

ORDINANCE NO. 14,173

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, by amending Section 94-321 relating to fees for private construction contracts.

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

Section 1. That the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, is hereby amended by amending Section 94-321 relating to fees for private construction contracts, as follows:

Sec. 94-321. Procedures for approval of three party contract.

(a) Prior to the commencement of construction of any street or sewer improvements associated with subdivision development, site plan development, or any private construction project, involving the construction of streets or sewers which are to be dedicated to and maintained by the city, the construction of private sewers upon city property or street rights-of-way, or the construction of private streets or private sewer mains serving more than one building, the person desiring to construct such improvements shall make application to the city engineer for approval of the private construction contract pursuant to which the

such improvements will be constructed. The application shall be in the form of a letter requesting approval and shall be accompanied by reproducible Mylars of engineering design drawings of such improvements approved by the city engineer, executed originals of all proposed contracts for the construction of such improvements, the contractor's surety bond for the performance, payment and maintenance of such work, and a certificate of insurance evidencing insurance coverages as required by the engineering department. The application shall also be accompanied by payment of an administrative fee for the City's costs of processing and approving the contract and accepting the work performed thereunder, together with an inspection and testing fee for the City's costs of inspecting and testing the work performed under the contract, said fees to be calculated upon the basis of the schedule of fees adopted by the City Council by resolution. All such proposed contracts shall be three-party contracts in

substantially the form provided and required by the engineering department. Under such contract, the city is to be a named third-party beneficiary of the contractor's obligations and commitments with regard to the construction of the improvements and an obligee under the contractor's bond. Surety bonds and insurance certificates shall likewise be in substantially the form provided and required by the engineering department.

(b) Upon receipt of an application requesting approval accompanied by all required documentation, and upon payment of fees as required in (a) above, the city engineer shall make a recommendation to the city council as to the approval or rejection of the proposed contract, taking into consideration the following:

(1) The financial responsibility of the contractor.

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(c) A proposed contract
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(d) If the city engineer determines to recommend rejection of the contract to the city council, the city

engineer shall so notify the affected contractor. The notice shall set forth the reasons supporting rejection of the proposed contract, shall indicate that the contractor may appeal the city engineer's determination in that regard, and shall be sent to the contractor by certified mail, return receipt requested.

- a. Upon written request of the contractor filed within ten days of mailing of the notice provided in subsection (c) of this section, the city engineer shall schedule a hearing at which the contractor may present evidence or argument why his or her proposed contract should not be rejected. Such hearing shall be scheduled and held within ten days of receipt of request therefor. The city engineer's recommendation shall be issued within 30 days of the conclusion of the hearing, shall be mailed to all parties participating in the hearing, and shall be forwarded to the city council for consideration. If the city engineer's recommendation is to reject the proposed contract, the city engineer shall notify the contractor by certified mail, return receipt requested, of the date, time, and location of the city council meeting at which the city engineer's recommendation will be presented to the city council for consideration.
- b. The city council may accept or reject the city engineer's recommendation with respect to the proposed contract, but if the city council determines to reject the proposed contract, the reasons for rejection shall be set forth in the council resolution memorializing that action.

(g) In the event a contract is rejected, the administrative portion of the fee will be retained and the

inspection and testing
portion of the fee shall
be refunded to the
applicant.

Sec. 2. 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, Deputy City Attorney

Preston A. Daniels, Mayor

Attest:

I, Donna V. Boetel-Baker, City Clerk of the City of Des Moines,
Iowa, hereby certify that the above and foregoing is a true copy
of an ordinance (Roll Call No. 02-2934), passed by the City
Council of said City at a meeting held December 16, 2002 signed
by the Mayor on December 16, 2002 and published as provided by
law in the Polk County Press Citizen on December 27, 2002
Authorized by Publication Order No. 3499.

Donna V. Boetel-Baker, City Clerk

