

 <p style="text-align: center;">Council Communication Office of the City Manager</p>	Date:	July 23, 2012
	Agenda Item No.	32
	Roll Call No.	<u>12-1175</u>
	Communication No.	<u>Council Communication: 12- 400</u>
	Submitted by:	Jeb E. Brewer, P.E. City Engineer

AGENDA HEADING:

Approving An Ordinance to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, by amending Sections 102-763 and 102-771, relating to eligibility for issuance of licenses for the use of right-of-way and license amendments.

SYNOPSIS:

Approving amendments to Municipal Code Section 102-763 relating to right-of-way management and those eligible to install facilities or equipment in the right-of-way and amendments to Section 102-771 relating to the conditions required for an amendment to a right-of-way license.

FISCAL IMPACT: NONE

Amount: N/A

Funding Source: N/A

ADDITIONAL INFORMATION:

In accordance with the City of Des Moines Right-of-Way Management Ordinance, Chapter 102, Article IX of the City of Code, the City has established a program to manage and regulate the use of its street and alley rights-of-way (ROW) by public and private users. Recently Wellmark submitted a right-of-way license application to install fiber optic cable in the City right-of-way from their new downtown headquarters to a data storage facility in Altoona. This type of “cross-town”, non-utility use of the right-of-way is not allowed through the current ordinance.

The City right-of-way is limited. Therefore, there is only space for limited users. Poor management of the ROW can lead to unknown users and increased costs to the City and the general public. The proposed modifications to Sections 102-763 and 102-771 give the City the discretion to allow non-utility users in the ROW and the ability to better regulate and manage those categories of users. This reduces the risk of abandonment of facilities and cost to the City to remove those facilities by unregulated private ROW users. The proposed modifications also provide an opportunity to update the Municipal Code to make it consistent with practices, procedures, and technology that have developed over the past ten years since the program was first implemented.

Chapter 102 of the Municipal Code currently allows the following categories of users to install equipment/facilities within the City right-of-way:

1. Utilities
 - City Utilities - includes Sanitary Sewer and Wastewater Reclamation Authority (WRA)
 - Franchise Utilities - includes MidAmerican Energy Gas, MidAmerican Energy Electric, Mediacom
 - Non-Franchise Utilities - examples include Des Moines Water Works and CenturyLink
2. Non-Utilities - private companies using the ROW for private purposes which include the following categories:
 - “Across the street” users: entities who utilize the ROW to connect buildings across the street or alley ROW from one another. Example: Nationwide
 - “Campus” users: entities who utilize the ROW to connect multiple buildings within a relatively small area or linear equivalent footage. Example: Drake University, Grandview University
 - “Wholesalers”: private entities who install facilities in the ROW that are leased to third parties. This is typically fiber optic cable. Example: Unite Private Networks

In an effort to allow the City discretion to allow non-utility uses, such as Wellmark, in the right-of-way and the ability to better regulate and manage this category of users, staff reviewed sections of the Municipal Code to determine what modifications would be needed. Proposed changes to Section 102-763 would apply to non-utilities users as follows:

1. “Across the Street” users - No substantial changes are recommended for this use.
2. “Campus” users:
 - Recommend clarification of the definition of this ROW use for adjoining buildings used collectively as a campus for residential, business and/or educational purposes within a four-block radius or less than 10,000 equivalent linear feet (ELF).
3. “Wholesalers”:
 - Recommend clarification to define this ROW use for entities providing wholesale services and/or support to third-party customers.
 - Recommend addition of removal/restoration deposit or provide maintenance bond.
4. “Corporate Cross-Town” user:
 - Recommend the addition of this ROW use to the Municipal Code.
 - Recommend criteria to evaluate license application for “corporate cross-town” use of ROW.
 - Provide broad-base public benefit through economic development, job creation, health, safety, welfare, etc.
 - Own minimum of one property within City of Des Moines used for non-residential purposes for the duration of the license term and renewals.
 - Own all equipment proposed to be installed within ROW; proposed equipment will have a minimal current or future impact on the ROW.
 - Pay removal/restoration deposit or provide maintenance bond.

No changes are proposed for utility users at this time. Existing users will not be impacted by the proposed Municipal Code modifications unless their usage type or amount of equivalent linear footage of equipment changes. Modifications to Section 102-771 would apply these changes to any future

amendments to existing right-of-way licenses, as well.

Certain private uses, such as wholesalers and corporate cross-town users, would be required to pay a removal/restoration deposit or maintenance bond. This deposit or bond would be collected at license issuance, renewal or amendment in an amount based on the estimated cost to remove the proposed facility/equipment and restore the ROW upon termination of the license. The deposit would be refunded to the user upon acceptable removal of the user's facility and restoration of the ROW. If the user fails to remove and restore satisfactorily, the deposit would be forfeited to the City for the purpose of removing abandoned facilities. A maintenance bond may be provided in lieu of a deposit. In that case, the surety company would assume responsibility for the cost of removal/restoration if the owner failed to do so. The deposit or bond amount would be re-evaluated by the City Engineer upon license renewal or license addendum to determine if an increase is necessary based on cost increases or inflation.

PREVIOUS COUNCIL ACTION(S):

Date: September 14, 1998

Roll Call Number: 98-2883

Action: Final consideration of ordinance Chapter 23 of the Municipal Code regarding regulation and management of private use of public rights-of-way. Moved by McPherson to adopt. Motion Carried 7-0.

BOARD/COMMISSION ACTION(S): NONE

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS: NONE

For more information on this and other agenda items, please call the City Clerk's Office at 515-283-4209 or visit the Clerk's Office on the second floor of City Hall, 400 Robert D. Ray Drive. Council agendas are available to the public at the City Clerk's Office on Thursday afternoon preceding Monday's Council meeting. Citizens can also request to receive meeting notices and agendas by email by calling the Clerk's Office or sending their request via email to cityclerk@dmgov.org.