

ORDINANCE 1984

AN ORDINANCE AMENDING PROVISION PERTAINING TO CHAPTER 122 (NON-FRANCHISE UTILITY ACCOMMODATION) OF THE MUNICIPAL CODE OF THE CITY OF ANKENY, IOWA

BE IT ORDAINED, by the City Council of the City of Ankeny, Iowa, that:

Section 1. SECTION MODIFIED. Section 122.01 PURPOSE is hereby repealed and the following adopted in lieu thereof:

122.01 PURPOSE. The City of Ankeny's street right-of-way areas are owned by the city primarily for the purpose of vehicular and pedestrian passage and for facilitating the city's essential public services and safety. The city recognizes that it holds the right-of-way within its boundaries as an asset in trust for its citizens. This chapter provides for uniform permitting procedures for the installation and maintenance of private or commercial utility and communication facilities within the City of Ankeny rights-of-way and on city property. This chapter also provides for the recovery of expenses from non-franchise utility companies using the public rights-of-way for private gain.

Section 2. SECTION MODIFIED. Section 122.02 LICENSE OR PERMITS REQUIRED is hereby repealed and the following adopted in lieu thereof:

122.02 PERMITS REQUIRED. A person, corporation or company (hereafter referred to as "Company") that does not hold a franchise agreement with the City of Ankeny and proposes to install utility or communication facilities within the City of Ankeny right-of-way or other city property shall be required to obtain permits as provided in this chapter. Furthermore, the Company shall be required to obtain a Right-of-Way Permit in accordance with Chapter 151.

1. The utility accommodation for franchise utility companies is defined by Chapter 364 of the Code of Iowa and is included in the Chapters 115 through 121 of the Code of Ordinances of the City of Ankeny. Franchise utilities are thus exempt from the permit requirements of this section.
2. Utility / communication installations that, in the opinion of the public works director, are not of a significant scope to warrant permitting, shall be exempt from this chapter. Said installations are subject to the requirements of Chapter 151.
3. Small Wireless Facilities are compact, low power wireless communication transceivers generally mounted on street lights or utility poles within the street right-of-way. These specific utility installations are subject to a Small Wireless Facility Permit in accordance with Section 122.15 of this chapter.
4. The rights and privileges hereby granted are subject to the restrictions and limitations of Chapter 364 of the Code of Iowa, or as subsequently amended or changed.

Section 3. SECTION MODIFIED. Section 122.05 TEMPORARY SUPPORT is hereby repealed and the following adopted in lieu thereof:

122.05 TEMPORARY SUPPORT. When a city crew or a city contractor performs work in the right-of-way and finds it necessary to maintain, support, or temporarily move a Company's equipment in order to protect it, the costs associated therewith will be billed to that Company. In such event, the public works director shall notify the affected Company of the action the city intends to take with respect to such equipment and shall afford such company the opportunity to take the action necessary to support or temporarily move its equipment to facilitate the city operation.

Section 4. SECTION MODIFIED. Section 122.07 INSURANCE CERTIFICATE is hereby repealed and the following adopted in lieu thereof:

122.07 INSURANCE CERTIFICATE. Before any permit shall be issued, the applicant shall submit or have on file with the City of Ankeny a certificate of insurance evidencing the existence of liability insurance deemed adequate by the city to cover the risk presented by the work being undertaken in the right-of-way. The type and limits of insurance shall meet the requirements of the current edition of the SUDAS Standard Specifications, Section 1070, with the city listed as an additional insured party on the certificate.

Section 5. SECTION MODIFIED. Section 122.08 PERFORMANCE BOND is hereby repealed and the following adopted in lieu thereof:

122.08 PERFORMANCE BOND. Before any permit shall be issued, the applicant shall post a performance bond with the City of Ankeny to cover the expenses necessary to restore disturbed surfaces, repair existing pavements, replace sod, replace landscaping and otherwise provide restoration of the right-of-way that is disturbed by the construction associated with the utility installation within the right-of-way. The amount of the bond shall be \$10,000.00 unless the public works director determines that a larger amount is necessary to be sufficient to cover the cost of restoring the right-of-way to its proper and required condition pursuant to the city's standard construction specifications. The performance bond shall be a surety bond in accordance with the requirements of the current edition of the SUDAS Standard Specifications, Section 1070.

(Ord. 1970 – May 19 Supp.)

1. If the Company fails or neglects to properly restore the right-of-way to its proper condition within a reasonable time after notice by the public works director of such failure or neglect, or fails to pay restoration costs incurred by the city to cure, the restoration costs as certified by the public works director shall be promptly paid by the Company or bonding company as the case may be.
2. In lieu of filing a performance bond in connection with each separate permit application, an applicant with numerous concurrent utility projects may, at the discretion of the public works director, be allowed to post with the City of Ankeny an alternate form of security in the form of an annual performance bond, letter of credit, certificate of deposit, or certified check in an amount deemed sufficient by the public works director, but in no event less than \$10,000.00 per utility installation, to secure the applicant's

performance of the restoration work which the applicant will become responsible for during the next 12-month period.

Section 6. SECTION MODIFIED. Seciton 122.10 OTHER OBLICATIONS is hereby repealed and the following adopted in lieu thereof:

122.10 OTHER OBLIGATIONS. Obtaining a permit to install utility equipment in the City of Ankeny right-of-way does not relieve the Company of the duty to obtain all other necessary permits, licenses, and authority required by the Iowa Department of Transportation, Polk County or other state and federal rules, laws or regulations. The Company shall comply with all requirements of local, state and federal laws, including I.C. § 480.1 et seq., pertaining to underground facilities information (Iowa One-Call excavation notice system).

Section 7. SECTION MODIFIED. Seciton 122.11 PERMISSIVE DENIAL is hereby repealed and the following adopted in lieu thereof:

122.11 PERMISSIVE DENIAL. The public works director may deny a permit request 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. In determining to deny a permit, the public works director will consider the following factors: (i) the extent to which right-of-way space is available; (ii) the competing demands for the particular space in the right-of-way; (iii) the availability of other locations or other right-of-way.

Section 8. SECTION MODIFIED. Seciton 122.12 SALE, ASSIGNMENT, OR CHANGE IN USE is hereby repealed and the following adopted in lieu thereof:

122.12 SALE, ASSIGNMENT, OR CHANGE IN USE. The Company shall not transfer its equipment located in the right-of-way or its business to any other entity without giving the City of Ankeny a 90-day prior written notice of such proposed transfer. The city may refuse consent to a proposed transfer if it determines that the proposed transferee lacks the expertise, experience, financial resources or sufficient personnel required to maintain the said equipment and/or the right-of-way associated therewith.

Section 9. SECTION MODIFIED. Section 122.13 SYSEM EXPANSION is hereby repealed and the following adopted in lieu thereof:

122.13 SYSTEM EXPANSION. The Company shall not expand, enlarge, or change the use of its equipment within the right-of-way without giving the city a 90-day prior written notice of such proposed change in use and without obtaining the prior written consent of the public works director to such change in use. In such notice, the registrant shall clearly and completely set forth the proposed change in use of equipment. Enlarging or expanding an existing utility within the right-of-way will require the same application process and fee requirements as an initial installation of facilities.

Section 10. SECTION MODIFIED. Section 122.14 SYSTEM ABANDONMENT is hereby repealed and the following adopted in lieu thereof:

122.14 SYSTEM ABANDONMENT. Any company that abandons or ceases use of its equipment within the right of way shall make provisions to remove said equipment from the right-of-way within the next 12 months. Any delay or suspension of this requirement shall be approved by the public works director. Unused underground conduits, cables, and pipes may be abandoned in-place (without removal) only upon approval of the public works director.

Section 11. SECTION MODIFIED. Section 122.15 SMALL WIRELESS FACILITY PERMIT, Subsection 2. and 3B. are hereby repealed and the following adopted in lieu there of:

2. The SWF permit and corresponding fee applies only to the spot facility installation. The permits identified in Section 122.02 and subsequent sections of this chapter shall apply to any wiring and conduits that are installed within the right-of-way to provide power or fiber optics to the SWF.

3B. New poles that are installed within the right-of-way to facilitate a SWF installation shall meet the requirements of the zoning district that applies to the adjacent property, including height and appearance. Said new poles shall match the height of any surrounding poles. SWF installations on new poles will be considered by the city only after exhausting options for SWF installations on existing poles.

Section 12. SECTION MODIFIED. Section 122.16 LICENSE AND PERMIT FEES is hereby repealed and the following adopted in lieu there of:

122.16 PERMIT FEES. Fees for the various permits as specified in this section shall be paid by the Company prior to the occupation and use of the right-of-way by the Company for the provision of utility enterprise services.

1. Right-of-Way Permit Fee: A right-of-way permit fee as stipulated in Chapter 151 - Excavations shall be charged to the Company for each permit application.

2. Plan Review Fee: A plan review fee shall be charged to the Company when submitting plans and specifications for a new or expanded utility installation of at least 300 feet in length or for a utility equipment installation within the right-of-way that, in the opinion of the public works director, is of sufficient scope and complexity to require an in-depth review by city staff. The plan review fee is intended to recover the salary, benefits, and overhead costs to the city of the city employees reviewing such plans and specifications.

3. Occupancy Permit Fee: The Company shall pay an occupancy permit fee based on the amount of equipment that is proposed to be installed within the City of Ankeny street right-of-way, measured in equivalent lineal feet as stipulated as follows. The occupancy permit fee shall be determined by multiplying that user's number of equivalent lineal feet of equipment in city right-of-way by the fee amount set forth as follows.

A. The occupancy permit fee 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 of private property abutting the right-of-way to be used and the Company's avoided cost in using the city right-of-way as opposed to establishing a private easement.

4. **Schedule of Permit Fees:** The following permit fees shall be paid by the Company for each separate utility installation, in conformance with the requirements of Iowa Code Chapter 480A. These fee amounts shall be in effect until such time that the fee amounts are amended by the city council by resolution:

- A. Right-of-Way Permit Fee = (per Chapter 151)
- B. Plan Review Fee = \$300.00
- C. Occupancy Permit Fee:
 - \$200.00 for linear utility installations within the right-of-way of a length of 1,500 feet or less.
 - \$0.15 per lineal foot for linear utility installations within the right-of-way of a length greater than 1,500 feet.
 - The occupancy permit fees for linear underground installations that occupy a width greater than 2 feet and vault/manhole structures greater than 6 feet in width shall be prorated by the public works director, based on the width dimensions and the said fee for a 2-foot occupation width.

5. **Small Wireless Facility Permit Fees:** The Federal Communications Commission (FCC) issued a Declaratory Ruling and Third Report and Order dated September 18, 2018 which clarified the scope and meaning of the Communications Act Sections 253 and 332(c)(7). This document established the compensation to states and cities for permitting a Small Wireless Facility (SWF) to be installed within the said jurisdiction's rights-of-way or property. The total amount of fees for processing or issuing a single permit, including any fees charged by third parties, shall be as the following:

- A. \$500 for a single up-front application that includes up to five SWFs.
- B. \$50 for each SWF beyond five in a single application.

6. **Permit Fee Adjustments:** The total amount of fees shall be adjusted every five years to reflect any increases or decreases in the consumer price index, and as dictated by Federal requirements as stipulated in the Communications Act Sections 253 and 332(c)(7).

7. The city reserves the right to adjust the schedule of permit fees by resolution at any time based on the management expenses expended by the city and the value of the property occupied by the Companies.

Section 13. SECTION MODIFIED. Section 122.17 LICENSE AND PERMIT TERMS is hereby repealed and the following adopted in lieu thereof:

122.17 PERMIT TERMS. The Utility Permits issued under this chapter shall be issued by the public works director for a maximum term of five years, with automatic renewal after the five-year term unless the city issues a notice of revocation per section 122.18 of this chapter.

Section 14. SECTION MODIFIED. Section 122.18 REVOCATION is hereby repealed and the following adopted in lieu thereof:

122.18 REVOCATION. If, during the term of any permit, the public works director determines that the permit should be revoked due to the Company's failure to comply with the requirements stated in this chapter including, but not limited to, a failure to comply with the city on previous projects, failure to timely pay the required fees, or if continued use of the equipment would be a risk to public health, safety and welfare, the public works director shall provide a 90-day notice of intent to revoke such permit.

1. Upon the effective date of revocation as provided in the public works director's notice, the Company shall be required to cease its use and occupancy of the right-of-way and to remove or relocate its equipment within the following 120 days.

Section 15. SEVERABILITY CLAUSE. If any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

Section 16. WHEN EFFECTIVE. This ordinance shall be in effect from and after its final passage, approval and publication as provided by law.

PASSED at Ankeny, Iowa, this _____ day of _____ 2019.

Gary Lorenz, Mayor

ATTEST:

Denise L. Hoy, City Clerk

**PUBLISHED IN THE
DES MOINES REGISTER
ON THE _____ DAY OF _____, 2019**

**1st Con _____
2nd Con _____
3rd Con _____**