

★ **Roll Call Number**

**Agenda Item Number**

43

**Date** May 19, 2008

An Ordinance entitled, "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, and amended by Ordinance No. 14,447 passed May 23, 2005, and Ordinance No. 14,685 passed August 20, 2007 by amending Section 26-211(b)(1) thereof, relating to building code obstruction permits",

which was considered and voted upon under Roll Call No. 08- 809 of <sup>May 5</sup>~~April 7~~, 2008; again presented.

Moved by \_\_\_\_\_ that this ordinance be considered and given second vote for passage.

(Second of three required readings)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLASSIS				
<b>TOTAL</b>				
MOTION CARRIED			APPROVED	
_____ Mayor				

**CERTIFICATE**

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

\_\_\_\_\_ City Clerk



**Council**  
**Communication**  
Office of the City Manager

Date May 5, 2008

Agenda Item No. ~~29~~ 809 43  
Roll Call No. 08-  
Communication No. 08-259  
Submitted by: Larry Hulse, Community  
Development Director; Jeb E.  
Brewer, P.E., City Engineer

**AGENDA HEADING:**

Amending Section 26-211(b)(1) thereof, relating to building code obstruction permits.

**SYNOPSIS:**

Recommend amending Section 26-211(b)(1) thereof, relating to building code obstruction permits. Section 26-211 of the Municipal Code authorizes the issuance of an obstruction permit when use of a portion of the City right-of-way is needed for private construction purposes. These changes will specifically set forth that the Surety Bond is to cover restoration of the right-of-way and all public improvements caused by the contractor in conjunction with the construction project.

**FISCAL IMPACT:**

Amount: N/A

Funding Source: No changes to the fee schedule or bond requirements are necessary. Section 26-211 contains existing permit fees and surety bond requirements.

**ADDITIONAL INFORMATION:**

The intent of section 26-211 is to allow a contractor to make limited use of public right-of-way when necessary for construction purposes on private property. Obstruction permits are frequently used for building construction in the downtown area, where the building is constructed out to the property line, with no setback to provide space for construction activities.

Various sections of the City Code require restoration of the right-of-way if it is damaged; however, none of these provisions were located directly within the obstruction permit section. The existing requirement for a surety bond is to ensure removal of the obstruction, typically a fence. Recent projects have demonstrated a need for greater leverage when damages occur within the right-of-way as a result of the construction activity, and the owner or contractor is unwilling to restore the site to a pre-construction condition. These changes will specifically set forth that the Surety Bond is to cover restoration of the right-of-way.

**PREVIOUS COUNCIL ACTION(S): NONE**

ORDINANCE NO. \_\_\_\_\_

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, and amended by Ordinance No. 14,447 passed May 23, 2005, and Ordinance No. 14,685 passed August 20, 2007 by amending Section 26-211(b)(1) thereof, relating to building code obstruction permits.

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, and amended by Ordinance No. 14,447 passed May 23, 2005, and Ordinance No. 14,685 passed August 20, 2007 is hereby amended by amending Section 26-211(b)(1) relating to building code obstruction permits, as follows:

**Sec. 26-211. Obstruction permit, bond, and insurance.**

- (a) No person shall use any portion of public property as described in Section 3308 of the International building code without first obtaining an obstruction permit which shall state the following:
  - (1) The name of the owner of the property abutting the public property to be used.
  - (2) The name of the person applying for the obstruction permit.
  - (3) An accurate description of the public property to be obstructed or occupied.
  - (4) The length of time such obstruction or occupancy shall exist.
  - (5) An agreement to comply in all respects with the provisions and requirements of the building code, this article and other city ordinances relating to the use of streets and alleys and to indemnify and save and keep harmless the city from any and all costs, expense or liability for damages or injuries to persons or property or liability of any kind whatsoever, arising from or growing out of the use and occupancy of such street or growing out of the deposit of such material or any failure to properly pile, deposit, guard, light or care for such.
  - (6) Such additional requirements as may be deemed

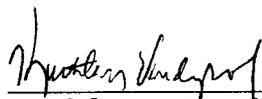
necessary for the protection of the city and its inhabitants.

- (b) Before an obstruction permit shall be issued, there shall be placed on file in the office of the building official a surety bond and liability insurance as follows:
- (1) A surety bond in the sum of \$5,000.00 conditioned to ensure removal of the obstruction and restoration of the right-of-way and all public improvements thereon by or before the expiration date of such obstruction permit or such extended time as may be granted by the city; and
  - (2) Liability insurance showing the city as named additional insured and providing a minimum limit of liability in the amount of \$500,000.00 each accident, for accidents caused by maintenance of such obstruction. The insurance policy shall contain a provision whereby such insurance may be cancelled or materially altered only after giving the city ten days' written notice of the change or cancellation.
- (c) Such surety bond and liability insurance shall be approved by the building official and the legal department and shall be conditioned to secure the performance of such agreement by the applicant.
- (d) No person shall, under any permit, occupy more area than is stated in the obstruction permit.
- (e) The fee for an obstruction permit shall be as set forth in the Schedule of Fees adopted by the city council by resolution.

Exception: To allow street maintenance and use of public way when maintenance is required.

Sec. 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

FORM APPROVED:



Kathleen Vanderpool  
Deputy City Attorney