

## ORDINANCE NO. 99-13

AN ORDINANCE AMENDING THE MUNICIPAL CODE OF THE CITY OF URBANDALE, IOWA, 1980, TO ESTABLISH TITLE IV, CHAPTER 9, TO UTILIZE PUBLIC RIGHTS-OF-WAY FOR THE INSTALLATION, OPERATION AND MAINTENANCE OF A UTILITY BUSINESS

BE IT ENACTED by the City Council of the City of Urbandale, Iowa:

SECTION 1. The MUNICIPAL CODE OF THE CITY OF URBANDALE, IOWA, 1980, is hereby amended as follows:

**SECTION 1: DEFINITIONS**

- (1) "City" shall mean the City of Urbandale, Iowa, and where appropriate, shall include its officers, employees and agents.
- (2) "Public Improvements" shall mean any improvements on Public Property, including but not limited to paving, sidewalks, grass, vegetation, trees, street lights, traffic signals, water mains, sewers, electric transmission lines, and equipment related thereto.
- (3) "Public Property" shall mean City owned property or City controlled easements.
- (4) "Public Rights-of-Way" shall mean the area on, below, or above a public roadway, highway, street, bridge, cartway, bicycle lane, or public sidewalk in which the local government has an interest, including other dedicated rights-of-way for travel purposes and public easements. A public right-of-way does not include the airwaves above a public right-of-way with regard to cellular or other nonwire telecommunications or broadcasts service.
- (5) "Utility Business" shall mean a company providing utility services by wire, or through conduit, pipe or similar structure, device or apparatus, and all equipment owned, operated, leased or subleased in connection with the operation of the Utility Business, and shall include but is not limited to poles, wires, pipes, cables, underground conduits, ducts, manholes, vaults, fiber optic cables, and other structures or appurtenances.

**SECTION 2: RESERVATIONS**

Utility Business shall construct, maintain, inspect, protect, repair, replace, retain a system, in, under, upon, along and across the Public Rights-of-Way or Public Property, subject to the Federal, State and City regulatory powers, and subject to the conditions hereinafter set forth.

### SECTION 3: PERMITS, PERMIT FEES, and INSPECTION FEES

Utility Business shall obtain a permit pursuant to this City Ordinance, to make excavations in City streets, avenues, alleys, public right-of-way and public properties. A permit shall not be required for a single commercial or residential service connection within a public right-of-way; however, a permit shall be required if such connection requires a street cut. A permit shall not be required for a single pole or single transformer change out, or a single street light change out. After the City reviews, approves and issues a permit, the Utility Business shall provide the City with twenty-four (24) hours notice prior to the actual commencement of the work; shall not unnecessarily obstruct the use of streets, avenues, alleys or public places; and shall comply with all provisions, requirements, and regulations in performing such work. Utility Business' installation shall not interfere with the reasonable and proper use, construction, reconstruction and maintenance of any public improvements or any existing or future public utility system component, or other structure upon or under public property.

The Utility Business shall submit its permit request, maps, plans or specifications for a proposed utility plan, and other notices as may be appropriate, to the following City office for the initial permit review, permit findings (approval, denial, resubmission), fee assessment, and other activities as may be appropriate:

Director of Engineering and Public Works  
City of Urbandale  
ATTN: ROW  
~~PO Box 3540~~ 3600 86th Street  
Urbandale, IA 50322

Fax: (515) 278-3927  
E-Mail: engpw@urbandale.org

The Utility Business shall pay the City the following rates:

- (1) Thirty-Five dollars (\$35.00) per permit for the engineering review of the Utility Business' proposed plans and specifications, with payment due either at the time the plans and specifications are delivered to the City or within thirty (30) days of the City's submittal of an invoice to the Utility Business; and
- (2) An hourly rate for any inspection services required in connection with the Utility Business' work, including but not limited to the personnel cost of an inspector's salary and benefits, vehicle and mileage, administrative overhead, with payment due within thirty (30) days of the City's submittal of an invoice to the Utility Business.

#### **SECTION 4: MAP, PLAN AND SPECIFICATIONS FOR THE EXTENSION, EXPANSION, REPAIR OR INSTALLATION OF THE UTILITY BUSINESS' SYSTEM**

Before commencing any extension or expansion of its system, or any major repair work, or the installation of any new system in the City's Public Rights-of-Way or Public Property, Utility Business shall file with the City a written statement verifying the Public Rights-of-Way or Public Property under which or upon which it proposes to extend, expand, install or repair its system. The City shall require that the statement be accompanied by a map, plan or specifications showing the proposed location of the system components with reference to streets and alleys, the size and dimensions of all public utilities, and the distance beneath the surface of the ground. When a Utility Business installs parallel utilities to a City owned public utility system facility, a minimum five (5) foot horizontal clearance from center is required, unless a reduced clearance is specifically approved by the City Engineer. All existing public utilities must be shown on the map, plan or specifications. If the proposed locations of any facilities shall interfere with the reasonable and proper use, construction, reconstruction and maintenance of any public improvements or any existing or future public utility system component, or other structure upon or under public property, the City shall within a reasonable time after the filing of such plan, map or specifications, note the changes necessary, eliminate all interference with a public improvement or existing City owned public utility system facility and refer the same back to the Utility Business for amendment. Such map, plan or specifications, when properly changed and corrected, shall be filed with the City, and after the approval of the same by the City, a permit shall be issued authorizing Utility Business to proceed in accordance with the approved maps, plans or specifications. No such excavation, construction or erection shall be commenced before the issuance of the permit herein provided for, unless it is an emergency as described in Section 7 (Emergencies), and all work shall be in accordance with the approved maps, plans or specifications.

#### **SECTION 5: CONSTRUCTION AND REPAIR OF UTILITY BUSINESS' SYSTEM**

In the process of location, construction, reconstruction, replacement, or repair of any system component, the excavation or obstruction made or placed in Public Property at any time or for any purpose by Utility Business shall, to protect the public and to assure the safe and efficient movement of traffic, be properly barricaded to comply, at a minimum, with requirements set forth in the Uniform Manual for Traffic Control. All pavement removed or damaged shall be properly and speedily replaced in accordance with the "Urban Standards Specifications for Public Improvements (Streets and Related Work)".

#### **SECTION 6: RESTORATION**

As a condition to use Public Property, Utility Business shall at its own expense, repair or cause repair to any private property, public utility system component,

public improvement, public rights-of-way, or Public Property damaged by such location, construction, reconstruction, replacement or repair work. Utility Business shall restore all such property to its previous condition at its expense. If multiple utilities are involved in the restoration, the City Engineer shall assess the restoration cost equally or proportionately to the parties involved. If Utility Business fails to repair or arrange with the City for the proper repair of any Public Property after excavations or damage to the surface has been made, and after thirty (30) days' notice in writing to do so given to its designated representative, then the City may make such repairs at the expense of Utility Business.

#### **SECTION 7: EMERGENCIES**

In emergencies, the Utility Business shall remove or relocate its installations within forty-eight (48) hours of notification from the City.

In emergencies which require immediate excavation, Utility Business may proceed with the work without first applying for or obtaining the permit, provided, however, that the Utility Business shall apply for and obtain the permit within forty-eight (48) hours after commencing such emergency work.

#### **SECTION 8: WORK BY OTHERS, ALTERATION TO CONFORM WITH PUBLIC IMPROVEMENTS**

The City reserves the right to lay, and permit to be laid, wires, pipes, cables, conduits, ducts, manholes and other appurtenances, and to do, or permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper by the City in, across, along, over or under any public property occupied by Utility Business, and to change any curb or sidewalk or the grade of any street. In permitting others to do such work, the City shall not be liable to Utility Business for any damages arising out of the performance of such work by other parties, except those arising out of or resulting from negligence of the City. Nothing in this ordinance shall be construed as to relieve any other person or corporation from liability for damage to Utility Business' facilities.

#### **SECTION 9: UTILITY BUSINESS CONTRACTORS**

The requirements of the ordinance shall apply to all persons, firms or corporations performing work for Utility Business under a contract, subcontract or other type of work order.

#### **SECTION 10: CONDITIONS OF STREET OCCUPANCY**

The utility system and other components of the facilities erected by Utility Business within the City shall conform to established grades of streets, alleys, and sidewalks, and be so located as to cause minimum interference with other public utilities located in or upon public property, and to cause minimum

interference with the rights or reasonable convenience of property owners who adjoin public property.

Utility Business shall conduct its work hereunder in such manner as to cause as little interference as possible with pedestrian and vehicular traffic, and shall abide by scheduling directions, if any, given by the City.

Utility Business shall, upon reasonable notice and at no cost or expense to the City, remove, locate and relocate its facilities in, on, over or under public property in such manner as the City may at any time require for the purpose of facilitating the construction, reconstruction, maintenance, repair or change in grade of any public improvement on, in or about any such public property, for the purpose of promoting the efficient operation of any such improvement, or for the purposes of facilitating the vacation and/or redevelopment of public right-of-way by the City.

Utility Business shall not place its facilities in the public property where the same will interfere with the normal use or maintenance of any public improvement including but not limited to streets, alleys, sidewalks, traffic control devices, sanitary sewers, storm sewers, storm drains or water mains, or any other existing public utility facility.

Upon request, Utility Business agrees to assist in locating underground facilities which are part of its system. As a condition of this ordinance Utility Business shall enroll as a member of the "Iowa One-Call System" and shall respond to all requests and notifications placed to the toll free "One-Call" number.

Installation, repair, or replacement work completed by Utility Business on any facilities requiring excavation or public property or public right-of-way shall require restoration and replacement of surface vegetation with sod or other materials approved by the City Engineer in conformance with City ordinances and in accordance with standard local practices for placing sod or other materials.

## **SECTION 11: POWERS OF CITY**

Nothing in this ordinance shall be construed to abridge the right or power of the City to make further regulations relative to the use of the streets, alley and public grounds by anyone using the same for the erection and maintenance of utility systems.

## **SECTION 12: VIOLATIONS OF ORDINANCE**

Upon evidence being received or observed by the City that a violation or breach of this ordinance or codes lawfully regulating Utility Business in the operation of its facilities, or in the use of public property therefore, is occurring, or has occurred, the City shall cause an investigation to be made. If the City finds that a violation exists or has occurred, the City may take appropriate steps to secure compliance with the terms of this ordinance.

The City shall notify Utility Business of the violation and Utility Business shall cure such violation within thirty (30) days after receipt of such notice.

If Utility Business fails to cure a violation within the time allowed, the City shall have the right to:

- (a) seek specific performance; or
- (b) seek damages for such default; or
- (c) any combination of (a) and (b).

### **SECTION 13: LIABILITY, INDEMNIFICATION AND INSURANCE**

Utility Business covenants to indemnify, defend, and save the City and its officers, agents and employees, harmless from any and all damages arising directly from the exercise of the rights granted herein, except those arising out of or resulting from negligence of the City. Utility Business agrees to require contractors and subcontractors engaged in work for Utility Business with the public rights-of-way or on public property to maintain in effect during the term of work liability insurance in comprehensive form and in the amounts to be set by the City.

### **SECTION 14: VACATION OF STREETS AND ALLEYS**

So long as Utility Business exercises the rights granted to it hereunder, the City will not, by ordinance or otherwise, vacate any street, alley or public way in which Utility Business has installed its facilities without reserving such rights as necessary to allow continued use of such property for the said facilities in accordance with the term of this ordinance, provided that nothing herein shall limit the City's right to require Utility Business to relocate its facilities as provided in Section 10 (Conditions of Street Occupancy) hereof.

### **SECTION 15: ORDINANCES IN CONFLICT REPEALED**

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

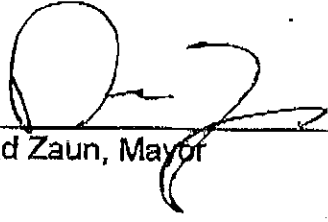
### **SECTION 16: ORDINANCE VALIDITY**

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

### **SECTION 17: ORDINANCE EFFECTIVE**

This ordinance shall be effective from and after its final passage, approval and publication by posting by law.

Passed and approved by the City Council of the City of Urbandale, Iowa, this  
27<sup>th</sup> day of July, 1999.



Brad Zaun, Mayor

ATTEST:

Debra Mains  
Debra Mains, City Clerk

Published: August 6, 1999