

 <p style="text-align: center;">Council Communication Office of the City Manager</p>	Date: June 8, 2015
	Agenda Item No. 56 Roll Call No. <u>15-957</u> Communication No. <u>15-307</u> Submitted by: Pamela S. Cooksey, P.E., City Engineer

AGENDA HEADING:

Amending Chapter 102 of the Municipal Code regarding Right-of-Way Management Fee changes.

SYNOPSIS:

Recommend approval of the Right-of-Way Management Fee changes to Municipal Code Sections 102-657, 102-660, 102-711, and 102-766 relating to the right-of-way management fee definition, calculation and implementation. The ordinance and fee amount and structure are proposed to be effective as of January 1, 2018.

FISCAL IMPACT:

Amount: Revenue

- Fiscal Year (FY) 2017-2018 (\$0.02 per Equivalent Lineal Foot {ELF}): \$201,200 recovered costs from non-City users; \$62,300 from City of Des Moines Sewer Enterprise funds
- FY 2018-2019 (\$0.04 per ELF): \$400,500 recovered costs from non-City users; \$124,600 from City of Des Moines Sewer Enterprise funds
- FY 2019-2020 (\$0.06 per ELF): \$599,900 recovered costs from non-City users; \$186,900 from City of Des Moines Sewer Enterprise funds
- FY 2020-2021 (\$0.08 per ELF): \$799,400 recovered costs from non-City users; \$249,200 from City of Des Moines Sewer Enterprise funds
- FY 2021-2022 (\$0.10 per ELF): \$998,900 recovered costs from non-City users; \$311,500 from City of Des Moines Sewer Enterprise funds
- FY 2022-2023 (\$0.12 per ELF): \$1,198,400 recovered costs from non-City users; \$373,800 from City of Des Moines Sewer Enterprise funds

Funding Source: Monies generated from this cost recovery effort will be used to reimburse administrative expenses associated with the effort, with remaining monies offsetting a portion of the costs associated with managing, maintaining and improving the City’s right-of-way within the City’s Operating and Capital budgets and with debt service payments associated with right-of-way maintenance and improvements.

ADDITIONAL INFORMATION:

The City’s Right-of-Way Management Ordinance, as enacted in 1998 and substantially amended in 2003, defines and identifies the manner and type of right-of-way regulation and management to be undertaken by the City. Pursuant to this Ordinance, the City, through the Engineering Department, Traffic and Transportation Division, has been charged with collecting permit fees for excavations and

obstructions within the City right-of-way, private license fees from private-entity right-of-way users, and right-of-way management fees as allowed under Iowa Code Chapter 480A from public-entity right-of-way users.

The Iowa Supreme Court ruling in the *Kragnes v. City of Des Moines* case outlined what impacts due to activities within the City right-of-way are eligible for cost recovery. Based on the identified impacts as set forth in the *Kragnes* ruling and based on data through FY 2012, a new study was conducted in 2013 that calculated the City's current annual right-of-way management costs to be \$9,064,000. City franchisees and City-owned utilities accounted for \$5,160,000 of this actual cost. All other users of City right-of-way account for the remaining \$3,820,000 of the actual cost, although said right-of-way users currently pay only approximately \$86,000 annually through the City's current annual right-of-way management fee. Thus, the annual remaining \$3,734,000 right-of-way management cost is not currently being recovered by the City and as a result is being subsidized by the City of Des Moines tax payers.

The 2013 study distributed the City's calculated current annual right-of-way management cost among all right-of-way users based on type of usage, measured by the actual impacts from the size and displacement of the user's type of equipment in the right-of-way. The range of cost per equivalent lineal foot (ELF) of equipment in the City right-of-way was determined to be \$0.28 to \$0.53 per ELF, based on approximately 24 million ELF of facilities in the right-of-way. The average rate calculated through the study is \$0.35 per ELF.

The City currently charges an annual right-of-way management fee of \$0.0085 per ELF to right-of-way users. This equates to a total of approximately \$86,000 annually. In addition, an annual license fee of \$0.10 per ELF is charged to non-franchise and non-public utility users. The City would need to charge an annual right-of-way management fee of approximately \$0.35 per ELF in order to recover the full calculated amount of \$9,064,000 in expense to the City for right-of-way management as determined by the 2013 study.

This information was presented to the City Council at the July 14, 2014 workshop. Informational meetings were held for right-of-way users on August 4, 2014 and September 4, 2014. Ordinance readings were held on August 25, 2014, September 8, 2014, and September 22, 2014. At the September 22, 2014 meeting, the City Council voted to continue the item indefinitely and referred it to the City Manager and City Attorney for further discussions with interested parties.

Based on the study findings and in an effort to address right-of-way user's budget planning and simplify the fee structure, City staff has proposed the adoption of a \$0.12 per ELF right-of-way management fee implemented over a six (6) year period, and the elimination of the additional license fee for licensed right-of-way users. The proposed changes would become effective on January 1, 2018 to allow time for affected parties to seek a declaratory judgment through the court system.

The rate for the first year would equal \$0.02 per ELF, with a \$0.02 per ELF increase per year for the next six (6) years. The rate in the sixth year (FY 2022-2023) would be \$0.12 per ELF. The proposed fee is significantly less than the average fee of \$0.35 per ELF (FY 2012) as calculated by the 2013 study, and is also less than the lowest fee based on right-of-way usage type of \$0.28 per ELF (FY 2012) as calculated by the 2013 study, but has been determined by City staff to be reasonable in consideration of the changes in fee amount and fee structure now planned for right-of-way users.

The proposed fee structure removes degradation costs, which account for approximately 11% of the total right-of-way management costs from the right-of-way management fee calculation, in order for cost recovery for degradation through permitting fees to be furthered studied. The ordinance revisions and

fee structure also includes a per-unit cost applicable to private equipment in the right-of-way, such as distributed antenna systems, that are placed at individual locations and are not part of or are measured separately from a lineal-footage equipment system. The ordinance and fee structure also exempt from the annual management fee requirements the following: permittees that do not use equipment in the right-of-way; franchisees that pay a franchise fee to the City; public utilities such as the Des Moines Metropolitan Wastewater Reclamation Authority that operate within the right-of-way by easement granted of record by the City; and the City's storm water management utility whose equipment constitutes part of the right-of-way infrastructure rather than a separate utility system.

Right-of-way management fee rates will be reviewed on an annual basis if significant changes in the City's management of right-of-way should occur. Every five (5) years, the overall study will be updated to review cost recovery and reassess the fee amount if needed, and the professional services agreements for study updates and schedule of fee amendments for any newly proposed right-of-way management fee amounts will be submitted to City Council for consideration and approval.

The proposed ordinance amends the Right-of-Way Management Ordinance by adding and clarifying definitions found in the Management Ordinance, setting forth the reporting and fee calculation processes applicable to the proposed fee structure, removing references to the license fee for private entities, and adding the per-unit cost component.

PREVIOUS COUNCIL ACTION(S):

Date: April 6, 2015

Roll Call Number: [15-0570](#)

Action: [Approval](#) of Fiscal Year (FY) 2014-2015 Annual Right-of-Way Management Fee. ([Council Communication No. 15-174](#)) Moved by Mahaffey to adopt. Motion Carried 6-1.

Date: September 22, 2014

Roll Call Number: [14-1498](#)

Action: [Amending](#) Chapter 102 of the Municipal Code regarding Right-of-Way Management Fees. Moved by Hensley to continue this item indefinitely, and refer to the City Manager and City Attorney to work with the Taxpayer's Association and other interested parties for review and recommendation regarding options. Motion Carried 7-0.

Date: September 8, 2014

Roll Call Number: [14-1390](#)

Action: [Amending](#) Chapter 102 of the Municipal Code regarding Right-of-Way Management Fees. ([Council Communication No. 14-440](#)) Moved by Hensley that this ordinance be considered and given first vote for passage; refer to the City Manager to continue discussions with CenturyLink regarding the following: 1. Seek input on a possible hybrid of fees and permits. 2. Review the potential impact of increasing the implementation period to 10 years. 3. Review the declaratory judgment process. Motion Carried 6-1. Nays: Coleman.

Date: August 25, 2014

Roll Call Number: [14-1313](#)

Action: [Amending](#) Chapter 102 of the Municipal Code regarding Right-of-Way Management Fees. ([Council Communication No. 14-423](#)) Moved by Hensley to continue to September 8, 2014; refer to the City Manager, City Attorney and Engineering Department to work with the impacted parties on suggestions for amendments to the proposed ordinance, to provide the Council with a list of all right-of-way users, and to provide information regarding the proposed job description for the additional staff person. Motion Carried 7-0.

Date: January 27, 2014

Roll Call Number: [14-0118](#)

Action: [Approval](#) of FY2013-2014 Annual Right-of-Way Management Fee. ([Council Communication No. 14-020](#)) Moved by Mahaffey to adopt. Motion Carried 5-2.

Date: April 8, 2013

Roll Call Number: [13-0562](#)

Action: [FY2012-2013 Annual Right-of-Way Management Fee.](#) ([Council Communication No. 13-176](#)) Moved by Hensley to adopt. Motion Carried 7-0.

Date: February 11, 2013

Roll Call Number: [13-0186](#)

Action: [Approving](#) professional services agreement with Springsted, Inc. to update Right-of-Way Management Fee Study, not to exceed \$55,530. ([Council Communication No. 13-056](#)) Moved by Hensley to adopt. Motion Carried 7-0.

BOARD/COMMISSION ACTION(S): NONE

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS:

Second and third ordinance readings. Approval of amendment to schedule of fees to implement the proposed fee amount and structure. Approval of professional services agreements and further amendments to schedule of fees as may be applicable upon five (5) year study updates.

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