

CHAPTER 122

NON-FRANCHISE UTILITY ACCOMMODATION

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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 ~~licensing and~~ 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.

(Ord. 1970 – May 19 Supp.)

122.02 ~~LICENSE OR 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 a license~~ as provided in this chapter. Furthermore, the ~~Company proposed licensee~~ shall be required to obtain a Right-of-Way Permit in accordance with Chapter 151. ~~pay initial installation fees and agree to pay annual management fees in accordance with this chapter.~~

1. ~~City of Ankeny and Ankeny Community School District utility facilities which occupy and use the right-of-way for the provision of municipal or public utility services shall be exempt from the licensing permit requirements of this section.~~

~~2-1.~~ 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 ~~licensing permit~~ requirements of this section.

~~3-2.~~ Utility / communication installations that ~~are less than 300 feet in length or~~, in the opinion of the public works director, are not of a significant scope to warrant ~~licensing permitting~~, shall be exempt ~~for~~ from this chapter. Said installations are subject to the requirements of Chapter 151.

~~4-3.~~ 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 122.16 of this chapter.

~~5-4.~~ 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.

(Ord. 1970 – May 19 Supp.)

122.03 INSTALLATION AND LOCATION. Subject to the following provisions and conditions, the Company shall have the right to excavate within the street right-of-way for the purpose of laying, relaying, repairing or extending pipes, mains, conduits, communication cables and other facilities provided that the same shall be so placed as to not unreasonably interfere with the construction of any water pipes, sewer pipes or the flow of water therefrom, which have been or may hereafter be located by authority of the city.

1. **Installation and Maintenance of Service Facilities.** The Company's equipment and distribution facilities shall be installed in accordance with good engineering practices and shall be located, constructed, repaired and operated so as not to endanger or interfere with the lives of persons, or to unnecessarily hinder or obstruct pedestrian or vehicular traffic. The construction, repair, maintenance and operation of the Company's facilities shall be in accordance with all applicable laws, ordinances, regulations and codes of the Federal, State and city.
2. **Company's Duty to Not Obstruct and to Restore.** Company's facilities shall be located as to cause no interference with the proper use of streets and other public ways, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the said streets or other public ways. In making excavations in any streets for the installation of pipes, conduits or apparatus, the Company shall not unreasonably obstruct the use of the streets and shall replace the surface, restoring it to the condition as existed immediately prior to excavation. Said practices shall meet the requirements of the current edition of the Iowa Statewide Urban Standard Specifications, which function as the city standard construction specifications. Any opening or obstruction in the streets or other public ways made by the Company in the course of its operation, pursuant to the authority granted hereunder, shall be guarded and protected at all times by the placement of traffic control, including advance signing, barricades or fencing in accordance with the Manual on Uniform Traffic Control Devices.
3. **Underground Installation.** All cables, wires, fibers, pipes and conduits installed in connection with any utility system shall be installed underground, except where above-ground connections to buildings or other locations where necessary as verified by the public works director. Existing wood poles within the right-of-way may be used for above-ground utility installations, if permission is obtained from the owners of said poles and public works director.
4. **Limitation of Space.** The public works director shall have the authority to prohibit the placement of new or additional equipment within the right-of-way if there is insufficient space available to occupy the right-of-way. In making such decisions, the public works director shall strive to the extent possible to accommodate all users, but shall be guided primarily by considerations of the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing equipment in the right-of-way, and future city plans for public improvements and development projects.
5. **Company's Duty to Restore Ground Surface.** The Company shall, at its own expense and in a timely manner approved by the public works director, promptly replace and restore all sod, sidewalk, driveway, or street pavement disturbed by the Companies operations. Said restoration shall provide as good a finished condition as before said work was commenced. All work shall be completed in conformance with current city design and construction standards.

122.04 COMPANY'S DUTY TO RELOCATE. If at any time, the City of Ankeny undertakes a street or utility improvement project and said project alters the street grade, street dimensions or public utility locations such that said improvement project requires the relocation of the Company's facilities along the project corridor, the Company shall complete the relocation at its own expense. Such relocation may include removing, relaying, or lowering underground facilities or other equipment. The Company's relocation work shall be completed in a timely manner and coordinated with the said city improvement project so that the construction of the city project is not delayed. For specific city improvement projects,

the Company shall relocate their facilities prior to the scheduled construction start date when provided with at least a 120 day notice by the city.

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 ~~licensee's Company's~~ equipment in order to protect it, the costs associated therewith will be billed to that ~~licensee Company~~. In such event, the public works director shall notify the affected ~~licensee 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.

122.06 INDEMNIFICATION. The Company shall indemnify and save harmless the city from any and all claims, suits, losses, damages, costs or expenses, on account of injury or damage to any person or property, to the extent caused or occasioned by the Company's negligence in construction or maintenance of the utility facilities authorized by this ordinance; However, the Company shall not be obligated to defend, indemnify and save harmless the city for any costs or damages to the extent arising from the negligence of the city, its officers, employees or agents.

122.07 INSURANCE CERTIFICATE. Before any ~~license-or~~ 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.

(Ord. 1970 – May 19 Supp.)

122.08 PERFORMANCE BOND. Before any ~~license-or~~ 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 ~~licensee 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 ~~licensee Company~~ or bonding company as the case may be.
2. In lieu of filing a performance bond in connection with each separate ~~license 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.

122.09 SUBMITTAL OF PLANS. The Company that intends to construct new facilities or intends to undertake a major maintenance project within the right-of-way shall submit construction plans to the public works department. Such plans shall be submitted using a format designated or approved by the public works director and shall contain the information determined by the public works director to be necessary to facilitate the coordination and reduction in the frequency of excavations and obstructions within the right-of-way. The plan shall include but not be limited to the following information: (i) existing utilities and ground features that are readily available. (ii) the specific locations and the beginning and ending points of all equipment and facilities to be installed. (iii) information indicating the horizontal and vertical locations, relative to the boundaries of the right-of-way, of all equipment which is proposed for installation within any right-of-way.

122.10 OTHER OBLIGATIONS. Obtaining a ~~license or~~ permit to install utility equipment in the City of Ankeny right-of-way does not relieve ~~a licensee 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. ~~A licensee 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).

(Ord. 1970 – May 19 Supp.)

122.11 PERMISSIVE DENIAL. The public works director may deny a ~~license or~~ 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 ~~license 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.

(Ord. 1970 – May 19 Supp.)

122.12 SALE, ASSIGNMENT, OR CHANGE IN USE. ~~A licensee or permittee~~ 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.

(Ord. 1970 – May 19 Supp.)

122.13 SYSTEM EXPANSION. ~~A licensee or permittee~~ 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.

(Ord. 1970 – May 19 Supp.)

122.14 SYSTEM ABANDONMENT. ~~Any licensee or permittee who~~ Any company that abandons or ceases use of its equipment within the right of way shall make provisions to remove ~~it 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.

(Ord. 1970 – May 19 Supp.)

122.15 SMALL WIRELESS FACILITY PERMIT. Small Wireless Facilities are compact, low power wireless communication transceivers which can be mounted on street lights or utility poles within the street right-of-way or on other city property pending issuance of a permit. Subject to the following provisions and conditions, a company that proposes to install a Small Wireless Facility (SWF) on an existing street light pole within the city right-of-way, on a new pole within the right-of-way, or on other facilities owned by the City of Ankeny within the right-of-way or on city property, shall be subject to a Small Wireless Facility Permit according to this section.

1. Said Small Wireless Facility installations are subject to the requirements of Chapter 151 in addition to the requirements of this section.
2. The SWF permit and corresponding fee applies only to the spot facility installation. The ~~Utility License identified 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.
3. Locations of Small Wireless Facilities: The strong preference for locations of SWF's within Ankeny are on non-City owned poles and infrastructure. If city infrastructure must be used, it shall be on streetlights, buildings or towers. SWF installations shall be restricted from city traffic signal poles due to the complexity of the signal systems present in the poles. Also, the city traffic signals are located at high-traffic volume intersections where SWF installations would create safety hazards and disruption to traffic.
 - A. SWF installations shall be located as far as feasible from residential neighborhoods. Installations along some of Ankeny's main corridors may not be possible due to the quantity of existing utilities within those corridors. Alternate locations will be coordinated with the City.
 - B. 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.~~
 - C. A separation distance of at least one city block or approximately 300 feet shall be maintained between SWF installations. A lesser distance may be allowed by the city when it is justified by the applicant due to coverage or service gap issues.
4. Aesthetics: Small Wireless Facility installations shall be completed with regard to the aesthetics of the surroundings. The SWF equipment shall match the color, dimensions and style of the host pole and nearby poles as closely as possible. For SWF installations that include the replacement of a street light pole, the replacement pole shall match the color, dimensions, height and style of the existing street light pole. For uniformity of lighting, any replacement street light poles shall have the same fixture type and wattage as the existing street light.
 - A. Uptown Ankeny and The District at Prairie Trail are special commercial districts within Ankeny that have black decorative street lights. SWF installations within these districts will need to utilize existing poles or replacement poles that match the exact style of the existing decorative street lights.
 - B. Screening: If a SWF installation does not aesthetically blend in to the surrounding environment, screening of the equipment may be required by the City. Screening features shall be approved by the city and may include camouflage treatments or solid coverings that fully mask the SWF equipment from view and environmentally match the surrounding.

- C. For a SWF installation within the right-of-way, no other above-ground equipment such as accessory structures or cabinets at-grade will be allowed.
- D. The total volume of the equipment and fixtures that comprises a SWF shall not exceed 28 cubic feet exclusive of the antenna. No guy wires or other auxiliary supports can be used to fortify a SWF installation.
- 5. Structural Certification: As part of the permit application process, each SWF installation shall be certified by a professional engineer licensed in Iowa that the installation will be structurally sound in accordance with applicable standards including the National Electric Safety Code, ANSI, TIA, and EIA standards.
- 6. Discontinuation and Relocation: If an SWF is no longer needed, the service provider shall immediately inform the city. Any SWF within the city that is no longer in operation shall be considered abandoned and shall be removed by the service provider within 12 months.
 - A. If the city undertakes a street or utility project that will require the relocation or modification of an existing SWF, the service provider shall accommodate the City project by scheduling and completing the relocation or modification so that the City project is not delayed in accordance with Sections 122.04 and 122.05 of this chapter. All costs associated with the relocation or modification of the SWF shall be the responsibility of the service provider.

(Ord. 1970 – May 19 Supp.)

122.16 ~~LICENSE AND PERMIT FEES.~~ ~~License Fees for the various permits as specified –computed as provided in this section shall be paid by the potential licensee Company prior to issuance of the license for 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 ~~each applicant for each license issued the Company for each permit application.~~
- 2. Plan Review Fee: A plan review fee shall be charged to ~~any license applicant or current licensee who submits 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. ~~Annual Management~~ Occupancy Permit Fee: ~~On or before July 1st of each year, all right-of-way licensees are required to pay an annual management~~ The Company shall pay an occupancy permit fee based on the amount of equipment that ~~each such licensee has in~~ is proposed to be installed within the City of Ankeny street right-of-way, measured in equivalent lineal feet as stipulated as follows. The ~~annual management fee to be charged to each user~~ 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 ~~annual management~~ 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 ~~licensee's Company's~~ avoided cost in using the city right-of-way as opposed to establishing a private easement. ~~for the licensed use upon abutting private property. The annual management fee shall be in terms of per lineal foot charges for the right-of-way used, assuming an occupied~~

~~width of three feet, with the schedule reflecting the per foot value of such right of way in identified segments of the city.~~

~~B. The annual management fee to be paid at the time of issuing a new licenses shall be prorated based on the number of months from issuing date to the next July 1st. The full annual management fee shall be due on each July 1st thereafter.~~

4. Schedule of ~~License~~ Permit Fees: The following permit fees shall be paid by the ~~license applicant or the licensee~~ 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. ~~Annual Management~~ 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.
- ~~\$0.033/LF for overhead linear cable installations on poles owned by others~~
- ~~\$0.10/LF for underground linear installations (cables or conduits) based on a 3-foot maximum width of occupation~~
- ~~\$0.20/LF for underground linear installations of multiple conduits or other facilities that occupy a width of greater than 3 feet but less than 6 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 ~~3~~ 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 ~~license~~ 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 ~~licensees~~ Companies. ~~The annual management fee shall, to the extent allowed by the constitution and laws of the state, be assessed on all licenses for occupancy of the right of way issued after the city council's approval of the resolution setting or adjusting the schedule of license fees for use of city rights of way.~~

(Ord. 1970 – May 19 Supp.)

122.17 ~~LICENSE AND PERMIT TERMS.~~ The Utility ~~Licenses and~~ 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.

(Ord. 1970 – May 19 Supp.)

122.18 REVOCATION. If, during the term of any ~~license permit~~, the public works director determines that the ~~license permit~~ should be revoked due to the ~~licensee's 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 ~~license~~-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 ~~license permit~~.

1. Upon the effective date of revocation as provided in the public works director's notice, the ~~licensee 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.

(Ord. 1970 – May 19 Supp.)

122.19 EFFECTIVE DATE. This ordinance and the rights and privileges herein granted shall become effective and binding upon its approval and passage in accordance with Iowa law. Following City Council approval, this ordinance shall be published in accordance with the Code of Iowa. The effective date of this ordinance shall be the date of publication. If any section, provision, or part of this ordinance shall be adjudged to be 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.

(Ord. 1970 – May 19 Supp.)

(Ch. 122 - Ord. 1855 – Jul. 15 Supp.)