



**Roll Call Number**

**Agenda Item Number**

47

**Date** May 20, 2013

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 102-708, 102-717 and 102-718 to remove reference to restoration cost schedule and replace with actual costs for right-of-way restoration work performed by city work crews or city contractor in relation to right-of-way excavation permits",

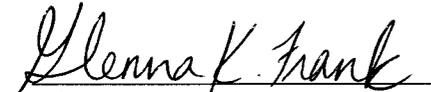
(Council Communication No. **13-268**)

presented.

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

FORM APPROVED:

(First of three required readings)

  
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

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, as heretofore amended, by amending Sections 102-708, 102-717 and 102-718 to remove reference to restoration cost schedule and replace with actual costs for right-of-way restoration work performed by city work crews or city contractor in relation to right-of-way excavation 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, as heretofore amended, is hereby amended by amending Section 102-708 to remove reference to restoration cost schedule and replace with actual costs for right-of-way restoration work performed by city work crews or city contractor in relation to right-of-way excavation permits, and by amending Sections 102-717 and 102-718 for consistency with other Municipal Code Sections, as follows:

**Sec. 102-708. Permit applications; plans and specifications; insurance; indemnification.**

- (a) Before any permit required by this article shall be issued, an application shall be made to the city engineer. A permit application will be accepted only if all of the following conditions have been met and the permit applicant has:
  - (1) If required, registered with the department pursuant to section 102-660.
  - (2) Fulfilled all obligations related to prior permits, including but not limited to the restoration of the right-of-way, and payment to the city of all money due for the following:
    - a. Prior obstruction or excavation permits;
    - b. Any loss, damage, or expense suffered by the city as a result of the applicant's prior excavations or obstructions of the rights-of-way or any emergency actions taken by the city in connection therewith;
    - c. Restoration of the right-of-way by the city or the city's contractor;

- d. System management fees; and
  - e. Fines assessed to the applicant pursuant to section 102-710.
- (3) Submitted a completed permit application form, which includes (i) all required attachments, and (ii) scaled drawings showing the location and area of the proposed project and the location of all existing and proposed equipment, and which states or identifies the following:
- a. The place, extent and purpose of the contemplated work including the identity of and location in the right-of-way at which any excavation is to be made.
  - b. The time when the work is to be commenced and the time it is to be completed.
  - c. For whom and in connection with what abutting property, if any, the work is to be performed.
  - d. To what street main, if any, the sewer, water, or gas connection is to be made or to what electric or telephone line, if any, the electric or telephone connection is to be made.
  - e. The name of the person or contractor who will do the work, the person who will be in charge thereof, and the public registration number issued by the state labor commissioner pursuant to I.C. ch. 91C for all contractors to be involved in the work for which the permit is sought.
- (4) Provided as-built maps or GIS mapping data for all equipment which it has placed in the right-of-way in the past.
- (5) Corrected deficiencies, if any, in prior restoration work performed by it.
- (b) Plans and specifications shall be filed with an application for a permit to make an excavation involving the construction or installation of equipment within the right-of-way. Plans and specifications shall be in sufficient detail to identify the exact type of equipment to be constructed or installed in the right-of-way, and the horizontal and vertical location of such equipment within the right-of-way, with respect to right-of-way/property lines and established monuments, which location shall be established on such plans according to available existing records. Except where plans and specifications have been provided to the city pursuant to an application for a grading permit under section 42-87 or pursuant to the requirements of articles II and III of chapter 110 of this Code and articles IV, V and VI of chapter 118 of this Code, detailed plans and specifications shall not be required for individual excavations, such as individual water, sewer, gas, electric, or telephone connections to a building. Unless a regulation approved and issued by the city engineer provides otherwise, a simple sketch on the application form provided by the city, including the dimensions of the proposed

excavation in reference to permanent landmarks, shall be provided for individual excavations.

- (c) If an applicant for an excavation permit is not qualified to perform right-of-way restoration work as provided in section 102-717, the application shall contain a stipulation that the applicant shall immediately notify the city engineer upon completion of the work done in connection with the excavation ~~as is required in this article~~ and that the applicant shall pay the actual costs that the city incurs in the refilling, replacement of pavement, and restoration and maintenance of the right-of-way by the city work crews or contractor working on behalf of the city, which costs shall be billed to the applicant following completion of the right-of-way restoration work and paid by the applicant in accordance with section 102-717(f) of this code. ~~based upon the square footage of the improved street which is disturbed by such excavation, the type or amount of materials required to restore the street surface, and the future maintenance cost for the affected right-of-way due to degradation associated with the excavation thereof. The restoration costs to be paid in each instance shall be determined by the city engineer by reference to a restoration cost schedule, which shall be developed and updated as needed prior to each construction season and approved by the city council by resolution.~~
- (d) Applications for obstruction and excavation permits shall be accompanied by an insurance certificate as required by section 102-709, unless such certificate has been previously filed with the department and is still in effect. Applications for excavation permits, and obstruction permits when required as provided for in section 102-717(i), shall further be accompanied by a surety or performance and maintenance bond or other form or security as required by section 102-717, as applicable, unless such bond has been previously filed with the department and is still in effect.
- (e) Except as otherwise provided in section 102-730, all applications for a permit under this article shall contain a stipulation that the applicant shall indemnify and hold harmless the city from any and all costs, expenses or liability for damages or injuries to persons or property or liability of any kind whatsoever arising from or growing out of any excavation or trench or surface restoration for which the permit is issued pursuant to this article.
- (f) Permits for the construction or installation of equipment in the right-of-way, which is to be owned or operated by a franchised or licensed utility, shall be issued in the name of the franchisee or licensee. Permits for the construction or installation of equipment in the right-of-way, which is to be owned by the city water works, may be issued either in the name of the water works or in the name of its contractor. Permits for the construction or installation of equipment in

the right-of-way, which is to be owned by a city utility or enterprise, may be issued either in the name of the municipal utility or enterprise or in the name of its contractor. Permits for the construction or installation of equipment in the right-of-way, which is to be owned or operated by an abutting property owner, may in the city engineer's discretion be issued either in the name of the abutting property owner or the abutting property owner's contractor. Permits for construction in the right-of-way of underground sewer, water, gas, electric, or telephone connections to an abutting property shall be issued in the name of the abutting property owner's contractor.

**Sec. 102-717. Right-of-way restoration; performance and maintenance bond or other form of security requirements for excavation permit; surety bond requirements for obstruction permit.**

- (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.
- (b) *Performance and maintenance bond.* An applicant for an excavation permit shall, at the time of application for an excavation permit, post a performance bond in an amount determined by the city engineer to be sufficient to cover the cost of restoring the right-of-way to its proper and required condition 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. If at the conclusion of the 48-month period after completion of the restoration of the right-of-way, the department determines that the right-of-way has been properly restored, the surety on the performance bond shall be released.
- (c) *Bond condition.* The bond shall be conditioned upon:

- (1) The faithful performance of the right-of-way restoration work required under this article, or payment of the restoration costs incurred by the city; and
- (2) The faithful performance of the terms of the permit, the provisions of this article, and any other requirements provided by law.

If the applicant fails or neglects to properly restore the right-of-way to its proper condition within the time for completion set forth in the permit, or within a reasonable time after notice by the city engineer of such failure or neglect, or fails to pay the restoration costs incurred by the city or fails or neglects to properly maintain the right-of-way to its proper condition within a reasonable time after notice by the city engineer of such failure or neglect, or fails to pay the maintenance costs incurred by the city, the right-of-way shall be restored or maintained by the city and the costs thereof, as certified by the city engineer, shall be promptly paid by the applicant or bonding company as the case may be.

- (d) *Alternate forms of security.* In lieu of filing a performance bond in connection with each excavation permit application, an applicant may, in the discretion of the city engineer, be allowed to post with the city treasurer an alternate form of security in the form of an annual performance bond, letter of credit, certificate of deposit, or certified check in an amount deemed sufficient by the city engineer, but in no event less than \$25,000.00, to secure the applicant's performance of all restoration work which the applicant will become responsible for during the next 12-month period in accordance with the current restoration cost schedule established by resolution of the city council upon the recommendation of the city engineer. Such alternate form of security shall be conditioned upon the applicant's performance as provided in subsection (c) of this section. If the costs as certified by the city engineer during such year are less than such letter of credit, certificate or deposit, or certified check, or if the maintenance period provided for in the permit has expired with the applicant having satisfied all of its restoration and maintenance responsibilities, the balance thereof shall upon request be returned to the applicant. If it appears to the city engineer at any time after issuance of a permit that the security so provided by letter of credit, certificate of deposit, or certified check is inadequate to secure the performance of all such restoration work, the city engineer may require the permittee to increase such security. If the costs during such year exceed the amount of such additional security provided by letter of credit, certificate of deposit, or certified check, the applicant shall be required to pay such difference to the city. Such excess costs shall be paid before any subsequent application by the applicant for a

permit under this article may be processed by the department. If the city incurs any outlay and expense in collecting its costs from the applicant, such outlay and expense shall be paid by the applicant or bonding company in addition to other amounts due.

- (e) *Bond for licensed plumbing contractors.* A licensed plumbing contractor may satisfy the requirements of subsections (a) through (d) of this section by maintaining on file with the department a surety bond in the amount of \$5,000.00 for the period running concurrently with the plumbing contractor's license ~~issued pursuant to chapter 26 of this Code~~, so long as such bond specifically provides coverage for any and all street excavations undertaken pursuant to this article during such period, unless the city engineer determines such bond amount is insufficient to cover the anticipated cost of restoration of the right-of-way for which the permit is sought. A plumbing contractor qualified to perform street right-of-way restoration work who chooses to perform the street right-of-way restoration work itself or through its qualified subcontractor or independent contractor must comply with subsections (a) through (d) and (g) through (i) of this section.
- (f) *Restoration by city or city contractor.* If an applicant for an excavation permit ~~has~~ is not qualified to perform right-of-way restoration work as provided in this ~~section~~ division ~~or if a qualified applicant chooses and requests in the permit application~~ to have the city or the city's contractor restore the right-of-way, ~~it~~ the applicant shall pay the costs thereof within 30 days of billing. If, during the 48 months following such restoration, the pavement settles due to the permittee's improper backfilling, the permittee shall pay to the city, within 30 days of billing, the cost of repairing the pavement.
- (g) *Restoration by permittee.* An applicant for an excavation permit who has been determined qualified to perform right-of-way restoration work as provided in this section and who intends to itself restore the right-of-way shall so indicate in its application for an excavation permit. The permittee shall perform the work 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. The city engineer shall have the authority to prescribe the manner and extent of the restoration and may do so in written procedures of general application or on a case-by-case basis. The city engineer in exercising this authority shall be guided by the following standards and considerations: the number, size, depth and duration of the excavations, disruptions or damage to the right-of-way; the preexcavation condition of the right-of-way; the remaining life expectancy of the right-of-way affected by the excavation; whether the relative cost of

the method of restoration to the permittee is in reasonable balance with the prevention of the accelerated depreciation of the right-of-way that would otherwise result from the excavation, disturbance or damage to the right-of-way; and the likelihood that the particular method of restoration would be effective in slowing the degradation of the right-of-way that would otherwise take place. Methods of restoration may include but are not limited to patching, replacement of the right-of-way base, and milling and overlay of the entire area of the right-of-way affected by the work. By choosing to restore the right-of-way itself, the permittee guarantees its work and shall maintain it for 48 months following its completion. During this 48-month period, the permittee shall, upon notification from the department, correct all restoration work to the extent necessary using the method required by the department. Such work shall be completed within the period of time allotted therefor as set forth in the notice from the department. If the permittee fails to restore the right-of-way in the manner and to the condition required by the department or fails to satisfactorily and timely complete all repairs required by the department, the city, at its option, may do such work or cause its contractor to do such work. In that event, the permittee shall pay to the city, within 30 days of billing, all costs incurred by the city in restoring the right-of-way.

- (h) *Identity of person performing restoration work.* Any person restoring a permanently improved street shall provide permanent identification of the person performing the restoration work and the month and year such work was performed by imprint or medallion within the restored surface, as provided in the city's utility accommodation and street restoration specifications.
- (i) *Bond for obstruction permit.* If the city engineer determines in his or her sole discretion that an obstruction permit applicant's proposed use of the right-of-way poses a risk of damage to the right-of-way, the city engineer may require such applicant to post a surety bond before the obstruction permit is issued. Such bond, if required, shall be placed on file with and approved by the city engineer; shall be in the minimum amount of \$5,000.00 or such other amount determined by the city engineer to be sufficient to cover the anticipated cost of damage to the right-of-way; and shall be 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 engineer.

**Sec. 102-718. Qualification to perform right-of-way restoration work.**

- (a) ~~Upon application by any person owning or operating a utility service, or by any person licensed as a plumbing contractor by the city, or by any contractor seeking to become qualified to perform right-of-way restoration work under city contract,~~  
‡The city engineer shall determine the qualifications of ~~such~~ permit applicants to perform right-of-way restoration work as provided in section 102-717. In determining if an applicant is qualified to perform right-of-way restoration work, the city engineer may consider any of the following factors, which the applicant shall be obligated to demonstrate to the satisfaction of the city engineer:
- (1) The financial responsibility of the applicant.
  - (2) The city's past record of transactions and experience with the applicant, including the quality of workmanship on past right-of-way restoration projects; the number of liens, claims or complaints filed regarding such past projects; and the number of repairs made on prior right-of-way restoration projects involving that applicant.
  - (3) The adequacy of the applicant's equipment and materials.
  - (4) The competency and experience of the applicant's managerial and supervisory personnel in performing right-of-way restoration work.
  - (5) The applicant's demonstrated ability to complete performance of right-of-way restoration work or work of a similar nature.
- (b) The city engineer may decline to qualify an applicant for the performance of right-of-way restoration work if the city engineer determines that the applicant has not demonstrated satisfactory compliance with the criteria in subsection (a) of this section or if the city engineer determines that the applicant has:
- (1) Without good cause therefor failed to carry on or complete prior right-of-way restoration work or work of a similar nature in an acceptable manner or refused to comply with a written order of the engineer with regard thereto within a reasonable time;
  - (2) Failed to perform prior right-of-way restoration work or work of a similar nature in reasonably close conformity with the plans and specifications therefor, or in reasonably close conformity with the city's design standards or the city's utility accommodation and street restoration specifications;
  - (3) Failed or refused to remove and replace materials or work found by the city engineer not to be in reasonably close conformity with the plans and specifications or city's utility accommodation and street restoration specifications, as applicable, or failed to correct such

- material or work so as to cause such materials or finished product to be reasonably acceptable work; or
- (4) Offered or given gifts or gratuities to city employees in violation of state law or has had as its employee a person who was at the time also a city employee.
- (c) If the city engineer determines not to qualify an applicant to perform right-of-way restoration work, the city engineer shall so notify the affected applicant. The notice shall set forth the reasons supporting the city engineer's determination not to qualify the applicant and shall indicate that the city engineer's determination shall be considered final unless the applicant files a written request for review with the city manager within 30 days of the applicant's receipt of notice thereof. The notice shall be sent to the applicant by certified mail, return receipt requested.
- (d) Upon written request of the applicant received within 30 days of mailing of the notice provided in subsection (c) of this section, the city manager shall schedule and hold a hearing thereon, as provided in section 102-802. At such hearing, the applicant may present evidence or argument why it should be qualified to perform right-of-way restoration work.

Section 2. This ordinance shall be in full force and effect as of July 1, 2013, after its passage and publication as provided by law.

FORM APPROVED:

  
 \_\_\_\_\_  
 Glenna K. Frank  
 Assistant City Attorney