

ORDINANCE NO. 15,120

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 use of the right-of-way and license amendments.

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, as heretofore amended, is hereby amended by amending Sections 102-763 and 102-771, relating to issuance of a license for the use of the right-of-way and license amendments, as follows:

**Sec. 102-763. Persons eligible for issuance of license.**

- (a) The following persons shall not be eligible for the grant of a franchise, but shall instead be eligible for the issuance of a license for the use of the right-of-way at the discretion of the city engineer:
  - (1) a. A person who, on the effective date of the ordinance from which this section derives, provides or proposes to provide utility services to all residents within the city or to all residents within a given part thereof but who intends to utilize for that purpose only certain street or alley rights-of-way constituting only a small portion of the street or alley rights-of-way within the city or within that part of the city; or
  - b. A person who the city determines can provide such service by utilizing only certain street or alley rights-of-way constituting only a small portion of the street or alley rights-of-way within the city or within a given part of the city.
- (2) The owner of two or more properties which abut a street or alley right-of-way on either side thereof and which properties are zoned for multifamily, commercial, or industrial use, who desires to use such street and/or alley right-of-way to provide a private service connection between two or more buildings or facilities located on such properties.

- (3) The owner of two or more properties within the boundaries of the city, which properties are used collectively as a campus for residential, business, and/or educational purposes, who desires to use the streets and/or alleys connecting said properties to provide a private service connection not to exceed a four-block radius or 10,000 equivalent linear feet between two or more buildings or facilities located on such properties.
- (4) A person who provides or proposes to provide wholesale services and/or support to its customers or clients who use the person's equipment and facilities within the city right-of-way. Upon request by such person for license, or for license renewal or license amendment increasing the equivalent linear footage of the person's equipment within the right-of-way existing on the effective date of the ordinance from which this section derives by ten percent or greater, the city engineer shall review the then-anticipated cost of relocation and removal of the person's proposed equipment and restoration of the city right-of-way due to said relocation or removal, and prior to issuing such license, or renewal or amendment, the city engineer may, in his or her sole discretion, require such person to make payment to the city of an upfront deposit payment or to post a performance and maintenance bond in the amount as more fully described in subsection (a)(5)(d) of this section, and to be used as more fully described in subsection (a)(5)(d) of this section. Nothing set forth herein relieves such person of its obligation to additionally pay applicable fees, or to remove and/or relocate its equipment following its license term and/or renewal(s) thereof following city engineer order, or to otherwise comply with all provisions of this code applicable to such person's use of the city right-of-way.
- (5) A person who provides or proposes to provide a private service connection that does not cross a street or alley right-of-way between two or more buildings or facilities on either side thereof in accordance with subsection (a)(2) of this section, or that exceeds a four-block radius or 10,000 equivalent linear feet in accordance with subsection (a)(3) of this section, and who, in the discretion of the city engineer, fulfills all of the following criteria:
  - a. Owns a minimum of one property used for non-residential purposes within the boundaries of the city, as determined by the records of the county assessor and/or auditor within which county the property is located, for the duration of the initial license term and renewal(s) thereof; and

- b. Provides a broad based public benefit to the city and its residents in the form of economic activity, and/or job creation, and/or the promotion of the health, safety or welfare of the city's residents; and
- c. Does or will own the proposed equipment within the right-of-way, and whose proposed use of the right-of-way has a minimal current impact and minimal anticipated future impact on such right-of-way, and of the use thereof by the city or other parties allowed by the city pursuant to this article; and
- d. Prior to license issuance, or to license renewal or amendment increasing the equivalent linear footage of the person's equipment within the right-of-way existing on the effective date of the ordinance from which this section derives by ten percent or greater, either pays to the city an upfront deposit payment or posts a performance and maintenance bond in the full amount recommended by the city engineer, including the anticipated cost of relocation and removal of such person's proposed equipment, plus the anticipated cost of restoration of the right-of-way due to said relocation or removal in the greater of the amount of \$25,000.00 or the amount calculated pursuant to the city's utility accommodation and street restoration specifications and in accordance with the current restoration cost schedule established by resolution of the city council. Said deposit payment shall be held in separate account by the city, and any interest gained thereon shall be paid to the city. Said bond shall be in a form approved by the city engineer and city legal department, subject to the requirements of section 102-717(b)-(c) of this code, and issued and/or renewed for the duration of the license issued pursuant to this section and all renewal(s) thereof and for a forty-eight (48) month period following termination of such license and renewal(s). Upon request by such person for license renewal or amendment, the city engineer shall review the amount of the deposit or bond, as applicable, and the then-anticipated cost of relocation and removal of such person's equipment and restoration of the city right-of-way due to said relocation or removal, and prior to issuing such renewal or amendment the city engineer may, in his or her sole discretion, require such person to pay additional funds to the deposit or increase the amount of the bond, as applicable, to account for inflation or other factors. Following full removal

by such person of all of its equipment from the right-of-way and restoration thereof to the satisfaction of the city engineer, as required at the end of the license term or renewal(s) thereof or by order of the city engineer, then the deposit shall be reimbursed by the city to such person or the surety on the bond shall be released, as applicable. If such person fails to remove all of its equipment from the right-of-way and restore the right-of-way to the satisfaction of the city engineer at the end of the license term or renewal(s) thereof or following order of the city engineer, the deposit shall be deemed forfeited and shall not be returned to such person or the surety on the bond shall not be released, as applicable. Such forfeited deposit or unreleased bond may be used by the city to pay and/or reimburse all of the city's costs related to the removal or relocation of such person's equipment from the right-of-way and restoration of the right-of-way, or such forfeited deposit may be transferred to a general account to be used by the city, when and as determined in the sole discretion of the city engineer, to pay and/or reimburse all of the city's costs related to the removal or relocation of any abandoned equipment in the right-of-way and restoration of the right-of-way associated with any city project or city repair or maintenance activity. Nothing set forth herein relieves such person of its obligation to additionally pay applicable fees, or to remove and/or relocate its equipment following its license term and/or renewal(s) thereof or following city engineer order, or to otherwise comply with all provisions of this code applicable to such person's use of the city right-of-way.

- (b) Appeals of the city engineer's decisions regarding eligibility for the issuance of a license for the use of the right-of-way may be made pursuant to section 102-802 of this code.

**Sec. 102-771. Amendment to license.**

If a licensee with a current license issued pursuant to this division proposes to expand, reduce, relocate or modify any portion of its equipment or system within public right-of-way, the licensee shall file an application for an amendment to the current license with the city engineer, shall pay the administrative application fee as provided in section 102-767 of this division and pay a deposit or post a bond if required pursuant to section 102-763 of this division, and shall further comply with all other applicable

requirements pursuant to section 102-763 of this division. An application for an amendment to a current license shall include relevant new information of the type required in connection with the initial application for a license. If approved, the amended license shall be issued by the city engineer in the same manner as the original license. However, if the amendment involves only one or more new hook-on connections to the licensed utility system and if the new connections will be made entirely through existing underground utility conduit or ducts so as not to require any excavation in the public right-of-way or by means of overhead wires or cables between existing utility poles, the licensee shall not be required to pay an additional administrative fee as part of the application for amendment.

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

FORM APPROVED:

Glenna K. Frank, Assistant 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. 12-1176), passed by the City Council of said City at a meeting held July 23, 2012 signed by the Mayor on July 23, 2012 and published as provided by law in the Business Record on August 10, 2012. Authorized by Publication Order No.7930.

Diane Rauh, City Clerk