

**CITY COUNCIL
COMMUNICATION:**

02-647

AGENDA:

DECEMBER 16, 2002

SUBJECT:

AMENDMENT TO
RIGHT-OF-WAY
MANAGEMENT
ORDINANCE

TYPE:

RESOLUTION
ORDINANCE
RECEIVE/FILE

SUBMITTED BY:

JOHN F. MCKEE,
P.E.
ACTING CITY
ENGINEER

ITEM 55

**OFFICE OF THE CITY MANAGER
CITY OF DES MOINES, IOWA**

SYNOPSIS —

Approval of an amendment to the City's Right-of-Way (ROW) Management Ordinance to provide for the regulatory provisions of the ordinance to unregistered users of the ROW; set administrative penalties; establish a plan review fee; repeal reference to a street degradation fee; require an annual performance and maintenance bond of \$25,000; and clarify application fees for initial issuance and for renewal of ROW licenses. The fees and penalties will be included in separate schedules of administrative fees and penalties to be adopted by Council resolution.

FISCAL IMPACT —

The current Operating Budget includes \$302,004 to begin implementation of the ROW Management Program. The City collects a portion of the annual cost of the program through the annual management fee that is collected from all occupants of the ROW. Permit fees charged to ROW users cover the remaining costs of the program. The proposed ordinance will allow the City to charge the applicable permit and plan review fees to all users of ROW regardless of their registration status.

RECOMMENDATION —

Approve amendment to the City's ROW Management Ordinance.

BACKGROUND —

The City is now prepared to fully implement the permit provisions of the ROW Management Ordinance. In order to do so, staff recommends some minor adjustments to the ordinance, as well as the adoption of a number of "Schedules" provided for in the ordinance.

Ordinance Amending ROW Management Ordinance

The proposed ordinance amends the definition of registrant to include all users and occupants of the ROW. It also sets administrative penalties in a schedule. This will allow the City Council to adopt the schedule by resolution whenever it needs to be updated.

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The proposed ordinance also establishes a plan review fee to cover the City cost for reviewing plans for placement of equipment in the ROW by users. The plan review fee will be set with the permit fees in a schedule of fees to be adopted by Council.

The proposed ordinance also repeals reference to a street degradation fee, provides for an annual performance and maintenance bond, or alternate form of security, to secure street restoration in the amount \$25,000, and clarifies references to application fees for initial issuance and for renewal of ROW licenses.

ROW Schedules and Implementing Regulations

Under the ROW Management Ordinance, the City Engineer is authorized to administratively adopt regulations implementing the ordinance and the City Council is to adopt the following schedules.

Schedule of Fees

The ROW Management ordinance provides for the issuance of excavation and obstruction permits as a means of controlling the use of City ROW by various users. The ordinance calls for the collection of permit fees to cover the costs of issuing such permits and of monitoring and inspecting permitted activities to secure compliance with City requirements. As proposed in the amendment, the ROW Management Ordinance would also require the payment of a fee for review of plans and specifications for excavation and installation of equipment in City ROW by utility, governmental, and private users of the ROW. The fees for issuance of permits and for review of plans and specifications would be in the amounts and calculated as provided in a Schedule of Fees to be adopted by the City Council.

Schedule of Required Insurance Coverages and ROW Restoration Cost

Companies and contractors who make application for permits to excavate in City ROW are required to demonstrate evidence of insurance and provide a performance and maintenance bond to the City. The amount of insurance to be required of each permittee is to be set forth in a Schedule of Required Insurance Coverages to be adopted by the City Council. The ordinance further requires that the amount of the performance and maintenance bond be determined in each instance by reference to a ROW Restoration Cost Schedule to be approved by the City Council. Alternatively, the permittee may file a "blanket bond" in the amount of \$25,000 (\$10,000 for plumbers) covering all of its excavation activities in City ROW.

Schedule of Administrative Penalties

The ROW Management Ordinance provides for the administrative

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issuance of violation notices to companies or contractors who do not obtain ROW permits as required, who do not observe City requirements in the conduct of permitted activities, or who do not restore City ROW when required. Each violation carries with it a particular penalty and the violation notice advises the violator that the penalty may be paid at the Office of the City Clerk, much like a parking ticket. Administrative issuance of a violation notice and payment of an administrative penalty allows the City to avoid having to file municipal infraction charges and expending the time of an attorney in pursuing those charges, and allows the violator to avoid having to appear in court and pay court costs in addition to the penalty. As proposed for amendment, the amounts of the administrative penalties would be set in a Schedule of Administrative Penalties approved by the City Council, rather than in the City Code itself.

Regulations Implementing ROW Management Ordinance

The ROW Management Ordinance provides that the City Engineer may promulgate proposed regulations implementing the ordinance and may, after public hearing thereon, administratively adopt such regulations. The ordinance further affords the City Council an opportunity to review the proposed regulations and in effect veto them if the Council determines them to be inappropriate. This process for administrative adoption of implementing regulations, with opportunity for legislative review, is much like the State of Iowa's process for adopting administrative rules and regulations. Staff has proposed a number of regulations to implement the ROW permitting system and has scheduled a public hearing on those regulations for December 19 in the City Council Chambers.

In addition to publishing notice of said hearing, all known ROW users and other affected "stakeholders" have received a letter of invitation to the public hearing, including a copy of the proposed regulations. Also included with the letter were the proposed Schedule of Fees, Schedule of Required Insurance Coverages, ROW Restoration Cost Schedule, and Schedule of Administrative Penalties. Meeting participants will be given an opportunity to discuss and provide input regarding both the proposed implementing regulations and the proposed schedules.

Suggested Process for Adoption of Ordinance Amending ROW Management Ordinance, Schedules, and Implementing Regulations

It is suggested that, given the public hearing requirement for the proposed implementing regulations, all final Council action regarding the ordinance amending the ROW Management Ordinance, and regarding adoption of the proposed schedules, not occur until at least the first meeting in January 2003. This will afford affected ROW

	<p>users and stakeholders the opportunity to have input to the City Council after the December 19 public hearing. The proposed ordinance amendments would be placed upon the January 6, 2003 Council meeting for consideration, along with the proposed Schedule of Fees, Schedule of Required Insurance Coverages, ROW Restoration Cost Schedule, and Schedule of Administrative Penalties. If the ordinance received final vote for passage at that meeting, the Council could then proceed to approve and adopt the various schedules. Under this scenario, the ordinance and the various schedules would take effect upon publication of the ordinance.</p>
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