

ORDINANCE NO. 14,463

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. 14,043, passed January 28, 2002, and Ordinance No. 14,202, passed January 6, 2003 by amending Section 102-707, paragraph (a) of Section 102-710, paragraphs (j) and (k) of Section 102-711, paragraph (a) of Section 102-717 and Section 102-722 relating to permits, administrative penalties, permit fees, right-of-way restoration and permittee obligations and adding and enacting a new Section 102-95 thereof, relating to construction of a heated sidewalk.

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. 14,043, passed January 28, 2002, and Ordinance No. 14,202, passed January 6, 2003 is hereby amended by amending Section 102-707, paragraph (a) of Section 102-710, paragraphs (j) and (k) of Section 102-711, paragraph (a) of Section 102-717 and Section 102-722 relating to permits, administrative penalties, permit fees, right-of-way restoration and permittee obligations and adding and enacting a new Section 102-95 thereof, relating to construction of a heated sidewalk, as follows:

Sec. 102-95. Construction of heated sidewalk.

- (a) If the owner or occupant of any property abutting a city street desires to construct a heated sidewalk within the city street right-of-way, the owner or occupant shall so state in its permit application. It shall be the

responsibility of the owner or occupant of the abutting property to protect and maintain the sidewalk and sidewalk heating system constructed in the city right-of-way. The city or any other person, firm or governmental entity having utility, traffic control or telecommunications equipment in the city right-of-way where the heated sidewalk is situated shall use reasonable care to avoid damaging or destroying the sidewalk heating system, but shall not have any duty to protect or repair the sidewalk heating system if same is destroyed, damaged, disturbed or adversely impacted due to the repair, maintenance or replacement of any such equipment.

- (b) The sidewalk permit applicant shall provide the following information with respect to such sidewalk:
 - (1) A drawing signed by the owner and/or occupant of the abutting property showing the proposed location of the heating system within the sidewalk on city right-of-way, and showing the connection point or points where such system will be connected to the glycol heating / pumping equipment, which equipment shall be located on the property abutting the city right-of-way.
 - (2) A statement from the abutting property owner stating that it understands and agrees to the conditions outlined in Sec. 102.95.
- (c) The only type of sidewalk heating system which will be allowed to be installed in a sidewalk constructed in city right-of-way shall be glycol circulated in PVC piping installed when the concrete sidewalk is poured, unless an alternate system is approved by the city engineer. The owner or occupant of the abutting property shall be allowed to place flush mounted monuments in the sidewalk surface indicating the presence of a heated sidewalk heating system, and advising who should be contacted if the sidewalk will be disturbed by construction or excavation activities.
- (d) It is the responsibility of the owner of the heated sidewalk (owner) to repair any and all damage to the heated sidewalk resulting from work done by a contractor working within the city right-of-way with an excavation permit (contractor). The Contractor is responsible for the cost to repair the sidewalk as per city specifications. The owner, or a representative thereof, must complete repairs to the heated sidewalk system within the time period outlined in the Contractor's excavation permit. If the heated sidewalk repairs are not completed within the specified time frame and time extension arrangements have not been made between the owner and the contractor, the

contractor may replace the sidewalk without repairing the heated sidewalk system.

Sec. 102-707. Permits required.

- (a) Except as otherwise provided in this article, no person shall excavate or obstruct any right-of-way without first obtaining an excavation permit, obstruction permit, tree well permit, or irrigation system permit, as described in this subsection, from the city engineer issued pursuant to this division.
 - 1) *Excavation permit.* An excavation permit is a permit which allows the holder to excavate in a specified city right-of-way and to hinder free and open passage over and use of the specific portion of right-of-way by placing equipment described therein, to the extent and for the duration specified therein.
 - 2) *Obstruction permit.* An obstruction permit is a permit which allows the holder to hinder free and open passage over and use of the specified portion of the right-of-way by placing equipment described therein on the right-of-way for the duration specified therein.
 - 3) *Tree well permit.* A tree well permit is a permit which allows the holder to construct a tree well in the right-of-way in the area between the property line and the back of the curb, provided such tree well has been approved as part of a site plan.
 - 4) *Irrigation system permit.* An irrigation system permit is a permit which allows the holder to construct an irrigation system or any part thereof in the right-of-way immediately adjacent to the permit holder's abutting property.
- (b) No person may excavate or obstruct the right-of-way beyond the date specified in the permit unless such person:
 - 1) Makes a supplementary application for another right-of-way permit before the expiration of the initial permit; and
 - 2) A new permit or permit extension is issued.
- (c) It shall be the responsibility of the owner or occupant of the abutting property to protect and maintain a treewell or irrigation system which it constructs or installs in the city right-of-way. Neither the city nor any other person, firm or governmental entity having utility, traffic control or telecommunications equipment in the city right-of-way where a treewell or irrigation system is situated shall have any duty to protect, repair or restore such treewell or irrigation system if same is destroyed,

damaged, disturbed or adversely impacted due to the repair, maintenance or replacement of any such equipment. Persons installing tree wells or irrigation systems in the right-of-way pursuant to a permit issued under this section shall acquire no right or interest in the right-of-way allowing the continued use of the right-of-way for such purpose, nor shall such persons be entitled to make claim against the city or any other person, firm or governmental entity having utility, traffic control or telecommunications equipment in the city right-of-way due to damage, disruption or removal of such facilities. Tree wells and irrigation systems placed in the right-of-way pursuant to permit issued under this section shall be considered emplaced in the right-of-way at the city's sufferance and shall be subject to the city's right to remove or disrupt the tree well or irrigation system with or without prior notice to the permit holder, during the course of constructing, repairing, maintaining, or replacing any city equipment or other facilities in the right-of-way, whether such work is performed by city work crews or city contractors. (d) Except as otherwise provided in this article, no person shall occupy any portion of the right-of-way for the purpose of providing ongoing utility services on other than a temporary basis as provided in an obstruction permit or excavation permit, without first obtaining a franchise, license, or lease from the city.

Sec. 102-710. Administrative penalties for scheduled violations.

- (a) The city engineer is authorized to impose administrative penalties upon persons who commit the following violations of this article:
- (1) Failure to obtain permit;
 - (2) Failure to provide required notification of emergency trenching or excavations;
 - (3) Failure to provide required traffic control devices;
 - (4) Failure to restore as required;
 - (5) Failure to properly secure steel plates;
 - (6) Failure to provide required notification for inspection by plumbing inspector;
 - (7) Failure of restoration within the maintenance period;
 - (8) Failure to restore street cuts within the period provided in the permit;
 - (9) Failure to comply with permit conditions;
 - (10) Failure to comply with orders issued by the city engineer or the city engineer's designee;
 - (11) Failure to complete work within the time provided in

the permit, or within a time extension of the permit granted by the city engineer or the city engineer's designee;

(12) Failure to provide factually accurate, truthful or complete information in making application for a permit; or

(13) Working, storing equipment or materials, or parking vehicles outside the permit area.

The administrative penalty for each violation shall be as provided in the schedule of administrative penalties adopted by the city council by resolution. Notice of violation, with the applicable penalty for such violation noted thereon, shall be issued by the city engineer to the violator. Penalties shall be paid in full within 30 days of the issuance of the notice at the city's permit and development center.

Sec. 102-711. Permit fees; management fees.

(j) *Annual management fee.* On or before February 1st of each year, all right-of-way users required to pay an annual management fee, as provided in section 102-660, shall make a detailed report to the city engineer on the right-of-way usage reporting form provided by the city for that purpose, setting forth the amount of equipment that each such user has in city street rights-of-way, measured in equivalent lineal feet as instructed on such form. In March of each year, the city engineer shall submit to the city council a right-of-way management program budget, showing the anticipated revenues from right-of-way permit fees in the next fiscal year, as well as the amount of non-allocable program costs which the city will incur, but which will not be allocable to particular users of the right-of-way and which cannot be recovered through permit fees as provided in this section. The city engineer shall also calculate and submit to the city council, as part of the budget for the right-of-way management program, an annual management fee to recover the non-allocable program costs. The annual management fee shall be expressed in cents per equivalent lineal foot of equipment to be charged to all users with equipment in city rights-of-way. The annual management fee to be charged to each user shall be determined by multiplying that user's number of equivalent lineal feet of equipment in City right-of-way by the per equivalent lineal foot fee amount set forth in the approved program budget. The city engineer shall report the annual management fee so

calculated to each right-of-way user on or before May 1st of each year and each user's annual management fee shall be due and payable on and as of July 1st of the fiscal year succeeding the approval and calculation of the annual management fee as above provided. An annual management fee shall be calculated for franchisees which pay a franchise fee to the city, but such franchisees shall not be required to pay such annual management fee in addition to the franchise fee.

- (k) Engineer's authority to waive the annual usage reporting requirement for ROW users; *engineer's authority to estimate equivalent lineal footage of non-reporting user; penalty for under-reporting right-of-way usage.* For any year as to which the city engineer determines that the relative change in right-of-way usage by all right-of-way users is insufficient to materially affect the calculation of the annual management fee as to individual users, the city engineer may waive such annual reporting requirement as set forth in subparagraph (j) above and may utilize the usage reported by right-of-way users for the most recent prior year in which all users were required to report. Such waiver shall be reported to all right-of-way users in lieu of sending a right-of-way usage reporting form to such users. As to any year in which right-of-way usage reporting is not so waived, the failure of the city engineer to send a right-of-way usage reporting form to a right-of-way user shall not excuse such user from the requirement of making such report as herein required. As to any right-of-way user who fails to complete or return a right-of-way usage reporting form as herein required by the February 1st deadline, the city engineer is authorized to calculate the equivalent lineal feet of equipment that such user has in city street right-of-way upon such basis as the city engineer determines is fair and rational, and to utilize the number of equivalent lineal feet so determined in the calculation of such user's annual management fee. The city engineer is further authorized to verify reported right-of-way usage by right-of-way users by any means the city engineer determines to be fair and rational. As to those right-of-way users who under-report by more than 5% their equivalent lineal feet of right-of-way usage, the city engineer is authorized to recalculate such usage and such user's annual management fee, and such users shall be required to immediately pay any balance in charges owing, with interest thereon at the rate of 7% per annum, since the due date of the annual management fee for such user.
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Sec. 102-717. Right-of-way restoration; performance and maintenance bond or other form of security required.

- (a) *Restoration required.* The work to be done under an excavation permit issued pursuant to this article and the restoration of the right-of-way as required in this division must be completed within the dates specified in the permit. In addition to its own work, the permittee must restore or pay for the restoration of the general area of the work, and the surrounding areas, including the paving, its foundations and any special features, to its proper and required condition in accordance with the city's utility accommodation and street restoration specifications, unless the city engineer deems other or additional specifications must be utilized in order to secure proper restoration. Further, the permittee shall inspect the area of the work and use reasonable care to maintain the same condition for 48 months thereafter. If special features in the right-of-way at a proposed excavation site, including but not limited to special sidewalk surfaces, heated sidewalks, underground vaults, areaways, and landscaping, cannot be preserved or protected, the City must be notified prior to the applicant beginning work.

Sec. 102-722. Permittee's other obligations.

- (a) Obtaining a right-of-way permit does not relieve a permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by any other city, county, state, or federal rules, laws or regulations.
- (b) A permittee shall comply with all requirements of local, state and federal laws, including I.C. § 480.1 et seq., pertaining to underground facilities information (one-call excavation notice system).
- (c) A permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who performs the work.
- (d) Except in an emergency and with the approval of the city engineer, no right-of-way obstruction or excavation may be performed when seasonally prohibited or when conditions are unreasonable for such work.
- (e) A permittee shall not so obstruct a right-of-way that the

natural free and clear passage of water through the gutters or other waterways shall be interfered with.

- (f) Work under a permit shall be conducted within the permit area, and work vehicles, equipment and materials shall be stored within the permit area. Private vehicles may not be parked within or adjacent to a permit area. The loading or unloading of trucks adjacent to a permit area is prohibited unless specifically authorized by the permit.
- (g) A permittee shall comply with all conditions stated in the permit, and with orders issued by the city engineer or the city engineer's designated representative with respect to work being performed under the permit.
- (h) A permittee shall complete all work authorized by a permit within the time provided in the permit, or within a time extension of the permit granted by the city engineer or the city engineer's designee.
- (i) A permittee shall provide factually accurate, truthful and complete information in making application for a permit.

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

T.M. Franklin Cownie, Mayor

Attest:

I, Diane Rauh, 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. 05- 1553), passed by the City Council of said City at a meeting held June 20, 2005 signed by the Mayor on June 20, 2005 and published as provided by law in the Business Record on July 4, 2005 Authorized by Publication Order No. 4821.

Diane Rauh, City Clerk

