

 <p style="text-align: center;">Council Communication Office of the City Manager</p>	Date: September 22, 2014
	Agenda Item No. 51I Roll Call No. <u>14-1498</u> Communication No. <u>14-473</u> Submitted by: Pamela S. Cooksey, P.E., Interim City Engineer

AGENDA HEADING:

Amending Chapter 102 of the Municipal Code Regarding Right-of-Way Management Fee changes.

SYNOPSIS:

Recommend approval of the Right-of-Way Management Fee changes to Municipal Code Sections 102-657, 102-660, 102-711, and 102-766 relating to the right-of-way management fee definition, calculation and implementation. The ordinance and fee amount and structure are proposed to be effective as of January 1, 2015.

FISCAL IMPACT:

Amount: Revenue

- Fiscal Year (FY) 2014-2015 (\$0.03/ Equivalent Lineal Foot {ELF}): \$292,700 recovered costs from non-City users; \$93,500 from City of Des Moines Sewer Enterprise funds
- FY 2015-2016 (\$0.06/ELF): \$583,800 recovered costs from non-City users; \$186,900 from City of Des Moines Sewer Enterprise funds
- FY 2016-2017 (\$0.09/ELF): \$875,000 recovered costs from non-City users; \$280,400 from City of Des Moines Sewer Enterprise funds
- FY 2017-2018 (\$0.12/ELF): \$1,166,500 recovered costs from non-City users; \$373,800 from City of Des Moines Sewer Enterprise funds
- FY 2019-2020 (\$0.15/ELF): \$1,457,900 recovered costs from non-City users; \$467,300 from City of Des Moines Sewer Enterprise funds

Funding: Monies generated from this cost recovery effort will be used to reimburse administrative expenses associated with the effort, with remaining monies offsetting a portion of the costs associated with managing the City’s right-of-way within the City’s Operating and Capital budgets and debt service payments associated with right-of-way maintenance and improvements.

ADDITIONAL INFORMATION:

At request of Council during the September 8, 2014 meeting, staff has continued discussions with stakeholders, considered an option that is a hybrid of fee and permits, and examined extending the proposed implementation period beyond five (5) years.

This item now contains two (2) roll calls: the original roll call which would recover \$0.15 per ELF implemented over a five (5) year period, and an alternate roll call for a hybrid which removes degradation costs from the right-of-way management fee calculation in order to further review the cost

recovery through permitting fees and adjusts the proposed right-of-way management fee schedule to implementation of a \$0.12 per ELF fee over a six (6) year calendar period. Cost recovery for degradation through permitting fees would be further studied in the first year of implementation of the new fee. This alternative would reduce the amount of fee recovery by the degradation costs which represent approximately 11% of the total right-of-way management costs to the City.

The Iowa Supreme Court ruling in the *Kragnes v. City of Des Moines* case outlined what impacts due to activities within the City right-of-way are eligible for cost recovery. Based on the identified impacts as set forth in the *Kragnes* ruling and based on data through fiscal year 2012, a new study was conducted in 2013 that calculated the City's current annual right-of-way management costs to be \$9,064,000. City franchisees and City-owned utilities accounted for \$5,160,000 of this actual cost. All other users of City right-of-way account for the remaining \$3,820,000 of the actual cost, although said right-of-way users currently pay only approximately \$84,000 annually through the City's current annual right-of-way management fee. Thus, the annual remaining \$3,820,000 right-of-way management cost is not currently being recovered by the City and as a result is being subsidized by the City of Des Moines tax payers.

On February 11, 2013, by Roll Call No. 13-0186, City Council approved a professional services agreement with Springsted, Inc. to update the City's Right-of-Way Management Fee Study. In 2013 Springsted Inc. conducted a study to and review the City's current actual costs associated with the management of the City right-of-way and the current fee structure for recovering these costs. Pursuant to said agreement, Springsted, Inc. updated the 2007 Franchise Fee Study that Springsted, Inc. prepared in 2007 for the City of Des Moines, in conjunction with the legal case of relating to franchise fees, *Kragnes v. City of Des Moines*. The Iowa Supreme Court ruling in the *Kragnes v. City of Des Moines* case outlined what impacts due to activities within the City right-of-way are eligible for cost recovery.

The 2013 study reviewed these impacts and identified a deficit between the City's costs to manage the right-of-way and the current fees collected from right-of-way users to support this management function, pursuant to Des Moines Municipal Code Chapter 102, Article IX (the "Right-of-Way Management Ordinance") and Iowa Code Chapter 480A. The 2013 study also identified the need for an additional City Engineering Department, Traffic and Transportation Division staff person to better manage multiple right-of-way users and provide better overall service to the said users and the public.

The 2013 study distributed the City's calculated current annual right-of-way management cost among all right-of-way users based on type of usage, measured by the actual impacts from the size and displacement of the user's type of equipment in the right-of-way. The range of cost per ELF of equipment in the City right-of-way was determined to be \$0.28 to \$0.53 per ELF, based on approximately 24 million ELF of facilities in the right-of-way, the average rate calculated through the study is \$0.35 per ELF.

The City currently charges an annual right-of-way management fee of \$0.0085/ELF to right-of-way users, in addition to an annual license fee of \$0.10/ELF for licensed users (i.e., non-franchise and non-public utility users). This equates to a total of approximately \$84,000 annually. The City would need to charge an annual right-of-way management fee of approximately \$0.35/ELF in order to recover the full calculated amount of \$9,064,000 in expense to the City for right-of-way management as determined by the 2013 study.

Based on the study findings and in an effort to address right-of-way user's budget planning and simplify the fee structure, City staff has proposed the adoption of a \$0.15ELF right-of-way

management fee implemented over a five (5) year period, and the elimination of the additional license fee for licensed right-of-way users. The rate for the first year would equal \$0.03 per ELF, with a \$0.03 per ELF increase per year for the next five (5) years. The rate in the fifth year (FY2019-20) would be \$0.015 per ELF. The proposed fee is significantly less than the average fee of \$0.35 per ELF (FY2012) as calculated by the 2013 study, and is also less than the lowest fee based on right-of-way usage type of \$0.28 per ELF (FY2012) as calculated by the 2013 study, but has been determined by City staff to be reasonable in consideration of the changes in fee amount and fee structure now planned for right-of-way users. Right-of-way management fee rates will be reviewed on an annual basis if significant changes in the City's management of right-of-way should occur. Every five (5) years, the overall study will be updated to review cost recovery and reassess the fee amount if needed, and the professional services agreements for study updates and schedule of fee amendments for any newly proposed right-of-way management fee amounts will be submitted to City Council for consideration and approval.

This information was presented to the City Council at the July 14, 2014 workshop. An informational meeting was held for right-of-way users on Monday, August 4, 2014. At request of Council during the August 25, 2014 meeting, additional discussions are planned to take place with stakeholders and Council members. The ordinance reading was continued until September 8th so that additional discussion could take place. The second right-of-way user meeting occurred on September 4, 2014 along with additional discussions with City Council members.

Questions and concerns have been raised by right-of-way users regarding the background calculations in the 2013 study. One concern raised was that the cost determination was made based on qualitative information only, rather than on quantitative numbers. Much of the study was based on previous work by Springsted during the Kragnes v. City of Des Moines legal case. Over 625 pages of employee interviews were performed and collected to determine the overhead and administrative costs associated with City staff overseeing the right-of-way. The degradation costs were based upon actual permit data from the Permit and Development Center, which detailed the number of right-of-way excavation permits taken out and the area of pavement removed. Construction costs were determined by the Engineering Department's experience in extra costs and staff time associated with designing and constructing around the existing utilities in the roadway. In the Kragnes ruling, the Iowa Supreme Court approved the cost recovery items and the manner of calculation addressed in the 2013 study in relation to usage by franchisees of the City right-of-way.

PREVIOUS COUNCIL ACTION(S):

Date: August 25, 2014

Roll Call Number: [14-1313](#)

Action: [Amending](#) Chapter 102 of the Municipal Code regarding Right-of-Way Management Fees. ([Council Communication No. 14-423](#)) Moved by Hensley to continue to September 8, 2014; refer to the City Manager, City Attorney and Engineering Department to work with the impacted parties on suggestions for amendments to the proposed ordinance, to provide the Council with a list of all right-of-way users, and to provide information regarding the proposed job description for the additional staff person. Motion Carried 7-0.

Date: January 27, 2014

Roll Call Number: [14-0118](#)

Action: [Approval](#) of FY2013-2014 Annual Right-of-Way Management Fee. ([Council Communication No. 14-020](#)) Moved by Mahaffey to adopt. Motion Carried 5-2.

Date: April 8, 2013

Roll Call Number: [13-0562](#)

Action: [FY2012-2013 Annual Right-of-Way Management Fee](#). ([Council Communication No. 13-176](#)) Moved by Hensley to adopt. Motion Carried 7-0.

Date: February 11, 2013

Roll Call Number: [13-0186](#)

Action: [Approving](#) professional services agreement with Springsted, Inc. to update Right-of-Way Management Fee Study, not to exceed \$55,530. ([Council Communication No. 13-056](#)) Moved by Hensley to adopt. Motion Carried 7-0.

Date: May 7, 2012

Roll Call Number: [12-0710](#)

Action: [FY2011-2012 Annual Right-of-Way Management Fee](#). ([Council Communication No. 12-212](#)) Moved by Hensley to adopt. Motion Carried 7-0.

BOARD/COMMISSION ACTION(S): NONE

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS:

Second and third ordinance readings. Approval of amendment to schedule of fees to implement the proposed fee amount and structure. Approval of professional services agreements and further amendments to schedule of fees as may be applicable upon five (5) year study updates.

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