

WEBSTER CITY, IOWA

CHAPTER 113

TITLE III - PUBLIC SERVICES

CHAPTER 113
CONTROL OF THE USE OF PUBLIC PROPERTY AND RIGHT OF WAY

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113.01 PURPOSE. The council finds that in order to insure 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, insure orderly use of public property and insure 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 that it is necessary for the City to establish uniform rules and controls. 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 EASEMENT REQUIRED. No person or their entity shall use the public right of way or other public property without first obtaining a franchise, license or easement from the City. The City shall not enter into or issue any franchise, license or easement which grants exclusive rights. (This section shall not apply to the State of Iowa.)

113.03 FEE REQUIRED. No franchise, license or easement 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.

113.04 LIMIT ON TERM. No franchise, license or easement for use of the public right of way or other public property shall be granted for a term of more than fifteen years.

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

113.06 INDEMNIFICATION. The holder of any license, franchise or easement shall indemnify and hold the City harmless at all times during the term of the franchise, license or easement from and against all claims for injury or damage to persons or property 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 in any street, alley, sidewalk or public place in the City, and which installation, improvement, obstruction or excavation was made or left in, under or upon such street, sidewalk alley or public place by the holder of a franchise, easement or license, its agents, contractors or

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employees, upon being notified in writing by the City of such action or proceeding, the holder of said franchise, license or easement shall appear and make proper defense thereto at the expense of the holder of the franchise, license or easement; and if any judgment or decree shall in any such case be rendered against the City therein, the holder of said franchise, license or easement shall assume, pay and satisfy such judgment or decree, with the costs thereof.

113.07 REGULATION BY CITY. The City reserves to itself 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 easement.

113.08 CONSTRUCTION AND EXCAVATION BY HOLDERS OF FRANCHISES, LICENSES OR EASEMENTS. A written permit will be obtained from the City Manager or designee whenever it becomes necessary for the holder of any franchise, license or easement 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 easement shall proceed with such work as to cause the least possible inconvenience to the public. The holder of any franchise, license or easement shall properly protect, according to safety standards generally accepted at the time of placement, as may be determined from time to time by the City Manager or designee, 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 City Manager or designee such excavation or obstruction is not properly and safely protected, the City Manager or designee shall notify such holder of a franchise, license or easement who shall immediately comply with such reasonable instructions.

Immediately after use any trenches for excavations which the holder of a franchise, license or easement has opened shall be filled. 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,

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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 easement 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 easement shall notify the City manager or designee who must approve the use of any alternate materials. In the event that the holder of a franchise, license or easement 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 repaid to the City by the holder of the franchise, license or easement. In cases where a cut or disturbance is made in a section of street paving or sidewalks, but causes greater disturbance than to simply the area cut, rather than replace only the area cut, the holder of a franchise, license or easement shall replace that area as may be ordered by the City Manager or designee, 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 easement, 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 easement 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 easement. Should the holder of the franchise, license or easement fail or refuse to do and perform the things provide in this chapter, the City may, after reasonable notice, perform the work and charge the expense thereof to the holder of the franchise, license or easement and the holder of the franchise, license or easement shall promptly pay said charges.

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113.10 DESIGN NOTICE TO CITY. The holder of a franchise, license or easement shall promptly upon request furnish the City Manager or designee a detailed map or maps of its distribution system both within the City limits and the area immediately surrounding the City. The holder of a franchise, license or easement shall thereafter update the map or maps, upon request, but not more often than every year, 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 easement 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 easement under this section shall be satisfied if contact is made with a corporation organized pursuant to Iowa Code Chapter 480 (1993) or any entity with a similar function utilized by both the City and the Company, currently the Iowa One-Call System.

113.11 ASSIGNMENT. No sale, assignment or lease of any franchise, license or easement for 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 easement and agreeing to perform all the conditions thereof.

113.12 FORFEITURE. The violation of any material portion of a franchise, license or easement 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 easement and the termination of all rights there under. 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.

113.13 APPLICATION. This chapter shall apply to all franchises, licenses and easements granted by the City including all existing franchises, licenses and easements.

113.14 HOME RULE. This chapter is intended to be and shall be construed as consistent with the reservation of local authority contained in the Twenty Fifth Amendment to the Iowa Constitution

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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 easement.

113.15 NEW TECHNOLOGIES. Should, within the term of any franchise, license or easement, developments within the field for which the grant was made offer to the holder thereof the opportunity to more 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 easement may petition the Council which, with such requirements or limitations 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 easement.

(Chapter 113 added by Ordinance No. 97-1478)

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CHAPTER 114

COMMUNICATIONS UTILITY

- 114.01 Purpose
- 114.02 Policy Direction
- 114.03 Superintendent
- 114.04 Service Rules and Regulations
- 114.05 Rates

114.01 PURPOSE. The purpose of this chapter is to provide for the operation of the municipally owned communications utility.

114.02 POLICY DIRECTION. The Mayor and City Council shall establish appropriate rules and regulations governing the operation and maintenance of the communications utility.

114.03 SUPERINTENDENT. The City Manager shall be responsible for execution of policies governing the system as established by the City Council.

114.04 SERVICE RULES AND REGULATIONS. (RESERVED)

114.05 RATES. (RESERVED)

(Ch. 114-Ord. 98-1519 - Jul. 98 Supp.)

