

★ **Roll Call Number**

Agenda Item Number

32A

Date July 23, 2012

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, 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",

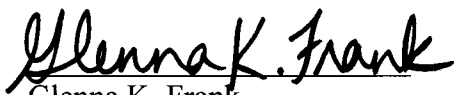
which was considered and voted upon under Roll Call No.12-_____ of July 23, 2012; again presented.

Moved by _____ that the rule requiring that an ordinance must be considered and voted on for passage at two Council meetings prior to the meeting at which it is to be finally passed be suspended, that the ordinance be placed upon its final passage and that the ordinance do now pass.

ORDINANCE NO. _____

NOTE: Waiver of this rule is requested by Midwest Fiber Network Systems, by attorney Kathryn M. West.

FORM APPROVED:



Glenna K. Frank
Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
TOTAL				
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



Whyte Hirschboeck Dudek S.C.

Kathryn M. West
Direct Dial: (414) 978-5442
kwest@whdlaw.com

July 23, 2012

VIA FACSIMILE AND E-MAIL

Mayor Frank Cownie
City Council Members
c/o City Clerk
400 Robert D Ray Drive
Second Floor
Des Moines, IA 50309

Re: July 23, 2012 City Council Meeting
Agenda Item No. 32
Amendment to Des Moines Right-of-way Management Ordinance

Dear Mayor Cownie and City Council Members:

I am writing on behalf of my client Midwest Networks Development, LLC (“MND”) to express support for the above-referenced amended ordinance you will be considering today, July 23, 2012, and to urge you to:

1. Vote in favor of the proposed amendment to Chapter 102 of the Des Moines Municipal Code at its First reading today July 23, 2012, and
2. Agree to waive the rule requiring that an ordinance must be considered and voted on for passage at two Council meetings prior to the meeting at which it is to be finally passed and, instead, also vote for Final approval of the proposed amendment to Chapter 102 today, July 23, 2012.

Midwest Fiber Networks, LLC, headquartered in Wisconsin, provides fiber optic development and construction services itself, and through its affiliate MND. MND is currently working on a multi-state project to help improve the connectivity of one of its clients. As part of this project, MND began working with Des Moines city staff as early as February 2012 in an effort to obtain all the approvals necessary to complete a project to expand its fiber optic network through Des Moines. More than three-quarters of the project involves installation of fiber optic cable in Des Moines’ overhead right-of-way on utility poles, with the remainder requiring

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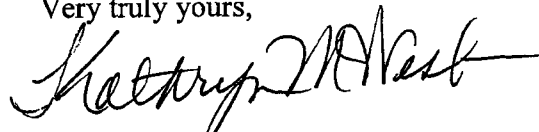
installation of the cables below ground. MND's goal was to have the Des Moines leg of the project completed by August 30, 2012. Although its application materials were submitted and seem to be in order, MND ultimately learned in mid-June that it was not eligible for the necessary license because its proposed use of the right-of-way was not contemplated by Des Moines City Ordinance section 102-763 which defines the "Persons eligible for issuance of a license."

Since then we have been in communication with Assistant City Attorney Glenna Frank regarding this matter. We appreciate her keeping us informed as to the progress of efforts to draft amendments to the ordinance that will give the City Engineer the authority to issue right-of-way licenses to entities such as MND, as well as to other entities that are not covered by the current terms of the ordinance.

We understand that the standard procedure for approving amendments to an ordinance is that the ordinance will be considered at one City Council meeting and, if approved, must then be considered and approved at a successive City Council meeting. In this instance, if the amended ordinance is approved at the July 23, 2012 City Council meeting, it would then have to be considered at the August 13, 2012 meeting. We understand that there is a procedural avenue that allows First and Final consideration of the amended ordinance at the same Council meeting, and have submitted a request to the Des Moines City Clerk, asking that the requirement for reading at a second Council meeting be waived in this instance. MND, which plans to employ local crews for the initial build out of the network, and also for the long-term maintenance of its facilities, is eager get this already-delayed project off the ground and to begin work in the City of Des Moines. It respectfully requests that if the proposed amendments to Chapter 102 are approved, the Final reading of the amended ordinance also take place at the City Council meeting on July 23, 2012 so that the terms of the ordinance can thereafter be implemented as soon as possible.

Thank you for your consideration of this matter. Please feel free to contact me directly with any questions you may have.

Very truly yours,



Kathryn M. West

KW

cc: Mr. Joel Bojarski
Mr. Andrew J. Schlidt
Ms Glenna Frank



Whyte Hirschboeck Dudek S.C.

Kathryn M. West
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kwest@whdlaw.com

July 20, 2012

Diane Rauh, City Clerk
City Hall
2nd Floor
400 Robert D. Ray Drive
Des Moines, IA 50309

Re: Des Moines City Council Meeting, July 23, 2012
Agenda Item no. 32: Amending Chapter 102 of the Municipal Code
READING WAIVER REQUEST

Dear Ms. Rauh:

We are making a **Reading Waiver Request** for the above-referenced agenda item no. 32 to be considered at the July 23, 2012 City Council meeting. We believe that allowing the first and final consideration of this matter at the same Council meeting will allow sufficient consideration of this matter and will facilitate more timely consideration of license requests which are awaiting implementation of the proposed ordinance amendments.

I would be happy to answer any questions you might have regarding this request and can be contacted directly at (414)978-5442.

Thank you for your consideration of this request.

Very truly yours,

Kathryn M. West
lmb

Kathryn M. West

KW/lmb

cc: Mr. Joel Bojarski
Ms. Glenna K. Frank

WHD/8785163.1