

ORDINANCE NO. 13,637

AN ORDINANCE to amend the Municipal Code of Des Moines, 1991, adopted by Ordinance No. 11,651, passed April 15, 1991, and amended by Ordinance No. 11,931, passed February 1, 1993, by repealing Sections 26-49, 26-50, 26-51, 26-52, 26-53, 26-54, 26-55, 26-56, 26-57, 26-58, 26-59, 26-60, 26-61, and 26-63, and enacting new Sections 26-49, 26-54, 26-56, and 26-61, all relating to licensing of communication systems within public right-of-way.

Be It Ordained by the City Council of the City of Des Moines,

Iowa:

Section 1. That the Municipal Code of Des Moines, 1991, adopted by Ordinance No. 11,651, passed April 15, 1991, and amended by February 1, 1993, be and is hereby amended by repealing Sections 26-49, 26-50, 26-51, 26-52, 26-53, 26-54, 26-55, 26-56, 26-57, 26-58, 26-59, 26-60, 26-61, and 26-63, and enacting new Sections 26-49, 26-54, 26-56, and 26-61, all relating to licensing of communication systems within public right-of-way, as follows:

**ARTICLE II. LICENSING OF COMMUNICATIONS SYSTEMS WITHIN  
PUBLIC RIGHT-OF-WAY**

**26-49. DEFINITIONS.**

The definitions found at section 23-53.01 of this city code shall apply to the provisions of this article. Unless otherwise expressly stated or the context clearly indicates a different intention, the following terms shall, for the purpose of this article have the meanings in this section.

**Communications system** means any telephone or telegraph system or any other system of cables, wires, fibers, or conduits, and any related equipment, facilities, manholes or overhead poles, operated and maintained for communications purposes, or operated for the purpose of transmitting data, but excluding cable television systems franchised to provide that service by the city.

**26-50. REPEALED BY ORD. 13,637.**

**26-51. REPEALED BY ORD. 13,637.**

**26-52. REPEALED BY ORD. 13,637.**

**26-53. REPEALED BY ORD. 13,637.**

**26-54. REGULATIONS.**

All technical standards governing installation, construction, reconstruction, repair, operation, disconnection and removal of a communications system licensed hereunder shall be in accordance with all applicable Federal Communications Commission and other federal, state and city laws and regulations.

**26-55. REPEALED BY ORD. 13,637.**

**26-56. LICENSE FEES.**

(a) A license fee shall, to the extent allowed by the Constitution and laws of Iowa, be assessed on all new licenses issued for use or occupancy of right-of-way for telecommunications uses upon and after the city council's approval by resolution of a schedule of license fees for use of city right-of-way. The schedule of fees for use of city right-of-way shall reflect the diminution in the functional utility of the right-of-way for use by the city, and shall be based upon such factors as the value or rental value of private property abutting the right-of-way to be used, and the licensee's avoided cost in using city right-of-way as opposed to establishing a private right-of-way for the licensed use upon abutting private property. The schedule of fees for use of city right-of-way shall establish such fees in terms of per linear foot charges for right-of-way used, and assuming a use width of not more than 10 feet, with the schedule reflecting the per foot value of such right-of-way in identified segments of the city.

(b) In addition to being required to pay a license fee as above provided, communication system licensees may, to the extent allowed by Chapter 480A of the Iowa Code, be required to provide in-kind services as compensation for such use, including but not limited to

(1) the installation by the licensee, of city equipment in the trenches excavated by, or in the duct banks constructed by the licensee, and/or

(2) access to said trenches or ducts so that the city can install its equipment therein.

Communication system licensees which provide such services as utility services, as defined in chapter 23, subchapter 4 of this city code, may, to the extent allowed by Chapter 480A of the Iowa Code, also be required to provide access at no cost to the communications services to be provided by the licensee, equivalent to the services of a "T-1" line, said service to be provided at a location to be designated by the city, or payment to the city of the equivalent value of such service to be provided at said location as an additional quarterly fee.

(c) License fees shall be paid at the city treasurer's office. The acceptance of any license fee payment by the city shall not be construed as an acknowledgment that the license is valid or that the amount paid is the correct amount due, nor shall such acceptance of payment be construed as a release of any claim which the city may have for additional sums due and payable. The licensee shall within 90 days of the close of the license year provide the city with an annual audit of the fees paid to the city during the reporting period indicating the the fee paid the city during that period is equal to the license fee due for such period. In the event that such audit results in a determination that an additional amount of license fee is owing to the city for the prior license year, such additional amount shall be due and payable immediately, together with interest at the

rate of ten percent per year calculated from the due dates for the quarterly license fee payments in question. The city manager may waive the audit requirement when he/she determines that the license fee amount owing to the city is too minimal to justify audit.

(c) The licensee shall pay interest at the rate of ten percent per year on any overdue license fee calculated from the due date thereof.

(d) Nothing in this article shall be construed to limit the liability of the licensee for all applicable federal, state and local taxes.

(e) Nothing in this article shall be construed to prevent the city council from exercising the right of the city to change the amount of any of the fees required by this section.

**26-57. REPEALED BY ORD. 13,637.**

**26-58. REPEALED BY ORD. 13,637.**

**26-59. REPEALED BY ORD. 13,637.**

**26-60. REPEALED BY ORD. 13,637.**

**26-61. ABOVE GROUND CABLES, WIRES, CONDUITS AND POLES;  
UNDERGROUNDING REQUIRED IN UNDERGROUND DISTRICT.**

(a) Within the underground district, as defined at section 23-53.01 of this city code, all cables, wires, fibers and conduits in connection with any communications system shall be placed underground, except where above ground connection to buildings or other locations above ground is reasonably necessary, and except where they can be located in private structures. Such above ground connection shall be by means of poles located, as far as reasonably practicable, within alleys.

(b) Outside the underground district, cables, wires, fibers and conduits in connection with any communications system may be placed either underground or on poles above ground, except for those instances in which undergrounding is required pursuant to the city's subdivision or site plan requirements as expressed in this city code. No such poles shall be installed or erected, and no license or permit for same shall be issued, until the city engineer has approved the proposed location of such poles.

**26-61.01. APPEALS.**

Any person or entity which believes that the license fee imposed on such person or entity, pursuant to this article, does not conform to the requirements of Chapter 480A of the 1997 Code of Iowa may request in writing that such decision or action be reviewed by the city council, pursuant to section 23-67 of the City Code. Any person or entity which is aggrieved by a decision of the department or of the city engineer with respect to the issuance, denial, revocation or suspension of a license for a telecommunications system may request in writing that such

decision or action be reviewed by the city manager, pursuant to section 23-67.01 of the City Code.

**26-62. CONSTRUCTION OF ARTICLE.**

Nothing in this article shall be construed as an acquiescence in, or ratification of, the occupation of any of the public right-of-way or public places of the city by any person now occupying the same without legal right, nor shall this article be construed as conferring the right to occupy any of the public right-of-way or public places of the city upon any such person now illegally or without authority occupying the same.

**26-63. REPEALED BY ORD. 13,637.**

**26-64 to 26-67. REPEALED BY ORD. 10,993, §1.**

**26-68 to 26-76. OMITTED. (See Sec. 26-48.01 to 26-48.09)**

**Sec. 3. SEVERABILITY.** If any of the provisions of this ordinance are for any reason declared illegal or void, then the lawful provisions of the ordinance, which are severable from said unlawful provisions, shall be and remain in full force and effect, the same as if the ordinance contained no illegal or void provisions.

**Sec. 4. REPEALER.** All ordinances or parts of ordinances, and all sections or subsections of the City Code, in conflict with the provisions of this ordinance are hereby repealed. Except as hereafter provided, Subchapter 2, Article II, of Chapter 26 of the City Code is repealed upon publication of this ordinance. The following enumerated existing sections of Subchapter 2, Article II, of Chapter 26 of the City Code shall remain in effect until, and shall be repealed effective upon, the dates hereafter indicated.

**SECTION REPEAL DATE**

Section 26-56 January 1, 1999

Section 26-57 January 1, 1999

**Sec. 5. EFFECTIVE DATE.** This ordinance shall be published immediately, and, with the exception of those provisions hereafter enumerated, the provisions of this ordinance shall be effective upon publication. The following provisions of this ordinance, referencing the new articles, sections, and subsections of the City Code hereby enacted, shall become effective on the dates hereafter indicated:

**SECTION EFFECTIVE DATE**

Section 26-56 January 1, 1999

**Sec. 6.** This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

FORM APPROVED:

Terrence L. Timmins, City Solicitor