

CHAPTER 113

USE OF PUBLIC PROPERTY AND RIGHTS-OF-WAY

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113.01 PURPOSE AND RULE OF INTERPRETATION. The Council finds it is necessary for the City 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 other 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 other 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.

113.02 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. The City shall not enter into or issue any franchise, license or lease that grants exclusive rights. An application for a license or lease shall be filed with the Clerk on a form provided by the City and shall include as a minimum the following information: the name, address and telephone number of the applicant; the name, address and telephone number of a person whom the City may notify or contact at any time concerning the license or lease; an engineering site plan showing the proposed location of the facilities including any manholes, the size, type and proposed depth of any conduit or other enclosures; and any additional information the City may require. All licenses or leases required by this section shall be granted by the Council.

113.03 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 receipts of customers within the City limits.

2. A license or lease fee will be assessed on all new licenses or leases for space in the right-of-way. This license or lease fee is a onetime fee for the term of the license or lease. Payment is expected when the license or lease is signed. If the license or lease is renewed, a new license or lease fee will be assessed. The fee shall be considered partial reimbursement to the City for its acquisition, development and maintenance costs of said right-of-way and shall be assessed at the rate of ten cents (\$0. 10) per linear foot. The minimum fee for a license or lease shall be fifty dollars (\$50.00).

(Amended by Ord. 577 Adopted7/5/06)

3. In addition to the license or lease fee, an annual right-of-way management fee will be assessed on July 1 of each year that the license or fee is in force. The fee is based on the number of linear feet of wire, fiber optics line or pipe laid in the City right-of-way, and reflects the actual management, inspection, insurance, mapping and record-keeping costs the City incurs while managing rights-of-way. The annual management fee shall be assessed at a rate of five cents (\$0.05) per linear foot. The minimum fee for a license or lease shall be twenty-five dollars (\$25.00).

(Amended by Ord. 577 Adopted7/5/06)

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 excavation fee will cover costs for street degradation and replacement, inspection and obstruction and routing of pedestrian and vehicle traffic. The fee shall be assessed at a rate of twenty-five dollars (\$25.00) per square yard. The City may waive all or part of this fee if such work is done in conjunction with City construction.

113.04 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 in excess of twenty-five (25) years. No license or lease shall be for a term of more than five (5) years. Any proposed lease which shall exceed three (3) years in length shall not be executed by the City until fully complying with the terms of Section 364.7 of the Code of Iowa. All license or leases shall expire on January 1st of their respective term.

(Amended by Ord. 577 Adopted7/5/06)

113.05 PLACEMENT OF FACILITIES. The facilities, fixtures and equipment of the distribution, transmission or sale of any utility services, or services provided under license or lease or easement, 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 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 City Administrator may require placement of equipment or facilities belonging to any holder of a franchise, license or lease be limited to locations designated by the City Administrator if such limitation is deemed by the City Administrator to be necessary to protect the integrity of use of present and future users of the public right-of-way or other public property.

113.06 INDEMNIFICATION AND BOND. 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 cost 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 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 submit a certified copy of the policy.

113.07 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.

113.08 CONSTRUCTION BY HOLDERS OF FRANCHISE OR LICENSE OR LEASE. Any holder of a franchise, license or lease shall obtain from the Clerk a written permit whenever it becomes necessary 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 streets, 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 Public Works Director, 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 Public Works Director such excavation or obstruction is not properly and safely protected, the Public Works Director 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 has 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 Public Works Director, 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 provision 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 repaired to the City by the holder of the franchise, license or lease. In cases where a cut or 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 Public Works Director, which in no event shall exceed the panel or panels disturbed.

113.09 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 constructed 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.

113.10 DESIGN NOTICE TO CITY. The holder of a franchise, license or lease shall promptly, upon request, furnish the Clerk a detailed map or maps of its distribution system 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 obligation to contact the holder of a franchise, license or lease under this section shall be satisfied if contact is made with the corporation organized pursuant to Code of Iowa Chapter 480 or an entity with a similar function utilized by both the City and the Company, currently the Iowa One Call System.

113.11 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 are reasonably necessary. Such above-ground connection shall be by means of poles located, as far as reasonably practical, within alleys. No such poles shall be installed or erected until the Public Works Director has approved the proposed location, construction and pole heights.

113.12 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 Council and until the holder thereof has filed in the office of the 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. 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.

113.13 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 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.

113.14 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.

113.15 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.

113.16 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 Council, which, with such requirements or limitation as it deems necessary to protect public health, safety and welfare, may allow the use of such substances under the terms and conditions of the franchise, license or lease.

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