

CHAPTER 141

RIGHT-OF-WAY MANAGEMENT

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141.01 PURPOSE. The City's street and alley rights-of-way are owned or held by the City primarily for the purpose of pedestrian and vehicular passage and for the City's provision of essential public safety services, including police, fire, and emergency medical response services; and public health services, including sanitary sewer, water, and storm drainage services. The City recognizes that it holds the rights-of-way within its geographical boundaries as an asset in trust for its citizens. The City has invested millions of dollars in public funds to acquire, build, and maintain the right-of-way. Some organizations, by placing their equipment in the right-of-way and charging the citizens of the City for goods and services are using for private gain this property held by the City for the public good. Although such services are often necessary or convenient for the citizens, such persons receive revenue and/or profit through their use of public property. This chapter provides for the recovery of out-of-pocket and projected costs from persons using the public rights-of-way. Finally, this chapter provides for uniform procedures and standards for the franchising and licensing of rights-of-way for private or commercial use.

141.02 ADMINISTRATION. The City Engineer shall be the principal City official responsible for the administration of the rights-of-way; of right-of-way permits; of the franchising and licensing of the use of rights-of-way; and of all sections of this Code and related City ordinances. The City Engineer may delegate any or all of his or her duties under this chapter.

141.03 RIGHT-OF-WAY PERMITS.

1. When working in public rights-of-way, permittees under this section shall not unreasonably interfere with the safety, health, and convenience of the public in the public's use thereof for ordinary travel, nor shall they interfere with public safety or public health services provided by the City to its residents by means of the public rights-of-way.

2. Permittees shall acquire no right or interest in the right-of-way allowing the continued use of the right-of-way for such purpose.

3. Permits Required.

A. Excavation Permit. An excavation permit shall be required for every person who excavates in the right-of-way.

B. Obstruction Permit. An obstruction permit shall be required for every person who undertakes activities in the right-of-way which will result in the obstruction of vehicular or pedestrian traffic.

C. Irrigation System Permit. Underground irrigation systems are allowed in right-of-way with the understanding that it is at the abutting property owner's risk and any repair of the irrigation system caused by maintenance of utilities will be the responsibility of and at the abutting property owner's expense.

4. No person may excavate or obstruct the right-of-way beyond the date specified in the permit unless they have been issued a new permit.

5. Permit Applications. Before any permit required by this chapter 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:

A. 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:

- (1) Prior obstruction or excavation permits;
- (2) 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;
- (3) Restoration of the right-of-way by the City or the City's contractor;
- (4) System management fees; and
- (5) Fines assessed to the applicant.

B. 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:

- (1) 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.
- (2) The time when the work is to be commenced and the time it is to be completed.
- (3) For whom and in connection with what abutting property, if any, the work is to be performed.
- (4) 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.

(5) The name and contact information of the person or contractor who will do the work, and the person who will be in charge.

6. Plans and Specifications. 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. Detailed plans and specifications shall not be required for individual excavations, such as individual water, sewer, gas, electric, or telephone connections to a building. 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.

7. Insurance Certificate. Applications for obstruction and excavation permits shall be accompanied by an insurance certificate or to have one on file with the department as required by this chapter. Applications for excavation permits, and obstruction permits shall be accompanied by a surety or performance and maintenance bond, unless such bond has been previously filed with the department and is still in effect.

8. Indemnification. All applications for a permit under this chapter 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.

9. Administrative Penalties. The City Engineer is authorized to impose administrative penalties upon persons who commit the following violations of this chapter:

- A. Failure to obtain permit;
- B. Failure to provide required notification of emergency trenching or excavations;
- C. Failure to provide required traffic control devices;
- D. Failure to restore as required;
- E. Failure to properly secure steel plates;
- F. Failure to provide required notification for inspection by plumbing inspector;
- G. Failure of restoration within the maintenance period;
- H. Failure to restore street cuts within the period provided in the permit;

- I. Failure to comply with permit conditions;
- J. Failure to comply with orders issued by the City Engineer or the City Engineer's designee;
- K. 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;
- L. Failure to provide factually accurate, truthful or complete information in making application for a permit; or
- M. 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.

10. Permit Fees.

A. Schedule of Fees. To recover the costs incurred by the department in managing the right-of-way a schedule of fees shall be developed. The permit fees to be paid in each instance shall be determined by the City Engineer, shall be updated as needed prior to each construction season, and shall be approved by the City Council by resolution.

B. Fees Accumulated in Separate Fund. All fees collected under this chapter shall be accumulated in a separate fund.

C. Fees Doubled During Probation. All permit fees shall be doubled during a probationary period.

D. Refund after Revocation of Permit. Permit fees which were paid in connection with a permit which the City Engineer has revoked for a breach are not refundable.

11. Refusal to Issue Permit. The City Engineer may refuse to issue the permits provided for in this chapter to any former permit holder who has intentionally violated the sections of this Code relating to excavations in or obstruction of any public right-of-way or who has failed to conform to the requirements of any previously issued permit or who has violated the orders or instructions of City officials issued pursuant to this chapter.

12. On-site Exhibit of Permit; Contractor Identification Signage.

A. One copy of the permit required by this chapter shall be kept and exhibited at every work site for which an excavation permit has been issued for a period of five days or more.

B. Persons performing work pursuant to an excavation permit shall display their name and telephone number on all motor vehicles and equipment, including tractors, trailers, and wheeled equipment capable of being driven or towed on the street. This shall not apply to personal or privately owned vehicles used solely to transport workers to a job site or to rental vehicles or equipment utilized in performing the work if the name and telephone number of the rental company appears on the vehicles or equipment. This information shall be exhibited in at least two locations on the vehicle and shall be either a temporary magnetic or permanent decal or painted lettering of a type and size, and with a contrasting color, rendering it legible from a distance of not less than 50 feet.

13. Restoration Required. The work to be done under an excavation permit issued pursuant to this chapter and the restoration of the right-of-way as required in this section 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.

14. Performance and Maintenance Bond.

A. 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.

B. Bond Condition. The bond shall be conditioned upon:

(1) The faithful performance of the right-of-way restoration work required under this chapter, 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 chapter, 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.

C. 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.

15. Permittee's Other Obligations.

A. 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.

B. 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.

C. Work under a permit shall be conducted within the permit area, and work vehicles, equipment and materials shall be stored within the permit area. The loading or unloading of trucks adjacent to a permit area is prohibited unless specifically authorized by the permit.

D. Contractor shall notify property owner(s) abutting the right-of-way in the area designated in the permit at least 24-hours in advance of the start of the work notifying them of the projected start date, type of

work, who the work is for, and the contractor business name and phone number.

16. Denial of Permit.

A. Mandatory Denial. Except in an emergency, no right-of-way permit will be issued:

(1) To any person who is not in full compliance with the requirements of this chapter;

(2) To any person who has outstanding debt owed to the City;

(3) To any person as to whom there exists grounds for the revocation of a permit; and

(4) If the issuance of a permit for the particular date and/or time would cause a conflict or interfere with an exhibition, celebration, festival, or any other event.

B. Permissive Denial. The City Engineer may deny a permit in order to protect the public health, safety and welfare; to prevent interference with the safety and convenience of ordinary travel over the right-of-way; or when necessary to protect the right-of-way and its users.

C. No person shall leave or keep open any excavation or vault on, in or under any right-of-way. All excavations and vaults shall be protected in accordance with the City's utility accommodation and street restoration specifications.

17. Inspection.

A. When the work under any permit issued pursuant to this chapter is completed, the permittee shall notify the City Engineer.

B. The permittee shall make the work site available to the department inspector and to all others as authorized by law for inspection at all reasonable times during the execution and upon completion of the work.

C. At the time of inspection, the department inspector may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well-being of the public.

18. Work Done Without Permit.

A. Emergency Situations. Each registrant under this chapter shall immediately notify the City Engineer of any event regarding its equipment which it considers to be an emergency. The registrant may proceed to take whatever actions are necessary in order to respond to the emergency. Within two business days after the occurrence of the emergency, the registrant shall apply for the necessary right-of-way

permits, and pay the fees associated therewith. If a storm, flood, or other citywide emergency event causes system-wide damages to the equipment of a utility service company, requiring emergency repairs without obtaining the necessary right-of-way permits, the City Council may, upon request by the company sustaining such damage, waive or modify the requirement that permits be obtained after the making of emergency repairs in response to such event. If the City Engineer becomes aware of an emergency regarding a registrant's equipment, the department may attempt to contact the local representative of each registrant affected or potentially affected by the emergency. In any event, the department may take whatever action it deems necessary in order to respond to the emergency, the cost of which shall be borne by the registrant whose equipment occasioned the emergency.

B. Nonemergency Situations. Except in an emergency, any person who obstructs or excavates a right-of-way without a permit must subsequently obtain a permit, pay double the normal fee for such permit, pay double all the other fees required by this Code, deposit with the department the fees necessary to correct any damage to the right-of-way.

19. Revocation.

A. Permittees hold right-of-way permits as a privilege and not as a right. The City reserves the right, as provided in this section, to revoke any right-of-way permit, without fee refund, for a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation or any condition of the permit. A substantial breach by the permittee shall include but shall not be limited to the following:

- (1) The violation of any material provision of the right-of-way permit;
- (2) An evasion or attempt to evade any material provision of the right-of-way permit or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens;
- (3) Any material misrepresentation of fact in the application for a right-of-way permit;
- (4) The failure to maintain the required bonds and/or insurance;
- (5) The failure to complete the work in a timely manner; or
- (6) The failure to correct a condition indicated as directed by the inspector.

B. If the City Engineer determines that the permittee has committed a substantial breach of a term of condition of any statute, ordinance, rule, regulation or any condition of the permit, the City Engineer shall make a written demand upon the permittee to remedy

such violation. The demand shall state that continued violations may be cause for revocation of the permit. Further, a substantial breach, as stated in this subsection, will allow the City Engineer, at his or her discretion, to place additional or revised conditions on the permit.

C. Within 24 hours of receiving notification of the breach, the permittee shall contact the City Engineer with a plan, acceptable to the City Engineer, for its correction. The permittee's failure to so contact the City Engineer or the permittee's failure to submit an acceptable plan or the permittee's failure to reasonably implement the approved plan shall be cause for immediate revocation of the permit. Further, the permittee's failure to so contact the City Engineer or the permittee's failure to submit an acceptable plan or permittee's failure to implement the approved plan shall automatically place the permittee on probation for one full year. From time to time, the City Engineer may establish a list of permit conditions which, if breached, will automatically place the permittee on probation for one full year, such as but not limited to working out of the allotted time period or working on right-of-way grossly outside of the permit.

D. If a permittee, while on probation, commits a breach as outlined in this section, the permittee's permit will automatically be revoked, and the permittee will not be allowed further permits for one full year, except for emergency repairs.

E. If a permit is revoked, the permittee shall also reimburse the City for the City's reasonable costs, including restoration costs and the costs of collection and reasonable attorneys' fees, incurred in connection with such revocation.

20. Traffic Control Devices, Lighting and Plating.

A. The public shall be protected at all excavations or trenches or open vaults in the right-of-way by the placement of proper traffic control devices, lighting and plating as specified in the state manual on uniform traffic control devices and applicable provisions of SUDAS.

B. Every person making such an excavation or trench shall maintain any and all protection required under subsection (A) of this section until the trench or excavation has been refilled and the street, pavement, sidewalk or curb has been restored to its proper condition as provided in the City's utility accommodation and street restoration specifications.

141.04 FRANCHISE OR LICENSE FOR PRIVATE OR COMMERCIAL USE.

1. Franchise or License Required.

A. Except as otherwise provided in this chapter, no person shall occupy or use public right-of-way on a citywide basis for the purpose

of providing utility services to private customers without first obtaining a franchise from the City as provided and required by I.C. §364.2, unless such utility service is provided by a governmental entity having jurisdiction and authority to provide such service within the City.

B. Except as otherwise provided in this chapter, no person shall occupy or use any portion of the right-of-way for the purpose of operating or conducting a private business, on other than a temporary basis as provided in an obstruction permit or excavation permit, without first obtaining a license from the City.

C. The City shall not grant, issue, or enter into any franchise or license that grants or allows exclusive use or occupancy of the right-of-way. Any person seeking a franchise or license for use of City right-of-way shall make application for a franchise or license with the City Engineer.

D. An application for a franchise or license for occupancy or use of a right-of-way shall be filed with the City Engineer on a form provided by the City and shall include all registration information required to be submitted.

2. Grant of Franchise; Persons Eligible.

A. Under this section, franchises will be granted in accordance with the procedures provided therefor in I.C. Ch. 364. The terms and conditions of a franchise shall be subject to negotiation between the franchise applicant and the City and shall be incorporated into the form of an ordinance. A franchise shall not be considered to have been granted by the City unless and until the form and provisions of the franchise ordinance have been approved and adopted by the City Council, the grant of the franchise has been approved by the City electorate at an election, and the franchise has been duly recorded, all as required by I.C. Ch. 364. The proposal to grant a franchise shall not be submitted at an election until the City Council has duly passed and approved the ordinance containing the proposed franchise.

B. A franchise will be granted only when the following conditions are met:

- (1) The franchise applicant provides or proposes to provide a utility service to all of the City residents or to all of the residents within a given area of the City; or
- (2) The franchise applicant provides or proposes to provide utility service within the City or within a given part thereof and is by law required to provide universal service within its service area; and
- (3) The franchise applicant proposes that it be authorized to utilize any and all street and alley rights-of-way within the City

or within a given part thereof for the purpose of providing such service; or

(4) The City Council determines that the franchise applicant will ultimately require authorization to utilize any and all street and alley rights-of-way within the City or within a given part thereof for the purpose of providing such service; and

(5) The franchise applicant has obtained a certificate of public convenience and necessity from the state utilities board for the provision of that service, if required, and has met all other legal requirements to provide the utility service.

C. Persons providing utility services, except local exchange telephone services, on the effective date of the ordinance from which this subsection derives:

(1) Which are not franchised by the City; and

(2) Which possess a certificate of public convenience and necessity from the Iowa utilities board for the provision of that service, if required; or

(3) Which provide utility service to all or a substantial proportion of the residents of the City, or to all or a substantial proportion of the residents of a given part of the City; and

(4) Which utilize all or a substantial proportion of the street and/or alley rights-of-way within the City, or within a given part of the City, for the purpose of providing such service;

shall be required to obtain a franchise for the continued provision of that utility service and for the continued use and occupancy of City street rights-of-way for that purpose.

3. 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 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

(2) 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.

(3) 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.

(4) 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.

(5) 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. 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.

(6) 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)(3) of this section, or that exceeds a four-block radius or 10,000 equivalent linear feet, 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 chapter.

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 this Code.

4. Authority to Issue License; Form of License and Term.

A. Licenses required by this section shall be issued by the City Engineer. The City Engineer shall review each application and shall issue each license which he or she determines to be in compliance with the requirements of this section and any other applicable legal requirements. In issuing a license, the City Engineer may require a change in the proposed location of the licensee's equipment where necessary to avoid interference with other equipment placed within the public right-of-way.

B. Licenses issued pursuant to this section shall be in writing, shall be executed by the licensee, and shall not take effect until approved by the City Attorney. The form of licenses to be issued pursuant to this section shall be uniform, but shall be subject to periodic review and modification.

5. Limit on Term of Franchises; Limit on Initial or Renewal Term of Licenses.

A. No franchise for use of the public right-of-way shall be granted for a term in excess of 25 years.

B. No license for use of the public right-of-way issued by the City Engineer shall be issued or renewed for a term in excess of five years.

6. Compensation Required; Franchise and License Fees.

A. All new franchises granted by the City shall allow for the collection of an annual franchise fee.

B. 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.

C. In addition to being required to pay franchise or license fees, franchisees and licensees 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 or licensee of City equipment in the trenches excavated by or in the duct banks constructed by the franchisee or licensee; and/or
- (2) Access to such trenches or ducts so that the City can install its equipment therein.

Franchisees and licensees who provide such services as utility services, as defined in this chapter, 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 or licensee at a location to be designated by the City, or the equivalent value of the service to be provided at such location.

D. Franchise and license fees shall be paid at the City Clerk'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.

E. The licensee or lessee shall pay interest at the rate of ten percent per year on any overdue license fee calculated from the due date of the fee.

F. Nothing in this section shall be construed to limit the liability of a franchisee or licensee for all applicable federal, state and local taxes.

G. Nothing in this section 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 section.

7. Application for Issuance of a License. A person desiring to obtain a license as required in this section shall make application for a license for such

use and occupancy as provided in this chapter, and shall pay an application fee for initial issuance of the license. The application fee for initial issuance of a license and any future changes thereto shall be effective upon its inclusion in a schedule of fees adopted by the City Council by resolution. The application for initial issuance of a license shall be filed with the City Engineer not less than 60 days prior to the proposed effective date of the license and shall be filed upon a form provided by the City for that purpose. The application shall include, at a minimum, the following information:

- A. The name, address and telephone number of the applicant.
- B. The name, address and telephone number of a responsible person whom the City may notify or contact at any time or in case of emergency concerning the equipment or utility system.
- C. A statement of the purpose for the equipment or system proposed for installation in the public right-of-way, the type of service it will provide, and the intended customers which it will serve.
- D. Any additional information which the City Engineer in his or her discretion may require.

8. Issuance and Renewal of Licenses; License Revocation and Cancellation.

- A. Prior to the initial issuance of a license for use or occupancy of public right-of-way, the City Engineer shall conduct a review of the licensee's background to determine the licensee's ability to meet the requirements stated in this section. If on the basis of such review the City Engineer determines that it would not be appropriate to issue the license, the City Engineer shall give notice of intent not to issue the license as provided in this section.
- B. To obtain renewal of a license, the licensee shall file an application with the City Engineer on the form provided by the City and pay an application fee for renewal of the license. The application fee and any future changes thereto shall be effective upon its inclusion in a schedule of fees adopted by the City Council by resolution. The renewal application shall be filed with the City Engineer not less than 180 days prior to the expiration of the existing license or any renewal term of the license. Upon receipt of the application, the City Engineer shall conduct a review of the licensee and the licensee's prior use of the public right-of-way to determine the licensee's continued compliance with the requirements. If on the basis of such review the City Engineer determines that the licensee and the licensee's prior use of the public right-of-way comply with all requirements stated in this section, the City Engineer may renew the license for an additional term of up to five years. If on the basis of such review the City Engineer determines that the licensee and the licensee's use of public right-of-way do not comply with one or more of the requirements stated in this section, the

City Engineer shall give notice of intent not to renew the license as provided in this section. If a licensee holds multiple licenses for use or occupancy of various rights-of-way within the City for the same or similar purpose, the licensee shall be required to renew all such licenses under a single license at such time as the earliest issued license expires.

C. In determining the length of the term of a license, the City Engineer shall take into consideration the likelihood that the City will require the use of the licensed right-of-way for municipal purposes or that such use of the licensed right-of-way will unduly burden the City or the public in its use of the licensed right-of-way during the proposed term of the license. A license shall not be issued or renewed if the City Engineer determines that any of the following conditions exist in the right-of-way proposed for licensing:

(1) There is insufficient space in the right-of-way to accommodate the proposed use, given the other existing uses thereof;

(2) The proposed private utility service connection would interfere with or conflict with existing or planned City equipment or utility equipment located or to be located in the right-of-way;

(3) Such use is incompatible with adjacent public or private uses of that right-of-way;

(4) Such use would involve an unacceptably high frequency of repair or maintenance to the private utility service equipment thereby requiring excessive excavation in or obstruction of the right-of-way; or

(5) The construction or installation of such private utility service equipment would interfere with a public improvement undertaken or to be undertaken by the City or with an economic development project in which the City has an interest or investment.

D. If during the term of any license the City Engineer determines that the license should be revoked due to the licensee's failure to comply with any of the requirements stated in this section, the City Engineer shall give notice of intent to revoke such license.

E. The following shall constitute grounds for refusal to issue or renew a license, or for revocation of a license for use or occupancy of public right-of-way. The licensee's failure to observe or comply with any of the following:

(1) The licensee's use or prior use of public right-of-way has been conducted in full and timely compliance with all laws and regulations applicable thereto, and the licensee has complied fully and in a timely manner with the requirements of any

previously issued license, and with the orders or instructions of city officials issued pursuant to this chapter; or

(2) The licensee is current in the payment of license fees, if applicable, and the licensee has made such payments fully and when due.

(3) The licensee has made a misleading statement or a material misrepresentation in connection with an application for initial issuance or renewal of a license, in connection with its use of public right-of-way.

F. The City Engineer shall give notice of intent to cancel such license as provided in this section if during the term of any license the City Engineer determines that:

(1) The licensee's continued use of the public right-of-way will unduly burden the City or the public in its use of that property;

(2) The public right-of-way for which the license was issued will be required for municipal purposes during the term of the license;

(3) The licensee's equipment at a particular location will interfere with:

a. A present or future City use of the right-of-way;

b. A public improvement undertaken or to be undertaken by the City;

c. An economic development project in which the City has an interest or investment; or

d. The public's safety or convenience in using the right-of-way for ordinary travel.

(4) The public health, safety and welfare requires it; or

(5) The continued existence of the license is not in the City's best interests.

G. Notice of intent not to issue a license for use of the public right-of-way shall be given to the applicant, either by certified mail, return receipt requested, or by actual service or delivery thereof, which notice shall be given not more than 30 days after submission of the application. Notice of intent not to renew a license for use of the public right-of-way shall be given to the licensee, either by certified mail, return receipt requested, or by actual service or delivery thereof, which notice shall be given not more than 90 days after submission of the application. Notice of intent to revoke or cancel a license shall also be given to the licensee. The notice shall set forth the grounds for refusal to issue or renew or for revocation or cancellation and shall inform the

applicant or licensee of the right to an appeal hearing upon request. At the hearing, the applicant or licensee shall have the burden of establishing that the grounds asserted in the notice do not exist.

H. Upon the effective date of revocation or cancellation as provided in the City Engineer's notice thereof, or upon the effective date specified in the City Engineer's written decision upon the licensee's appeal, the licensee shall be required to cease its use and occupancy of the right-of-way or to remove or relocate its equipment therefrom, as provided in the notice or decision. Equipment not removed or relocated from the right-of-way as required in such notice or order shall be considered a nuisance and may be removed, relocated, or taken possession of by the City, at the licensee's expense. Except in emergency circumstances, the requirement to relocate, remove, or cease use of equipment shall be suspended during the pendency of any appeal taken by a licensee.

I. If a license is refused or cancelled upon the basis that the City property licensed or proposed for licensing is or will be required for municipal purposes, the applicant or licensee shall not be entitled to appeal. However, in that event, the licensee shall be entitled to a partial refund of the annual fee already paid, such refund to be computed on the basis of 1/12 of the required annual fee multiplied by the number of unexpired whole months of the year remaining in the license term. In all other cases where a license is not issued or renewed or is revoked, no refund of any portion of the required annual fee shall be paid to the licensee.

J. Notwithstanding the notice and hearing requirements of this section, the City Engineer may in emergency circumstances order the immediate relocation or removal of equipment from the right-of-way and may, upon the licensee's failure to comply with such order, immediately remove, relocate, or take possession of such equipment at the licensee's expense.

9. Failure to Secure, Renew or Comply.

A. Any person who fails to secure a franchise or license required under this section or any franchisee or licensee who fails to comply with the requirements of this section shall, upon notification of such violation by the City Engineer, immediately act either to abate the violation or to cease its use and occupancy of the right-of-way and remove its equipment or system from the right-of-way.

B. The City reserves the right either to remove or to disconnect and render inoperative any equipment or system in the right-of-way under franchise or license which is used or maintained contrary to this chapter; provided, however, that the City will give written notice of its intent to take such action, including the date upon which such action

will be taken, to the affected franchisee or licensee not less than seven days prior to taking such action.

10. Amendment to License. If a licensee with a current license issued pursuant to this section 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 and pay a deposit or post a bond if required. 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.

11. Duties of Licensee.

A. No license required under this section or amendment to such license shall be issued for any equipment or system until the required fees have been paid and until a complete application has been filed with and approved by the City Engineer.

B. The licensee's equipment or system shall be installed or constructed in accordance with applicable industry standards, the City's utility accommodation and street restoration specifications, and the terms and conditions imposed by the City.

C. If it becomes necessary to excavate or obstruct any public right-of-way in connection with the installation, construction, reconstruction, repair, operation, disconnection or removal of a licensee's equipment or system, the licensee shall first obtain a permit from the City.

D. The licensee shall maintain its equipment and all parts of its system in good condition, order and repair.

E. The licensee shall be responsible for repairing or reimbursing other licensed or franchised utilities or other persons or entities lawfully using the right-of-way for any damage to their property caused by negligence of the licensee or its agents, employees or contractors in connection with the installation, construction, reconstruction, repair, operation, disconnection or removal of the licensee's equipment or system.

F. No license required under this section shall be issued to authorize placement of a utility system in any space which is required for public use.

12. Relocation or Removal of Equipment; Payment of City Costs Due to Improper Location of Equipment.

A. Under this chapter, the City Engineer shall order the removal or relocation of equipment, as he or she deems appropriate, if the City Engineer determines at any time that:

- (1) A registrant's or permittee's continued use of the public right-of-way will unduly burden the City or the public in its use of that property;
- (2) The public right-of-way which the registrant or permittee is using or occupying will be required for municipal purposes;
- (3) The registrant's or permittee's equipment at a particular location will interfere with:
 - a. A present or future City use of the right-of-way;
 - b. A public improvement undertaken or to be undertaken by the City;
 - c. An economic development project in which the City has an interest or investment; or
 - d. The public's safety or convenience in using the right-of-way for ordinary travel; or
- (4) The public health, safety and welfare requires it.

B. Franchisees and licensees under this chapter shall promptly and at their own expense, with due regard for seasonal working conditions, permanently remove their equipment or relocate their equipment within the right-of-way, whenever the City Engineer orders such removal or relocation, and shall at their sole expense restore the right-of-way to its proper and required condition.

13. Damage to Other Equipment.

A. When any City department performs work in the right-of-way and finds it necessary to maintain, support, or move a permittee's, franchisee's, or licensee's equipment in order to protect it, the costs associated therewith will be billed to that person and must be paid within 30 days from the date of billing. In such event, the City Engineer or City department performing such work shall notify the affected registrant, permittee, franchisee, licensee, or lessee, informing such person of the action it intends to take with respect to such equipment and affording such person the opportunity to review and comment on the action proposed to be taken. If circumstances permit it, the City Engineer or City department performing the work may allow the affected registrant, permittee, franchisee, or licensee to take the action necessary to maintain, support, or move its equipment.

B. Each registrant, permittee, franchisee, or licensee shall be responsible for the cost of repairing any equipment in the right-of-way which it or its equipment damages. Each registrant, permittee, franchisee, or licensee shall be responsible for the cost of repairing any damage to the equipment of another registrant, permittee, franchisee, or licensee.

licensee occurring during the City's response to an emergency occasioned by that registrant's equipment.

14. Abandoned and Unused Equipment.

A. Under this chapter, a franchisee or licensee who has determined to discontinue its operations in the City, in whole or in part, or who has discontinued use of part or all of its equipment in the right-of-way, must either:

(1) Provide information satisfactory to the City Engineer that its obligations for its equipment in the right-of-way have been lawfully assumed by another franchisee or licensee; or

(2) Submit to the City Engineer a proposal and instruments for transferring ownership of its equipment to the City. If a franchisee or licensee proceeds under this subsection, the City may, at its option:

a. Assume ownership of and responsibility for the equipment; or

b. Refuse transfer of ownership to the City and require the registrant, at its own expense, to remove the equipment.

B. A registrant, franchisee, or licensee who fails to comply with this section and whose equipment remains unused for a period of two years shall be deemed to have abandoned such equipment and the equipment shall be deemed to be abandoned. Abandoned equipment is deemed to be a nuisance. The City may, with respect to abandoned equipment which is deemed a nuisance, exercise any remedies or rights it has at law or in equity, including but not limited to:

(1) Bringing an action for nuisance abatement in which the City may seek the abatement of the nuisance and/or authority to take possession of the equipment; or

(2) Requiring removal of the equipment by the registrant, franchisee, or licensee.

C. Any franchisee or licensee who has unused equipment in any right-of-way shall remove it from the right-of-way during the next scheduled excavation, unless this requirement is waived by the City Engineer.

D. A franchisee or licensee who abandons or ceases use of its equipment as provided in this section and whose proposal to transfer such equipment to the City is accepted by the City shall, nonetheless, be allowed to remove wires or cables from underground conduits and to remove movable equipment from underground vaults or handholes if the City Engineer determines that such removal can be accomplished without damaging such conduits or vaults, and provided such removal

can be accomplished without extensive excavation or long-term obstruction of the right-of-way. Such removal shall be accomplished pursuant to appropriate right-of-way permits, which may include conditions regarding the manner of removal and schedule for removal.

15. **Reservation of Regulatory and Police Powers.** The City by issuing of a right-of-way permit, franchise, or a license under this chapter does not surrender or to any extent lose, waive, impair, or lessen the lawful powers and rights which it has or which may be vested in the City under the state constitution, state law, and the City Charter to regulate the use of the right-of-way by such persons. All such persons by acceptance of a right-of-way permit, franchise, or license are deemed and shall be held to agree that all lawful powers and rights, regulatory power, or police power, or otherwise as are or may be from time to time vested in or reserved to the City, shall be in full force and effect and subject to the exercise thereof by the City at any time. All such persons are further deemed to acknowledge that their rights are subject to the regulatory and police powers of the City to adopt and enforce general ordinances necessary to the safety and welfare of the public and are deemed to have agreed to comply with all applicable general laws and ordinances enacted by the City pursuant to such powers.

16. **Existing Franchises.** If a conflict of language occurs between the provisions of this chapter and an existing franchise agreement the conflict shall be resolved by honoring the terms of the franchise until it expires.

17. **Construction of Chapter.** Nothing in this chapter shall be construed as an acquiescence in or ratification of the occupancy or use of any public right-of-way in the City by any person occupying the right-of-way without legal right, nor shall this chapter be construed as conferring the right to occupy or use any public right-of-way within the City upon any such person illegally or without authority occupying the right-of-way.

141.05 APPEAL. Administrative decisions by City staff and enforcement actions of the enforcement officer may be appealed by the applicant to the City Council pursuant to the following rules:

1. The appeal must be filed in writing with the City Administrator within twenty (20) business days of the decision or enforcement action.
2. The written appeal shall specify in detail the action appealed from, the errors allegedly made by the enforcement officer giving rise to the appeal, a written summary of all oral and written testimony the applicant intends to introduce at the hearing, including the names and addresses of all witnesses the applicant intends to call, copies of all documents the applicant intends to introduce at the hearing, and the relief requested.
3. The enforcement officer shall specify in writing the reasons for the enforcement action, a written summary of all oral and written testimony the enforcement officer intends to introduce at the hearing, including the names and addresses of all witnesses the enforcement officer intends to call, and

copies of all documents the enforcement officer intends to introduce at the hearing.

4. The City Administrator shall notify the applicant and the enforcement officer by ordinary mail, and shall give public notice in accordance with Chapter 21, Iowa Code, of the date, time and place for the regular or special meeting of the City Council at which the hearing on the appeal shall occur. The hearing shall be scheduled for a date not less than four (4) or more than twenty (20) days after the filing of the appeal. The rules of evidence and procedure, and the standard of proof to be applied, shall be the same as provided by Chapter 17A, Code of Iowa. The applicant may be represented by counsel at the applicant's expense. The enforcement officer may be represented by the City Attorney or by an attorney designated by the City Council at City expense. The decision of the City Council shall be rendered in writing and may be appealed to the Iowa District Court.

(Ch. 141 - Ord. 03-18-2013#01 [365] - June 13 Supp.)

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