

Date November 9, 2015

An Ordinance entitled, "AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, as amended by Ordinance No. 15,386, passed July 27, 2015, by amending Section 102-766 and adding and enacting new Section 102-766.01, relating to access to equipment trenches and ducts in city right-of-way",

presented.

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

FORM APPROVED:

(First of three required readings)

Glenna K. Frank
 Glenna K. Frank
 Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GATTO				
GRAY				
HENSLEY				
MAHAFFEY				
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, as amended by Ordinance No. 15,386, passed July 27, 2015, by amending Section 102-766 and adding and enacting new Section 102-766.01, relating to access to equipment trenches and ducts in city right-of-way.

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, as amended by Ordinance No. 15,386, passed July 27, 2015, is hereby amended by amending Section 102-766 and adding and enacting new Section 102-766.01, relating to access to equipment trenches and ducts in city right-of-way, as follows:

Sec. 102-766. Compensation required; franchise and management, ~~license and lease~~ fees.

- (a) No franchise ~~or lease~~ for use of public right-of-way shall be granted, and no license for the use of public right-of-way shall be issued without requiring the grantee or licensee thereof to compensate the city for such use by payment of a reasonable and competitively neutral fee.
 - (b) All ~~new~~ franchises granted by the city shall require the franchisee to pay an annual franchise fee. The franchise fee shall be provided for in the franchise ordinance.
 - (c) ~~A license fee shall, to the extent allowed by the constitution and laws of the state, be assessed on all new licenses for use or occupancy of the right of way upon and after the city council's approval by resolution of a schedule of license fees for use of city rights of way. The schedule of fees for use of city rights of way shall reflect the diminution in the functional utility of the right of way for use by the city and shall be based upon such factors as the value or rental value of private property abutting the right of way to be used and the licensee's avoided cost in using the city right of way as opposed to establishing a private right of way for the licensed use upon abutting private property. The schedule of fees for use of city rights of way shall establish such fees in terms of per linear foot charges for the right of way used, and assuming a use width of not more than ten feet, with the schedule reflecting the per foot value of such right of way in identified segments of the city. All licenses granted by the city shall require the licensee to pay a right-of-way management fee. The management fee shall be calculated as provided for in the schedule of management fees developed and approved in accordance with section 102-711 of this article.~~
 - (d) ~~Reserved.~~ A lease fee shall be assessed on all new leases for use or occupancy of the right of way. The lease fee shall in each instance be established and provided for in the lease approved by the city council.
 - (e) In addition to being required to pay franchise, license, or lease fees, franchisees, licensees, and lessees may, to the extent allowed by I.C. § 480A.1 et seq., be required to provide in-kind services as compensation for such use, including but not limited to:
 - (1) The installation by the franchisee, licensee, or lessee of city equipment in the trenches excavated by or in the duct banks constructed by the franchisee, licensee, or lessee; and/or
 - (2) Access to such trenches or ducts so that the city can install its equipment therein.
- Franchisees, licensees, and lessees who provide such services as utility services, as defined in

this article, may, to the extent allowed by I.C. § 480A.1 et seq., also be required to provide access at no cost to the services provided by the franchisee, licensee, or lessee at a location to be designated by the city, or the equivalent value of the service to be provided at such location.

- (fe) Franchise, ~~and license, and lease~~ management fees shall be paid at the city treasurer's office. The acceptance of any such fee payment by the city shall not be construed as an acknowledgment that the amount paid is the correct amount due, nor shall such acceptance of payment be construed as a release of any claim which the city may have for additional sums due and payable. Franchisees and licensees shall, within 90 days of the date of a written request from the city engineer, close of the license or fiscal year, as the case may be, provide the city with an annual audit of the fees paid to the city during the reporting period indicating that the fee paid the city during that period is equal to the franchise or ~~license~~ management fee due for such period. If such audit results in a determination that an additional amount of franchise or ~~license~~ management fee is owing to the city for the prior year, such additional amount shall be due and payable immediately, together with interest at the rate of ten percent per year calculated from the due dates for the franchise or ~~license~~ management fee payments in question. The city manager may waive the audit requirement when he or she determines that the ~~license~~ management or franchise fee amount owing to the city is too minimal to justify audit.
- (gf) The ~~licensee or lessee~~ shall pay interest at the rate of ten percent per year on any overdue ~~license or lease~~ management fee calculated from the due date of the fee.
- (hg) Nothing in this division shall be construed to limit the liability of a franchisee, ~~or licensee, or lessee~~ for all applicable federal, state and local taxes.
- (ih) Nothing in this division shall be construed to prevent the city council from exercising the right of the city to change the amount of any of the fees required by this division.

Sec. 102-766.01. Access to equipment trenches and ducts.

Franchisees and licensees may be requested by the city to provide access to equipment trenches or ducts at locations designated by the city in order for the city to install city equipment therein. Such installation shall be undertaken so as not to impact the applicable franchisee's or licensee's equipment or use of the trench or duct. Such access shall be at no cost to the city; shall not require separate access agreement; shall not occur until at least ninety (90) calendar days' notice is given by the city to the applicable franchisee or licensee; and shall not occur until approval by the applicable franchisee or licensee is granted, which approval shall not be unreasonably withheld. Franchisees and licensees shall be obligated to respond to the city's notice requesting access within thirty (30) calendar days from the date stated on such notice, and if approved, the applicable franchisee or licensee shall be required to cooperate with the city to coordinate the access within a reasonable timeframe.

Section 2. This ordinance hereby amends Ordinance No. 15,386, and shall be in full force and effect as of January 1, 2018.

FORM APPROVED:


Glenna K. Frank, Assistant City Attorney