

# Managing crowded right-of-ways

Demand for space in road right-of-ways is high and growing. The telecommunications industry boom has increased pressure on right-of-ways that are already crowded. In response, many local governments have developed permitting and inspection systems to protect the quality and safety of local roads. In some states they have even begun charging franchise fees of up to five percent of income for access to rights-of-way.

The Wisconsin Alliance of Cities developed model ordinances in 1998 for managing right-of-ways (see Winter 2000 issue of **Crossroads**). In response, some private utilities asked the state Public Service Commission (PSC) to develop administrative rules in the matter. It will likely hold formal hearings this summer. The rules would be applied only in case of a complaint by the utility and address such issues as:

- Requiring public utility facilities be placed underground.
- Discriminating among utilities regarding access to the right-of-way (ROW).

- Fees municipalities may collect from public utilities for using ROWs.
- Bonding, indemnification, and insurance requirements.
- ROW restoration requirements and degradation fees.
- Who should pay for relocating utility facilities.
- Public utility facilities that have been abandoned in the ROW.

In general, under current state law, municipalities are entitled to develop "reasonable" regulations to manage right-of-ways. This means that regulations protect the health, safety, and general welfare of the community; and fees recover the costs of regulation and are not intended to raise revenue.

Allowed costs covered by fees would include:

- Registering, permitting and inspecting the work.
- Maintaining, supporting, protecting, or moving user equipment during work.

- Restoring work inadequately performed.
- Maintaining databases used to manage highway, street, and right-of-way work.
- Scheduling and coordinating highway, street, and right-of-way work.

In the current draft the rules permit charging fees for decreased pavement life, saying: *It is not unreasonable for a municipality to charge a utility for right-of-way degradation, if the degradation costs are reasonably ascertainable.*

You will need documentation to justify all fees. A good source for roadway information would be pavement condition and costs available through using the PASER or other pavement rating system.

*The T.I.C. has information and sample right-of-way ordinances. See the form on page 7 for contact information. For background and the status of PSC rule-making contact Curt Witynski at the League of Wisconsin Municipalities, 608/267-2380 or witynski@lwm-info.org.*

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