

**CITY COUNCIL COMMUNICATION 98-057  
FEBRUARY 16, 1998 AGENDA**

**SUBJECT:**

**RIGHT-OF-WAY MANAGEMENT  
ORDINANCE**

**SUBMITTED BY:**

**ERIC A. ANDERSON  
CITY MANAGER**

**SYNOPSIS –**

Staff has prepared and recommends Council approval of an amendment to Chapter 23, Subchapter 4 of the Municipal Code, relating to the regulation and management of private use of public right-of-way (Right-of-Way Ordinance) and an amendment to Chapter 26, Subchapter 2, Article II of the Municipal Code, relating to the licensing of communications systems within public right-of-way (Telecommunications Licensing Ordinance).

**FISCAL IMPACT –**

Adoption of these ordinances will: (a) enable the City to better regulate and manage City rights-of-way; (b) minimize the degradation of street surfaces; (c) reduce the City's capital and operating costs for street replacement and repair; and (d) provide for the recovery of costs incurred by the City in regulating and managing its rights-of-way.

**RECOMMENDATION –**

**Give the ordinance first reading and table it for further discussion, anticipating second reading no earlier than the first meeting in March.**

**BACKGROUND –**

**A. FEATURES OF THE RIGHT-OF-WAY MANAGEMENT ORDINANCE:**

1. **Registration:** Each user of the right-of-way would be required to register and:

(a) identify the user by company name, and provide the names and addresses of local contacts, including emergency contact person;

(b) provide evidence of liability insurance, and execute a hold harmless and indemnity agreement in favor of the City;

(c) provide a bond to secure removal of equipment installed in City street right-of-way in the event of its abandonment or required removal;

(d) provide accurate as-built maps of the system installed in City street rights-of-way, in format suitable for Geographic Information Systems (GIS) mapping;

(e) provide annual reports indicating the planned short-term and long-term improvements/extensions to their systems, and to provide the City an opportunity to plan and coordinate such private projects in City street rights-of-way with public improvement projects in City street rights-of-way; and

(f) pay a **registration fee** to provide staffing and equipment for administration of the GIS mapping system and for enhanced management of the right-of-way.

**2. Right-of-Way Permit Fees:** Right-of-way users would be required to obtain permits to excavate in or obstruct the right-of-way, and would be required to submit plans and specifications detailing where they would place equipment. The excavation permit fee and the obstruction permit fee would include several cost components, as follows:

(a) an **administrative cost component** to recover the expense of maintaining the permitting system;

(b) a **disruptive cost component** to provide an incentive to the company to limit the amount of right-of-way it obstructs and to limit the amount of time it obstructs that right-of-way;

(c) an **inspection cost component** to cover the time City inspectors are required to spend on the job-site inspecting the quality of the work and enforcing compliance with City requirements; and

(d) a **GIS cost component** to cover the City's cost of maintaining and upgrading information in the GIS system to reflect additional equipment, the abandonment or removal of equipment, etc.

The **excavation permit fee** would also include a **degradation cost component** to recover the accelerated depreciation of street paving caused by excavation, resulting in the need to replace paving sooner than would otherwise have been necessary.

**3. Franchising, Licensing, and Leasing of Right-of-Way for Private or Commercial Use:** All firms desiring to use City rights-of-way for private or commercial purposes would be required to obtain a franchise, license, or lease from the City and pay a fee for that use.

**4. Development and Implementation of Fee Structure:** The ordinances do not establish the amount of any of the fees described above. Upon Council adoption of the ordinances, staff will begin work developing the fee structure, which would then be brought back to Council for

approval by resolution. It would be my expectation that staff would work closely with the regulated businesses and utilities in developing the fee structure.

**B. CONTACTS WITH BUSINESSES AND UTILITIES AFFECTED BY THE ORDINANCES:**

Informational packets, including copies of the proposed ordinances and other explanatory materials, were mailed to all firms and businesses which would be affected by the ordinances, including utilities and local businesses with facilities presently in City rights-of-way, as well as the 25 firms holding certificates of public convenience and necessity to provide telephone service in Des Moines. Those parties were offered the opportunity to meet with City staff to discuss the ordinances, and they were advised the City Council would initially consider the ordinances at its February 16 meeting and that they were welcome to appear before the Council to provide input.

On Wednesday, February 11, 1998, staff met with representatives of Principal Financial to discuss their concerns with regard to the fiscal and operational impacts of the ordinances. Principal representatives agreed to provide a detailed list of their concerns for staff response, and were advised the Council could, if necessary, amend the ordinance before final consideration to address their concerns.