

CHAPTER 152

CONTROL OF THE USE OF PUBLIC PROPERTY AND RIGHT-OF-WAY

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152.01 PURPOSE. The Council finds it is necessary to establish uniform rules and controls to ensure public safety and provide efficient delivery of services by the City and others wishing to utilize streets and the public property for the delivery of utility or other services, in order to protect public and private investment, ensure orderly use of public property and ensure the health, safety and welfare of the population, to provide for the regulation and administration of the public streets and the public property and secure the rights of the City to a return on its investment in public property. This chapter is to be interpreted in light of these findings for the benefit of the public and users of the streets and other public property.

152.02 FRANCHISE, LICENSE OR LEASE REQUIRED. No person or other entity shall use the public right-of-way or other public property without first obtaining a franchise, license or lease from the City. All persons who seek to maintain or erect a system for the delivery of electric light or power, cable television, waterworks, gasworks or public transit shall first obtain a franchise as herein required; all other persons shall obtain a license or lease. The City shall not enter into or issue any franchise, license or lease that grants exclusive rights. All licenses or leases required by this section shall be granted by the Council.

152.03 FEES REQUIRED. No franchise, license or lease for the use of public right-of-way or other public property shall be granted without requiring the grantee thereof to pay a reasonable and competitively neutral fee for the use of public right-of-way or other public property. The fees will be as follows:

1. All new franchises shall be assessed a franchise fee of up to five percent (5%) of the gross revenues received by the holder of the franchise from its operations within the City limits.

2. To the extent allowed by law a license or lease fee will be assessed on all licenses or leases for the use of space in the right-of-way. This license or lease fee is a fee based on the term of the license or lease. Payment in full is due when the license or lease is granted, however a mutually agreeable payment schedule may be entered into between the City and the licensee or lessee. If the license or lease is renewed, a new license or lease fee will be assessed based on the term of the renewal. The fee to be paid shall be as follows:

A. A person or an entity whose end use is solely dedicated to a governmental use, including education, shall pay a fee based on an annual fee of \$0.13 per linear foot of right-of-way used.

B. A person or an entity shall pay a fee based on an annual fee of \$0.45 per linear foot of right-of-way used in residential areas as shown on the official right-of-way access map.

C. A person or an entity shall pay a fee based on an annual fee of \$2.11 per linear foot of right-of-way used in commercial areas as shown on the official right-of-way map.

3. In addition to the license or lease fee, an annual right-of-way management fee covering the management costs the City incurs in connection with managing the right-of-way will be assessed each year that the license or lease is in force. Each entity or person shall pay on annual fee of \$0.03 per linear foot of right-of-way used. Payment shall be made within thirty (30) days after the beginning of each year the license or lease is in force.

4. In addition to the license or lease fee and annual management fee, any person or other entity shall pay a fee every time their facility requires excavation in the right-of-way. This fee will cover costs for street degradation and replacement, inspection, and obstruction and routing of pedestrian and vehicle traffic. The fee to be paid for each cut into the street will be based on a Degradation Fee schedule maintained by the Director of Public Works. All or part of this fee may be waived if work is done in conjunction with City construction. In addition, no fee will be charged if lateral boring is done and there is no cut into the street.

152.04 LIMIT ON TERM. No franchise, license or lease for use of the public right-of-way or other public property shall be granted for a term of more than ten (10) years.

152.05 PLACEMENT OF FACILITIES. The facilities, fixtures and equipment for the distribution, transmission or sale of any utility services, or services provided under a license or lease, shall be placed and maintained so as not to unnecessarily or unreasonably interfere with the travel on the streets, highways, avenues, alleys, bridges and public places in the City, nor shall such facilities, fixtures and equipment interfere with the proper use of the same including, but not limited to, ordinary drainage, or the functioning of the sewers, underground pipe or other property of the City. In the event that facilities, fixtures and equipment of any person or other entity located within a public right-of-way must be relocated because of paving, road construction or road reconstruction, sewer construction or sewer reconstruction, or the construction or reconstruction of public drainage systems or similar public works or the construction or reconstruction of the facilities of any City-owned utility, such relocation, at the written request of the City, shall be completed by the owner of such facilities at the owner's cost. The City shall upon request of any person or other entity holding a franchise, license or lease, review any plans for the construction of facilities, fixtures and equipment within the public right-of-way and advise the person or other entity of any conflict such construction may have with planned or anticipated public improvements, but failure of the City to so advise such person or other entity will not relieve the owner of such facilities of its obligations under this chapter. Notwithstanding the foregoing, the Director of Public Works may require placement of equipment or facilities belonging to any holder of a franchise, license or lease be limited to locations designated by the Director of Public Works to be necessary to protect the integrity of use of present and future users of the public right-of-way or other public property.

152.06 INDEMNIFICATION AND INSURANCE. The holder of any franchise, license or lease shall indemnify and hold the City harmless at all times during the term of the franchise, license or lease from and against all claims for injury or damage to any person or property, including payments under worker's compensation laws, caused by the construction, erection, operation or maintenance of its facilities, fixtures or equipment, or the negligence of its contractors or its employees. In case of any suit or action at law being commenced against the City, upon any claim for damage arising out of any loss, injury or damage claimed to have been caused by any installation, improvement, obstruction or excavation made or left in, under or upon such street, sidewalk, alley or public place by the holder of a franchise, license or lease, its agents, contractors or employees, upon being notified in writing by the City of such action or proceeding, the

holder of said franchise, license or lease shall appear and make proper defense thereto at the expense of the holder of the franchise, license or lease; and if any judgment or decree shall in any such case be rendered against the City therein, the holder of said franchise, license or lease shall assume, pay and satisfy such judgment or decree, with the costs thereof. Immediately upon issuance of the franchise, license or lease, the holder of the franchise, license or lease shall purchase general liability insurance. The amount of insurance shall be a minimum of \$1,000,000 with a maximum deductible of \$5,000. The holder of the franchise, license or lease shall file with the City Clerk a certificate of insurance which clearly discloses on its face coverage in conformity with these requirements. Upon request of the City, the holder of the franchise, license or lease shall at its cost submit to the City a certified copy of the policy.

152.07 REGULATION BY THE CITY. The City reserves the right to make reasonable general regulations for the use of streets and other public property which unless otherwise specifically provided shall apply to any holder of a franchise, license or lease.

152.08 CONSTRUCTION AND EXCAVATION BY HOLDERS OF A FRANCHISE, LICENSE OR LEASE. A written permit shall be obtained from the Director of Public Works whenever it becomes necessary for the holder of any franchise, license or lease to excavate in streets or public grounds of the City. Such permits shall state a particular part or point of the street where the excavation is to be made and the length of time in which such permit shall authorize the work to be done. An exception to a requirement for a permit shall be made in cases of emergency involving public safety, in which case a permit will be obtained at the earliest opportunity after the work has started. In making excavations in the street, the holder of any franchise, license or lease shall proceed with such work as to cause the least possible inconvenience to the public. The holder of any franchise, license or lease shall properly protect, according to safety standards generally accepted at the time of placement, as may be determined from time to time by the Director of Public Works, all excavations and obstructions by proper placement of shoring, surface plates, barricades, warning lights and such other or additional devices as circumstances may warrant. If in the opinion of the Director of Public Works such excavation or obstruction is not properly and safely protected, the Director of Public Works shall notify such holder of a franchise, license or lease who shall immediately comply with such reasonable instructions. Immediately after use, any trenches for excavations which the holder of a franchise, license or lease has opened shall be filled. However, no trench or excavation in the streets shall be filled or covered without giving the City the right to inspect the same. All backfilling in streets will be according to City specifications. Temporary street surfacing will be placed in such excavations as soon as the same have been backfilled. Pavements, sidewalks, curbs and gutters or other portions of streets and public places opened, disturbed or damaged shall be promptly restored and replaced with like materials at the expense of the holder of a franchise, license or lease and left in as good condition as before the opening, disturbance or damage occurred. In the event like replacement materials are not available, the holder of the franchise, license or lease shall notify the Director of Public Works, who must approve the use of any alternate materials. In the event that the holder of a franchise, license or lease fails to comply with the provisions of this section, after having been given reasonable notice, the City may do such work as may be needed to properly repair such pavements, sidewalks, curbs and gutters or other portions of streets and public places and the cost thereof shall be repaid to the City by the holder of the franchise, license or lease. In cases where a cut a disturbance is made in a section of street paving or sidewalks, but causes greater disturbance than to just the area cut, rather than replace only the area cut, the holder of a franchise, license or lease shall replace that area as may be ordered by the Director of Public Works, which in no event shall exceed the panel or panels disturbed.

152.09 CITY CONSTRUCTION AND PAVING. Whenever the City shall pave or repave any street or shall change the grade line of any street or public place or shall construct or reconstruct any conduit, water main service or water connection, sewer or other City-owned public works or City-owned utility, it shall be the duty of the holder of any franchise, license or lease, when so ordered by the City, to relocate its service lines and other property in the streets or other public places at its own expense so as to conform to the established grade or line of such street or public place and so as not to interfere with the public improvements so contracted or reconstructed. In the case of other public improvements, including but not limited to urban renewal projects, the City may require the holder of a franchise, license or lease to relocate its poles, service lines and appurtenances in the streets at the owner's expense. The City may at its discretion assign personnel for inspection of excavation and related work being performed by the holder of a franchise, license or lease. Should the holder of the franchise, license or lease fail or refuse to do and perform the things provided in this section, the City may, after reasonable notice, perform the work and charge the expense thereof to the holder of the franchise, license or lease and the holder of the franchise, license or lease shall promptly pay said charges.

152.10 DESIGN NOTICE TO CITY. The holder of a franchise, license or lease shall promptly, upon request, furnish the Director of Public Works a detailed map or maps of its facilities both within the City limits and the area within two miles surrounding the City unless that area is within another City. The holder of a franchise, license or lease shall thereafter update the map or maps at least annually or upon request, showing all subsequent additions or deletions to the distribution system. Prior to any excavation by the City or its agents, a representative must contact the holder of any franchise, license or lease regarding current information on the location of underground lines or facilities in the area concerned. The obligations to contact the holder of a franchise, license or lease under this section shall be satisfied if contact is made with a corporation organized pursuant to Chapter 480 of the Code of Iowa or an entity with a similar function utilized by both the City and the company, currently the Iowa One Call System.

152.11 ABOVE-GROUND CABLES, WIRES, CONDUITS AND POLES. All cables, wires and conduits shall be placed underground except where above-ground connection to buildings or other locations above ground is reasonable necessary. Such above-ground connection shall be by means of poles located, as far as reasonable practical, within alleys. No such poles shall be installed or erected until the Director of Public Works has approved the proposed location, construction and pole heights.

152.12 ASSIGNMENT. No sale or assignment of any franchise, license or lease of the use of the public right-of-way or other public property shall be effective until it is approved by the City Council and until the holder thereof has filed in the office of the City Clerk written notice of the proposed sale, transfer, disposition or assignment, such notice to clearly summarize the proposed procedure and the terms and conditions thereof. If the City determines it needs additional information, the holder of the franchise, license or lease shall be required to provide said information. The City shall be reimbursed by the holder of the franchise, license or lease for its reasonable costs incurred in reviewing all matters relating to said sale or assignment, including the reasonable costs for consultants or technical experts. Such approval by the City shall not be unreasonably withheld. The proposed vendee, assignee or lessee shall similarly file an instrument, duly executed, reciting such proposal, accepting the terms of the franchise, license or lease and agreeing to perform all of the conditions thereof.

152.13 FORFEITURE. The violation of any material portion of a franchise, license or lease by the holder thereof or its successors or assigns, or its failure promptly to promptly to perform any of the provisions of this chapter shall be cause for forfeiture of said franchise,

license or lease and the termination of all rights thereunder. Such forfeiture shall be accomplished by ordinance of the City after written notice to the holder thereof and a continuation of the violation, failure or default specified on the notice for at least thirty (30) days from the date the notice was served.

152.14 APPLICATION. This chapter shall apply to all franchises, licenses or leases and easements granted by the City including all existing franchises, licenses or leases and easements.

152.15 REMOVAL OF MATERIAL; BOND REQUIRED. The holder of any franchise, license or lease, at the termination of said franchise, license or lease, shall remove from the public property or public right-of-way whatever was placed in said right-of-way and shall restore the property to a condition reasonably comparable to the condition it was in prior to the right-of-way being used. Before a franchise, license or lease is issued to any person or entity, a bond shall be obtained to insure that the holder of the franchise, license or lease shall be responsible for removing whatever was placed in the public property or right-of-way and to further insure that said public property or right-of-way shall be restored to a condition reasonably comparable to the condition it was in prior to the right-of-way being used. The amount of the bond to be secured shall be determined by the City and shall be dependent upon the amount of cable, wire or other material that is being placed in the right-of-way and the estimated cost it would take to remove said material and restore the property at the expiration of said franchise, license or lease.

152.16 HOME RULE. This chapter is intended to be and shall be construed as consistent with the reservation of local authority contained in the 25th Amendment to the Iowa Constitution granting cities Home Rule powers. To such end any limitation on the power of the City contained herein is to be strictly construed and the City reserves to itself the right to exercise all power and authority to regulate and control its local affairs and all ordinances and regulations of the City shall be enforceable against the holder of any franchise, license or lease.

152.17 NEW TECHNOLOGIES. Should, within the term of any franchise, license or lease, developments within the field for which the grant was made offer to the holder thereof the opportunity to effectively, efficiently and economically serve its customers through use of a substance or material other than those for which the grant was originally made, then the holder of the franchise, license or lease may petition the City Council which, with such requirements or limitations as it deems necessary to protect public health, safety and welfare, may allow the use of such substance under the terms and conditions of the franchise, license or lease.