

★ Roll Call Number

16-0653

Agenda Item Number

7

Date April 25, 2016

**APPROVAL OF FY 2015-2016 ANNUAL RIGHT-OF-WAY MANAGEMENT FEE**

WHEREAS, pursuant to the City of Des Moines Right-of-Way Management Ordinance, Chapter 102, Article IX of the City Code, the City has established a program to manage and regulate the use of its street and alley rights-of-way (ROW) by public and private users, and established provisions to charge ROW management fees to recover the costs of said program; and

WHEREAS, pursuant to Section 102-711 of the City Code, the City will attempt to recover its ROW management costs from all persons, companies and governmental entities whose presence and activities in the ROW require the City to engage in regulatory activities, as provided and allowed by Chapter 480A of the Iowa Code, "Public Utilities in Public Rights-of-Way"; and

WHEREAS, Section 480A.5 of the Iowa Code provides as follows:

A local government may recover from a public utility only those management costs caused by the public utility's activity in the public right-of-way. A fee or other obligation under this section shall be imposed on a competitively neutral basis. When a local government's management costs cannot be attributed to only one entity, those costs shall be allocated among all users of the public rights-of-way, including the local government itself. The allocation shall reflect proportionately the costs incurred by the local government as a result of the various types of uses of the public rights-of-way"; and

WHEREAS, Section 102-711 of the City Code provides that ROW management costs which the City incurs due to the activities of particular persons, companies and governmental entities in its ROW will be allocated to and collected from such persons, companies and governmental entities by means of permit fees; and

WHEREAS, Section 102-711 of the City Code further provides that ROW management costs which the City incurs which cannot be allocated to particular users ("non-allocable costs") will be allocated among all users of the public rights-of-way, including the City, and collected by means of an "annual management fee"; and

WHEREAS, Section 102-711 of the City Code provides that each user's annual management fee is to be based on its proportional allocation and use of City ROW as reported to the City by all ROW users, and that each user is to pay its proportionate share of the non-allocable costs in the City's ROW management program budget by means of an annual management fee to be approved by the City Council; and

WHEREAS, the City Engineer has determined the proportional allocation of ROW usage by all of the known ROW users in terms of "equivalent lineal footage" of such use, which usage was calculated on the basis of reports of ROW usage submitted by such users, or on the basis of City Engineer's estimate of such usage, as provided and required in Section 102-711 of the City Code; and

WHEREAS, the City Engineer recommends the City Council approve the annual management fee for FY 2015-2016 in the amount of 0.88 cents (.0088 dollars) per equivalent lineal foot with the proposed minimum annual management fee of \$100.

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NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF DES MOINES, IOWA:

1. That this City Council hereby authorizes and directs the City Engineer to calculate the annual management fee for FY 2015-2016 owing by all ROW users with known use of City ROW and to send notice of such fee to all such ROW users.
2. That the City Engineer's calculation of the annual management fee for FY 2015-2016 in the amount of 0.88 cents (.0088 dollars) per equivalent lineal foot with the proposed minimum annual management fee of \$100, all as shown in the supplemental documentation for the FY 2015-2016 ROW Management Program Budget, is hereby approved and adopted by this City Council as provided by Section 102-711 of the City Code.
3. That the supplemental documentation for the FY 2015-2016 ROW Management Program Budget submitted by the City Engineer is hereby received and filed.

(Council Letter Number 16-208 attached)

Moved by Hensley to adopt.

APPROVED AS TO FORM:

Kathleen Vanderpool  
Kathleen Vanderpool  
Deputy City Attorney

\*Council Member Coleman declared a conflict of interest and abstains from voting.

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
*COLEMAN				
GATTO	✓			
GRAY	✓			
HENSLEY	✓			
MOORE		✓		
WESTERGAARD	✓			
TOTAL	5	1		

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.

T. M. Franklin  
Mayor

Diane Rauh  
City Clerk