

## CHAPTER 22A

### USE OF CITY RIGHTS-OF-WAY BY RIGHT-OF-WAY USERS

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**Sec. 22A.1. DEFINITIONS.** For the purpose of this chapter, certain terms are defined as follows:

(1) City Right-of-Way means the area on, below, or above a City roadway, street, bridge, bicycle path, or City sidewalk, in which the City has an interest, including other dedicated rights-of-way for travel purposes and utility easements. A City right-of-way does not include the airwaves above a City right-of-way with regard to cellular or other non-wire telecommunications or broadcasts service or utility poles owned by the City.

(2) Right-of-Way Users: Those entities, except the City of Ames and Iowa State University, that own or operate facilities that are or are proposed to be installed within City right-of-way for purposes of conducting, transmitting or distributing water, drainage, sanitary sewage, electricity, steam, gas, or electronic communications.

**Sec. 22A.2. REGISTRATION.**

(1) The City of Ames and Iowa State University and all right-of-way users that have or propose to have facilities within the City right-of-way shall register annually with the City on or before January 1 of each year to provide the following information:

a) The identity and form of legal entity of the registrant and if wholly owned by another legal entity the identity of the owning entity.

b) The name, address and telephone number of the officer, agent or employee responsible for the accuracy of the registration statement, and for local operations of the right-of-way user.

c) A description of the registrant's existing and proposed facilities within the City right-of-way.

d) A description of the service that the registrant intends to offer or is currently offering within the City.

e) Information sufficient to enable the City to determine that the registrant has applied for or received any document or certificate required by State or Federal law to provide services or facilities within the City.

(f) Proof of registration with the Iowa "one-call" system.

(2) Each right-of-way user registration, and registration by the City, shall be accompanied by such registration fee as shall be set from time to time by the City Council.

(3) The purpose of the registration required by this section is to assist the City in enforcement of its regulations; and, to assist the City in the abatement of dangerous conditions or conditions that threaten to interfere with the property of others by reason of the registrant's facilities.

**Sec. 22A.3. RIGHT-OF-WAY INSTALLATION PERMITS.**

(1) A right-of-way user shall obtain, by application to the City Director of Public Works, a permit for installation in the City right-of-way whenever the right-of-way user desires to place, construct, or bury anything in the City right-of-way. Such application shall be accompanied by:

(a) Written and graphic material that states and shows the particular part of or point on the city right-of-way where placement, construction, or excavation is proposed to occur.

(b) A statement of the beginning and ending dates for the time during which the work is to be done and completed.

(c) A sign-off sheet showing that all other registered right-of-way users, the City of Ames and Iowa State University, with facilities in the vicinity of the proposed installation or repair work have reviewed the plan for the proposed work and have no objection. So as not to have undue delay, the right-of-way user making application for the permit need only wait ten working days from the time of submitting its plans to the other right-of-way users. Failure by a right-of-way user to respond to such requested plan review within ten (10) days shall constitute an expression of no objection. If there is a dispute between right-of-way users as to location of the respective facilities of each in a segment of City right-of-way, the Director of Public Works shall determine the placement of such facilities in a manner reasonably consistent with how various kinds of facilities are shown to be placed on a model right-of-way cross section established and maintained on file for public inspection by the Director of Public Works.

(d) Plans and specifications for the proposed work in such detail as the Director of Public Works shall reasonably require to show that the work as proposed conforms to city ordinances, regulations, and policies.

(2) In making excavations in the City right-of-way the right-of-way user shall do the work in a manner devised to cause the least possible inconvenience to the public.

(3) The right-of-way user shall properly protect, according to safety standards generally accepted at the time that the installation in the City right-of-way occurs, all excavations and obstructions by proper placement of barricades, warning lights and such other or additional devices, in accordance with The Manual on Uniform Traffic Control Devices, as circumstances may warrant. If in the opinion of the City Director of Public Works such excavation or obstruction is not properly and safely protected, the City Director of Public Works shall notify the right-of-way user and the right-of-way user shall comply immediately with the instructions of the Director of Public Works. Failure or refusal by the right-of-way user to follow such instructions shall constitute a violation of this section.

(4) Any trenches or excavations opened by a right-of-way user in the City right-of-way shall be filled by the right-of-way user. All backfilling in the City right-of-way shall be done in accordance with City specifications, including specification for the replacement of grass and other landscaping features.

(5) Temporary street surfacing shall be placed in excavations in a city street 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 right-of-way user and left in as good a condition as before the opening, disturbance or damage occurred. In the event that like materials for replacement are not available, the Director of Public Works may approve the use of an alternative material that is reasonably close in effect to the original material. The Director of Public Works will consider and evaluate for approved use, on a case by case basis, such alternative methods that meet standards of good engineering practice.

(6) Where a cut or disturbance is made by a right-of-way user to a section of a street or a sidewalk paving, rather than replacing only the area cut, the right-of-way user shall replace the full width of the existing sidewalk or street paving and the full length of the section or sections cut, a section being that area marked by expansion joints or scoring, or as directed by the City.

(7) Right-of-way users shall maintain, repair and keep in good condition for a period of two (2) years following such disturbance all portions of the City street surface disturbed by a right-of-way user. Landscaping that is so disturbed shall be repaired and maintained for a period of one (1) year. Grass that is so disturbed shall be repaired and maintained for a period of sixty (60) days.

(8) No right-of-way user or any person acting on the right-of-way user's behalf shall commence any non-emergency work in the City right-of-way without five (5) working days advance notice to the City. In the event of an emergency involving public safety, the public works Director or designee may issue the permit orally, but the written documentation of the application for and issuance of the permit shall be completed as soon as practicable after the work has started.

(9) Whenever any existing electric utility facilities, cable television facilities, or other telecommunications facilities are installed underground in a certain segment of the City right-of-way, any other right-of-way user shall also locate its facilities underground in that segment of the City right-of-way.

(10) Street crossings and sidewalk crossings by right-of-way user facilities shall be bored at those locations where reasonably required by the Director of Public Works. Some examples of where such boring may be required are: major streets, new streets, and locations of major events that conflict with construction.

(11) No permit shall be issued for the installation of right-of-way user facilities in the City right-of-way unless the right-of-way user has filed with the City a registration statement in accordance with Section 22A.2 above.

(12) No permit for installation of right-of-way user facilities in the City right-of-way shall be issued by the City Director of Public Works unless the right-of-way user has paid such installation permit fee as shall be established from time to time by resolution of the City Council.

(13) Installation and repair work shall be done in accordance with the city street tree protection policy requirements. All trees, landscaping and grounds removed, damaged or disturbed as a result of installations by a right-of-way user in the City right-of-way shall be replaced or restored as soon as is reasonably possible, in accordance with the City street tree protection policy with respect to effects of construction in the City right-of-way.

#### **Sec. 22A.4. COMPLETION OF INSTALLATIONS.**

A right-of-way user shall promptly complete all installations in the City right-of-way so as to minimize disruption of the City ways and other public and private property. All installation work authorized by permit within the City right-of-way, including restoration work, shall be completed as soon as possible but not later than 180 days of the date the City Director of Public Works issued a permit for the installation. An extension may be granted for good cause due to circumstances beyond the control of the right-of-way user.

#### **Sec. 22A.5. AS BUILT DRAWINGS.**

A right-of-way user shall, within sixty (60) days of making an installation of facilities in the City right-of-way, furnish the City with one (1) complete set of as built drawings, in an electronic format compatible with the City's mapping system, if required, drawn to scale and certified by the contact person for the right-of-way user as accurately depicting the location of the facilities installed pursuant to the permit. When the Director of Public Works has issued a single installation permit document relative to multiple installations linked in a single project, the as built drawing pertaining to those installations are not required as aforesaid until sixty (60) days after completion of all installations to be done for the project.

#### **Sec. 22A.6. INTERFERENCE WITH THE CITY.**

A right-of-way user shall so construct, maintain, operate and locate its facilities in the City right-of-way so as not to interfere with the construction, location, maintenance and operation of city sewer, water, drainage, electrical, communications, signal and fiber optic facilities, or any other operations or facilities of the City. The City shall have the right and power by resolution of its City Council, or by order of its Director of Public Works, to specifically direct the location of right-of-way user facilities with reference to city facilities, existing or proposed, in such a manner as shall serve the public use and convenience. Failure or refusal by a right-of-way user to promptly follow such directions shall be a violation of this section.

#### **Sec. 22A.7. RELOCATION OR REMOVAL.**

Within sixty (60) days following written notice from the City, a right-of-way user shall, at its own expense, temporarily or permanently relocate, change or alter the position of any facilities within the City right-of-way whenever the City shall have determined that such relocation, change or alteration is reasonably necessary for the construction, repair, maintenance, or installation of any city public improvement, or for the operations of the City in

or upon the City right-of-way.

**Sec. 22A.8. REMOVAL OF UNAUTHORIZED FACILITIES.**

Within thirty (30) days following written notice from the City, a right-of-way user that owns, controls or maintains any unauthorized facility within the City right-of-way shall remove such facilities from the City right-of-way at the right-of-way users sole expense. A facility is unauthorized if:

- (1) Any license, permit or authorization required by Federal, State or City regulations with respect to the facilities has not been obtained, or has been revoked, or allowed to expire.
- (2) The facilities are not installed in accordance with the permit for installation or other requirements of this chapter.

**Sec. 22A.9. COMPLIANCE WITH PERMIT.**

All installation work and activities for right-of-way user facilities in the City right-of-way shall be in accordance with the installation permit issued by the Director of Public Works. Any work done that is not in accordance with an applicable installation permit shall be a violation of this section by the right-of-way user; and, failure to do work required by an installation permit shall be a violation by the right-of-way user, regardless of involvement of agents or contractors of the right-of-way user.

**Sec. 22A.10. EMERGENCY REMOVAL OR RELOCATION.**

The City shall have the right and power to cut or move any right-of-way facilities in the City right-of-way as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency. The City shall endeavor to give notice of such emergency disruption, but nothing in this chapter shall be deemed to create a duty to give such notice. Restoration of right-of-way facilities that have been cut or moved as aforesaid shall be done by the right-of-way user at its own expense.

**Sec. 22A.11. COORDINATION OF INSTALLATIONS.**

All right-of-way users with facilities in the City right-of-way or who expect to install facilities in the City right-of-way shall coordinate such activities with the City and with each other right-of-way user. Between January 1 and February 1 of each year, all registered right-of-way users shall provide to the City a schedule of their anticipated installations in the City right-of way for that calendar year. Each registered right-of-way user shall meet with the City, and with the other registered right-of-way users as scheduled by the City Director of Public Works, to schedule and coordinate installation of right-of-way user facilities in the City right-of-way, so as to minimize public inconvenience and costs.

**Sec. 22A.12. INSURANCE AND BOND REQUIREMENTS.**

- (1) A right-of-way user that has or expects to install facilities within the City right-of-way shall maintain in effect such insurance as the City's risk manager shall reasonably deem appropriate to the nature of the facilities installed or to be installed, and the location of such installations.
- (2) The Director of Public Works may require performance security in an amount commensurate with the scope of the work, to secure satisfactory installation in accordance with the installation permit, by means of an irrevocable letter of credit in a form approved by the City Attorney, or by cash deposit.

**Sec. 22A.13. POLE ATTACHMENTS.**

- (1) Nothing in this chapter shall be deemed to require a right-of-way user to attach its facilities to the utility poles of the City of Ames municipal electric utility, or to the utility poles of any other right-of-way user. Installation of right-of-way user facilities underground in the same places where other right-of-way user facilities are attached to an existing set of utility poles shall be permitted.
- (2) Nothing in this chapter shall be deemed to confer upon any right-of-way user any right or entitlement to make any attachment to the utility poles of the City of Ames municipal electric utility or to

the utility poles of any other right-of-way user.

(3) Nothing in this chapter shall be deemed to prevent the City of Ames municipal electric utility from requiring any right-of-way user to make a payment of a pole attachment fee and "make ready" charges for attachment of facilities to the utility poles of the City of Ames municipal electric utility; and, to enter into and abide by the terms and conditions of a pole attachment agreement.

(4) At those locations on the City right-of-way where there are already existing utility poles of either the City of Ames municipal electric utility or of some other right-of-way user, a second set of poles is strictly prohibited, except when done by or at the request of the City. If there is not sufficient space on the existing utility poles for attachment of the proposed additional right-of-way user facilities, or if the right-of-way user proposing to install right-of-way user facilities at the site of the existing poles cannot reach an agreement with the owner of the poles to allow attachment of those facilities, then those facilities shall be installed underground.

**Sec. 22A.14. APPEAL TO CITY COUNCIL.**

A right-of-way user that is denied registration, denied a right-of-way installation permit, that has its right-of-way installation permit revoked, or that believes that the fees imposed do not conform to the requirements of Chapter 480A, Code of Iowa, may request in writing that such denial, revocation or fee imposition be reviewed by the City Council. The City Council shall act within sixty (60) days of a timely written request. A decision by the City Council affirming the denial, revocation, or fee imposition must be in writing and supported by a written finding establishing the reasonableness of the decision.

**Sec. 22A.15. NO EASEMENT, PERMISSION ONLY, NOT ASSIGNABLE.**

The provisions of this chapter, and the permits and authorizations granted pursuant to this chapter, shall not be deemed to create or grant to anyone any easement, estate, or interest in the property of the City. A permit to install right-of-way user facilities in the City right-of-way is a mere license, that is, an authorization to the stated entity to go onto the land of the City to do only that which is explicitly stated by the permit, that may be revoked by the City as provided in this chapter, and that cannot be assigned to another. A right-of-way user that occupies city right-of-way or makes an installation of facilities in the City right-of-way on the basis of a purported assignment of an installation permit granted to another entity, shall be in violation of this section.

**Sec. 22A.16. FRANCHISE FEE CREDIT.**

For a right-of-way user that pays a franchise fee, the amount of any registration fee paid per subsection 22A.2(2) and any installation permit fee paid per subsection 22A.3(13) shall be applied as a credit to reduce the amount due for the franchise fee.

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