's System within Madison.

### **SECTION 82-78 - REGISTRATION REQUIRED.**

Each Utility who occupies, uses or has Facilities in the Rights of Way, including by lease, sublease or assignment, to operate Facilities located in the Rights of Way, unless specifically exempted by state or federal law or this Code, shall file a Registration Statement with the City within 90 days of the effective date of this Ordinance. The Registration information provided to the City shall be on a form approved by the City and include, but not be limited to:

- a. The name, legal status (i.e. partnership, corporation, etc.), street address, email address, and telephone and facsimile numbers of the Utility filing the Registration Statement (the "Registrant"). If the Registrant is not the owner of the Facility in the Right of Way, the Registration shall include the name, street address, email address if applicable, and telephone and facsimile numbers of the owner;
- b. The name, street address, email address, telephone and fax numbers of 1 or more Facilities Representative(s). Current information how to contact the Facilities Representative(s) in an Emergency shall be provided at the time of filing a Registration and shall be updated to assure accurate contact information is available to City at all times;

- c. A copy of the Utility's certificate of authority (or other acceptable evidence of authority to operate) from the Georgia PSC and/or the FCC and any other similar approvals, permits, or agreements.
- d. A copy, if requested, of the Service Agreement, if applicable or other legal instrument that authorizes the Utility to use or occupy the Right of Way for the purpose described in the Registration.

If a Registration is incomplete, the City shall notify the Registrant and shall provide a reasonable period of time in which to complete the Registration. If a Registration is complete, the City shall so notify the Utility in writing. Acceptance of the Registration shall not convey title in the Rights of Way. Acceptance of the Registration is only the nonexclusive, limited right to occupy Rights of Way in the City for the limited purposes stated in the Acceptance. Acceptance of the Registration does not excuse a Utility from obtaining Permits required by City ordinances nor from obtaining appropriate access or pole attachment agreements before using the Facilities of others, including the City. Acceptance of the Registration does not excuse a Utility from notifying the City of Construction as required herein.

Beginning one year after the effective date of this Chapter, any Facilities or part of a Facility found in a Right of Way for which registration is required but has not been obtained unless specifically exempted by law, and for which no valid Service Agreement exists with the City, may be deemed to be a nuisance and an unauthorized use of the Rights of Way. The City may exercise any remedies or rights it has at law or in equity, including, but not limited to abating the nuisance; taking possession of the Facilities, evicting the Utility from the Right of Way; prosecuting the violator; and/or any other remedy provided by City ordinance or otherwise allowed in law or in equity.

## **SECTION 82-79 - PERMIT REQUIRED**

- a. Permit Required. It shall be unlawful for any Utility to excavate or to construct, install, maintain, renew, remove or relocate Facilities in, on, along, over or under the public roads of the City without a permit from the City per this Chapter. Each permit shall have a set commencement and expiration date based on information provided in applicant's permit application. The Permit shall remain in place until Construction is completed or until its expiration date, unless the Utility is in violation of this Ordinance.
- b. Permit Procedure. Utility Permits shall be obtained from City on application made on forms prescribed by the City. Fees shall be set by the Mayor and Council. The written application shall include the following:
  - i. The name and address of the Utility;
  - ii. The nature, extent, and location of any work proposed to be done, along with satisfactory plans showing in detail the location, size or capacity, relationship to Street features such as right-of-way lines, pavement edge, structures, etc., horizontal and vertical clearance to critical elements of the roadway and any other information necessary to evaluate the impact and operation;
  - iii. The name and address of the contractor who is to do such work;
  - iv. 24 hour contact information including Name, address, email address, telephone and fax numbers of Facilities Representative(s) in case of emergency.
  - v. The projected dates for the work to be started and finished;
- c. If the City determines Applicant has satisfied the following requirements, the City may issue a permit.
  - i Approval will be consistent with this Chapter; and
  - ii Applicant has submitted a complete Application and secured all certificates and other authorizations required by law to construct Facilities as proposed by the Applicant; and

iii No impact on safety, visual quality of the streets, traffic flow, and other users of the right of way.

d. Per O.C.G.A §25-9-6 (Georgia Utility Facility Protection Act) and other applicable law, no Utility shall commence, perform, or engage in blasting or in excavating with mechanized excavating facilities unless and until the Utility planning the blasting or excavating has given 48 hours' notice by submitting a locate request to the Utility Protection Center, beginning the next Working Day after such notice is provided, excluding hours during days other than Working Days.

e. The Utility shall obtain all other required permits or approvals per City ordinance, state and federal law.

## **SECTION 82-80 - OPERATIONAL REQUIREMENTS**

a. Ordinance Compliance. Any Company, including any which has sought and obtained a state-wide franchise, shall operate within Madison, Georgia in compliance with the terms and conditions hereinafter set forth as to the construction, operation, maintenance and ownership of a System, including all poles, wires, cables, fibers, underground conduits, pipes, manholes, and other fixtures and appliances ("Equipment") necessary for the construction, maintenance and operation in this City of the System and any lines connected therewith, across, above, over, and under the public ways now laid out or dedicated, and all extensions thereof and additions thereto, located in City.

b. Regulatory Compliance. The System shall be designed, maintained and operated such that quality and reliability of the System will be in compliance with all applicable state and federal regulations. The Company shall operate and maintain the System per all applicable state and federal testing procedures and technical performance standards. Company shall also comply with all applicable state and federal regulations pertaining to customer service requirements, and Company shall also comply with all other applicable regulations.

c. Work. All work in the installation, operation, upgrade, repair and removal of Equipment shall be performed in a safe, thorough and reliable manner using materials of good and durable quality. The free flow and safety of traffic and the public use of City property shall not be unduly impaired and the installation shall not prevent the City from reasonably maintaining the streets, structures, traffic control devices and other City property. Maintenance and operations of the Facilities shall not jeopardize the traffic, street structure, other users of the right of way, or the right of way itself.

d. Stop Work Order. At any time City may order the immediate cessation of work which poses a threat to the health, safety, or welfare of the public, violates law, or which violates the terms and conditions of the Permit and/or this Ordinance or issue an order to correct work which does not conform to the Permit and/or applicable standards, conditions or codes.

e. Corrections. If, using reasonable discretion, it is determined by City or any other agency or authority of competent jurisdiction that any Equipment or Construction is harmful to the health or safety of any Person, then Company shall, at its own cost and expense, promptly correct all such conditions or remove such Equipment.

f. Grade Changes. If the grades or lines of any Street are changed at any time, then Company shall, at its own cost and expense and upon the reasonable advance request of City, protect or promptly alter or relocate Equipment so as to conform to such new grades or lines. If Company refuses or neglects to so protect, alter, or relocate Equipment, City shall have the right to break through, remove, alter, or relocate such Equipment without any liability to Company and Company shall pay to City the reasonable costs incurred in connection with such breaking through, removal, alteration, or relocation.

g. Protection of Structures. In connection with the installation, operation, upgrade, repair or removal of Equipment, Company shall, at its own cost and expense, protect the Streets and any structures thereon, thereunder or thereover, and shall obtain the prior approval of City before altering the Streets or any such structures. Any such alteration shall be made by Company, at its sole cost and expense, in a manner prescribed by City. Company shall be liable, at its own cost and expense, to replace or repair, in a manner reasonably specified by City, any Street or structure thereon, thereunder or thereover that may become disturbed or damaged as a result of the installation, operation, upgrade, repair or removal of Equipment. If Company does not commence such replacement or repair after thirty (30) days written notice, City or the owner of the affected structure may make such replacement or repair and Company shall pay the cost of the same.

h. No Obstruction. In connection with the installation, operation, upgrade, repair or removal of Equipment, Company shall not obstruct the sidewalks, streets, subways, railways, waterways or other traffic to, from or within the corporate limits of City without the prior consent of City. Equipment of Company in the Streets shall be located so as to cause minimum interference with the use of the Streets and adjoining property. Company shall install its Equipment in accordance with all laws, ordinances, regulations and policies applicable to any individuals, groups or entities who construct, operate, own, control, or provide (1) Utility facilities or services (including without limitation, a local exchange carrier, inter-exchange

carrier, reseller, competitive access provider, cellular or personal communications services provider or telephone company); (2) telephone, data, voice, television, cable television, video, electric, water, sewer or gas facilities, or services; (3) fiber optic, coaxial, electric or other wire or cable or conduits, ducts, poles, towers and related facilities (except lighting facilities, traffic control devices, and police and fire alarms).

i. Moving Equipment. In addition to Company's obligation to move Equipment at its cost per the request of City, Company shall, upon reasonable prior written notice by City or any Person holding a permit issued by City to move any structure, and within the time that is reasonable under the circumstances, temporarily move Equipment to the extent commercially reasonable permit the moving of said structure. Company may impose a reasonable charge on any Person other than City for any such movement of its Equipment.

j. Emergencies. Each Utility shall, as soon as reasonably practicable, notify the City of any event regarding its Facilities which it considers to be an Emergency. The Utility may proceed to take whatever actions are necessary in order to respond to the Emergency. A Utility who engages in an emergency excavation shall take all reasonable precautions to avoid or minimize damage to any existing facilities. If City becomes aware of an Emergency regarding Facilities, the City may attempt to contact the affected Utility or Facilities Representative. The City may take whatever action it deems necessary in order to respond to the Emergency, including cut or move any of the wires, cables, amplifiers, appliances, or other parts of the Facilities. The City shall not incur any liability to the Utility for such emergency actions, and the cost of such shall be paid by each Utility affected by the Emergency.

k. Disasters. City may, at any time, in case of fire, disaster, or other emergency, as determined by City in its reasonable sole discretion, cut or move Equipment, in which event City shall not incur any liability to Company, any Affiliated Person or any other Person. When possible, Company shall be consulted prior to any such cutting or movement of Equipment and be given the opportunity to perform such work itself. All costs to repair or replace such Equipment shall be borne by Company. City shall use reasonable efforts to avoid any disruption to Company's Services or Equipment.

l. Oversight and Inspection. City may with reasonable notice, oversee, regulate and inspect installation, technical operation, upgrade, repair and removal of Equipment per this Ordinance and applicable law and regulations. By such oversight and inspection, City does not take on any joint partner role or any similar liability or responsibility.

m. Approvals. Company shall obtain all construction, building or other permits or approvals necessary before installing, operating, upgrading, repairing, and removing Equipment, and following completion of installation, Company shall provide City with updated as built maps of the Utility system. Any fees that City charges to issue permits or approvals shall not be offset against the compensation that Company is required to pay to City.

n. Reservation of Regulatory and Police Powers. The City by issuing a Permit or a written approval of Registration does not surrender or lose, waive, impair, or lessen the powers and rights vested in the City under the Constitution and Laws of the United States, Georgia and City Charter, and under the City's Codified Ordinances to regulate the use of the Rights of Way. The Utility by applying for and being issued a written Permit, is deemed to acknowledge 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 Utility is deemed to acknowledge that its interests 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 enacted by the City pursuant to such powers. In particular, all Utilities shall comply with City zoning and other land use requirements pertaining to the placement and specifications of Facilities.

## **SECTION 82-81 - NON-EXCLUSIVITY; NON-LIABILITY**

a. Nothing in this Ordinance affects the right of City to occupy and use the Streets to install, operate, upgrade, repair and remove equipment for any services, or to engage in any other activity in the Streets. Nothing herein abrogates the right of City to perform any public works or improvements. If the Equipment interferes with the construction, operation, maintenance, repair or removal of such public works or improvements, Company, at its expense, shall promptly, following reasonable written notice from City, take action to protect, alter or permanently relocate Equipment, as requested by City.

b. City and its officers, employees, agents, attorneys, consultants and independent contractors shall not have any liability to Company for any damage as a result of or in connection with such public works or public improvements. The foregoing provision freeing City and its officers, employees, agents, attorneys, consultants and independent contractors from liability pursuant to this section shall not apply to acts of gross negligence or willful misconduct or to damages caused by violations by City or its officers, employees, agents, consultants or independent contractors of OCGA Chapter 25-9, relating to notification prior to and excavation near underground utilities, as now or hereafter amended.

## **SECTION 82-82 - COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES**

Company shall, in connection with protection of health and safety of the public, be subject to the lawful exercise of the police power by City and to such regulations governing public ways as City shall hereafter by resolution or ordinance promulgate. Every installation by Company shall be in accordance with the applicable codes then in force in City.

## **SECTION 82-83 - COMPANY LIABILITY - INDEMNIFICATION**

Company, as an indemnifying party, shall hold City harmless from all loss sustained by City, on account of any suit, judgment, execution, claim or demand, resulting from negligence on the part of Company in construction, operation, or maintenance of the System. If any claim or action is brought against City for which Company might be liable as an indemnifying party, City shall promptly give notice to Company of such and a description of the source and nature thereof. On notice of any claim or action within the scope of this Section, Company shall have the obligation to negotiate a settlement or compromise (such being subject to the approval of City, which approval shall not be unreasonably withheld) of any such claim or action, or to defend actions instituted at the sole cost and expense of Company.

## **SECTION 82-84 - CONDITIONS ON STREET USE**

a. USE - Company shall, subject to the permitting process herein, reasonably determine the number and location of all transmission and distribution structures, lines, and equipment for proper operation of the System on the public ways, and Company shall locate such System as is reasonable under the circumstances to prevent interference with the proper use of public ways. City shall not grant any request for any use or occupancy of public ways in proximity to the System that would conflict with Company's use or occupancy herein permitted or take any action that would be inconsistent with or adverse to Company's use or occupancy of the System. Company shall not interfere with the technical operation of any other Utility system within the corporate limits of City, and such interference would be a material violation hereof.

b. RESTORATION - In case of any disturbance by Company of pavement, sidewalk, driveway, or other surfacing of City, Company shall at its own cost and expense, replace and restore all sidewalk, driveway or surface of any street or alley disturbed, to as good a condition as before said work was commenced.

c. RELOCATION - If City in its governmental capacity shall lawfully alter or change its public ways, Company, as reasonably necessary to maintain its System, and on reasonable notice by City, shall at Company's expense relocate or adjust its poles, wires, cable, underground conduits, manholes, or other fixes. Company shall not be liable for any expense incurred by it if Company is required to adjust or relocate its poles, wires, cables, underground conduits, manholes, and other telephone fixtures, where such alteration is made necessary by actions of a third party other than City.

d. TEMPORARY REMOVAL OF LINES FOR BUILDING MOVING - Company shall, on the request of any person holding a building moving permit issued by City, temporarily raise or lower or move its lines to permit moving of buildings. The expense of such shall be paid by the person requesting the same, except where the person is the City, and Company shall have the authority to require such payment in advance. Company shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes unless there is an emergency.

e. UTILITY POLE AND USE RENTAL - Company shall have the right to use utility poles erected by City upon obtaining prior permission from Mayor and Council, or their designate.

f. TREE TRIMMING - Company may, under the general oversight of City after written permission, trim trees on and overhanging public ways, but only to the extent reasonably necessary to prevent branches of trees from interfering with lines, cables or facilities of Company. City does not take on any joint partner role or any similar liability or responsibility.

## **SECTION 82-85 - INSPECTION**

City shall have the right to inspect all work performed by Company on, along, in, or across any of the public ways of City to ensure compliance with the rules and regulations of City and any pertinent ordinances governing installations which affect, or might affect, such public ways. Company shall maintain its System in good operating condition at all times. An exception to this condition is automatically in effect when service furnished by Company is interrupted, impaired, or prevented by fires, strikes, riots or other occurrences beyond the control of Company, or by storms, floods, or other casualties, in any of which events Company shall do all things reasonably within its power to restore normal service. By such inspection, City does not take on any joint partner role or any similar liability or responsibility.

## SECTION 82-86- VIOLATION

An Event of Violation shall include, but shall not be limited to, any of the following acts or failures to act by Company, or by any employees, contractors, subcontractors, consultants, agents or representatives of Company, or, to the extent applicable, to any Affiliated Person:

- (a) Any substantial failure to comply with any material violation of this Ordinance that is not cured within forty-five (45) days after written notice pursuant hereto; or if such substantial noncompliance, by its nature, cannot be cured within forty-five (45) days, if Company has not, within forty-five (45) days after written notice, initiated reasonable steps to remedy such and notified City of the steps being taken and the projected date of such compliance;
- (b) The condemnation by a public authority other than City, or sale or dedication under threat or in lieu of condemnation, of all or any part of the Utility System, the effect of which would materially frustrate or impede the ability of Company to carry out its obligations, and the purposes of this Ordinance;
- (c) Company's suspension or discontinuing of its business;
- (d) Any denial, forfeiture or revocation by any federal, state or local governmental authority of any authorization required by law or the expiration without renewal of any such authorization, and such either individually or in the aggregate, materially jeopardize Company's ability to operate the Utility System in the franchise area, or
- (e) A persistent failure by Company, or by any employee, contractor, subcontractor, consultant, agent or representative of Company, to comply with any of the material provisions, terms or conditions of this Ordinance after Company has received notice of a failure to comply and has been given a reasonable opportunity to cure.

Upon the occurrence of an Event of Violation, City may:

- (a) Require Company to take such actions as City deems reasonably appropriate under the circumstances;
- (b) Prosecute the Company in Court for a violation of any provision of this chapter, to be punished by a fine not exceeding \$1,000 per violation. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty prescribed above, the City may pursue other remedies such as abatement of nuisances, injunctive relief and revocation of licenses or permits, and/or the City may;
- (c) Impose a penalty on Company for such Event of Violation, as outlined below.

City shall exercise option (a) above per the procedures below:

- (a) City shall notify Company, in writing, of an alleged Event of Violation, which notice shall specify the alleged Event of Violation with reasonable particularity. Company shall, within 10 days after receipt of such notice, or such longer period of time as City may specify in such notice, either (a) cure such alleged Event of Violation or (b) in a written response to City, either (i) present facts and arguments refuting such alleged Event of Violation or (ii) state that such alleged Event of Violation will be cured and set forth the method and time schedule for accomplishing such cure.
- (b) After receiving Company's response to the notice, City shall determine (i) whether an Event of Violation has occurred; (ii) whether such Event of Violation is excusable; and (iii) whether such Event of Violation has been cured or will be cured by Company. If Company does not respond to City's notice, then City may conclude that an Event of Violation has occurred, and that such Event of Violation is not excusable and has not been or will not be cured by Company in a manner and in accordance with a schedule reasonably satisfactory to City, and City may then issue a written order, detailing its findings and the action to be taken, and Company may appeal such order.
- (c) If, after receiving Company's response to City's written notice, City determines an Event of Violation has occurred and that such Event of Violation is not excusable and has not been or will not be cured by Company in a manner and in accordance with a schedule reasonably satisfactory to City, then City shall provide notice of such to Company.
- (d) If City's governing body determines that there is an Event of Violation, then Company may within 10 days in writing request a public hearing, to take place not less more 45 days from the request. At the hearing, Company may state its position on the matter, present evidence and question witnesses.
- (e) If City after the public hearing upholds the finding that an Event of Violation occurred, and such Event of Violation will not be cured in a manner and per a schedule reasonably satisfactory to City's governing body, and that such Event of Violation is not excusable, then City will issue a written order, detailing its findings and the action to be taken.
- (f) Company may within 30 days seek certiorari to the Superior court, which shall review the decision of City non-de novo.

## **SECTION 82-87 – PENALTY**

If any of the following events occur and are not remedied within 30 days after Company's receipt of written notice thereof, City, at its discretion, may impose a penalty on Company up to a maximum of \$200 per occurrence, per day, commencing with the thirty first day after Company's receipt of the aforesaid written notice, which amount shall be in addition to any other remedies available to City under this Ordinance and any other laws, agreements and regulations:

- a) Equipment is installed, operated, upgraded, repaired or removed in the Streets without appropriate permits and other regulatory approvals obtained from City, as required hereby.
- b) Sidewalks, streets, railways or other traffic to, from or within the City is/are obstructed by Company, its officers, employees, agents or contractors without permission having been obtained from City, as required hereby.
- c) Structures in the Streets are altered by Company, its officers, employees, agents or contractors without City approval or are not protected, as required hereby.
- d) Failure to provide information required hereby or which City may reasonably require in the oversight and regulation of the installation, operation, upgrade, repair and removal of Equipment.
- e) Failure to secure or maintain liability insurance as required hereby.
- f) Failure to secure or maintain the Performance Bond as required hereby.

Each of the foregoing failures may result in injuries to City and its residents, businesses and institutions. Such penalties shall be without prejudice to any other remedies available to City to the extent permitted by law.

## **SECTION 82-88- TERMINATION OF SERVICES**

Upon termination of services in City by Company, City may issue a removal order directing Company to remove, at Company's sole cost and expense, all or any portion of the Utility System, subject to the following:

- a. in removing the Utility System, or any part thereof, Company shall, at its own expense, refill and compact any excavation it makes, and shall leave the Streets and other property, including utility cables, wires and attachments, in as good condition as that prevailing immediately prior to Company's removal of the Utility System;
- b. the liability insurance and indemnity provisions hereof remain in full force and effect during the period in which the Utility System is being removed and the associated repairs to the Streets and other property are being made; and
- c. If, in the reasonable judgment of City, Company fails to substantially complete removal, including repair of the Streets and other property, within 12 months of City's issuance of a removal order, City may: (i) authorize removal of the Utility System, at Company's cost, by another Person; and/or (ii) declare all rights, title and interest to the Utility System belong to City, including any portion of the Utility System not designated for removal, without compensation to Company.
- d. Alternatively, Company may submit to the City, in good faith and within a reasonable amount of time, a proposal for transferring ownership of its Facilities to the City. If a Utility does so, City may do one or more of the following:
  - i. Purchase the Facilities;
  - ii. Accept donation of some or all Facilities, or
  - iii. Require the Utility to post a bond in an amount sufficient to reimburse the City for its reasonably anticipated costs to be incurred in removing the Facilities.
- e. Facilities of a Utility who fails to comply with the above provision shall be deemed abandoned. Abandoned Facilities are deemed a nuisance. The City may exercise any remedies or rights it has at law or in equity, including, but not limited to abating the nuisance; taking possession of the Facilities, evicting the Utility from the Right of Way; prosecuting the violator; and/or any other remedy provided by City ordinance or otherwise at law or in equity.

## **SECTION 82-89 - PAYMENT TO CITY – See Pre-existing ordinance**

## **SECTION 82-90 - PARTIAL INVALIDITY AND REPEAL PROVISION**

If any section, sentence, or clause of this Ordinance is held illegal, *ultra vires*, or unconstitutional, such invalidity shall not affect the validity of the remaining portions hereof if the invalidity does not substantially alter the meaning thereof. All ordinances and agreements and parts of ordinances and agreements in conflict herewith are repealed.

## **SECTION 82-91- LIABILITY AND INSURANCE**

Company shall maintain a liability insurance policy, in a form reasonably acceptable to City, together with evidence thereof reasonably acceptable to City. City and its officers, boards, commissions, councils, elected officials, agents and employees (through appropriate endorsements if necessary) shall be named as additional insureds to the extent of the liabilities assumed by Company under this Ordinance. Company shall provide such insurance in the minimum combined amount of \$3,000,000 for bodily injury and property damage.

The liability insurance policy shall be maintained throughout any period of time during which Company operates or is engaged in the removal of Equipment. Each such liability insurance policy shall contain the following endorsement: "It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until sixty (60) days after receipt by City, by registered mail, of a written notice of such intent to cancel or not to renew." Within thirty (30) days after receipt by City of said notice, and in no event later than fifteen (15) days prior to said cancellation, Company shall obtain and furnish to City replacement insurance policies in a form reasonably acceptable to City.

The legal liability of Company to City and any Person for any of the matters that are the subject of the liability insurance policy, including without limitation, Company's indemnification obligations herein, shall not be limited by such insurance policies nor by the recovery of any amounts thereunder, except to the extent necessary to avoid duplicative recovery from or payment by Company. Company shall (i) at its own cost and expense, replace, repair or restore any damaged property substantially to its prior condition, and (ii) pay damages determined to be due per any claim against Company for any injury to or death of any Person caused by any act or failure to act of Company, or any officer, employee, agent or contractor of Company, in connection with the installation, operation, upgrade, repair or removal of Equipment or the provision of Services through the Equipment. Nothing herein shall be deemed to limit any recovery to which a Person may otherwise be entitled, nor shall anything herein be deemed an admission of liability on the part of Company.

City and its officers, employees, agents, attorneys, consultants and independent contractors shall have no liability to Company, any Affiliated Person or any other Person for any special, incidental, consequential, punitive, or other damages as a result of the exercise of any right of City per this ordinance or applicable law. Nothing herein shall be deemed an admission of liability by City nor be interpreted to waive any protection for City against liability under the law.

## **SECTION 82-92- MISCELLANEOUS**

The preamble to this ordinance is incorporated into this ordinance as if set out fully herein. The sections, paragraphs, sentences, or clauses of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared illegal by the valid judgment or decree of any court of competent jurisdiction, such illegality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance. All parts of ordinances in conflict herewith are hereby expressly repealed. The effective date of this ordinance is March 12, 2012. All notices shall be in writing and shall be sufficiently given and served upon the other party by first class mail, registered or certified, return receipt requested, postage prepaid, or via facsimile (with confirmation of transmission).

ORDAINED by the Mayor and Council of City of Madison, March 12, 2012.

CITY OF MADISON

By:

\_\_\_\_\_  
Bruce E. Gilbert, Mayor

\_\_\_\_\_  
Fred Perriman, Mayor Pro Tempore

\_\_\_\_\_  
Richard Blanton, Council Member

\_\_\_\_\_  
Lowry W. Hunt, Jr., Council Member



\_\_\_\_\_  
Michael J. Naples, Council Member

\_\_\_\_\_  
Joseph V. DiLetto, Council Member

Attest:

\_\_\_\_\_  
Mellie A. Thomas, City Clerk