



MEMORANDUM

TO: Mayor Laurel L. Prussing and Members of the City Council
FROM: William R. Gray, Public Works Director
Bradley M. Bennett, Assistant City Engineer
DATE: March 23, 2017
RE: Amendments to City Code Chapter 20 Right-of-Way Ordinance

Action Requested

Staff recommends adoption of the attached revisions to Section 20-600 of Chapter 20 of the City Code on public right-of-way (ROW) and other public places.

Background and Facts

ROW is public property and includes any public thoroughfare, such as streets, alleys, parkways, and sidewalks. As a general rule of thumb, the entire sidewalk and the street are part of the ROW. Private property begins behind the ROW.

The City adopted an ordinance on public ROW and other public places (Ordinance No. 2014-01-004) on January 21, 2014, which provides regulations on managing the public ROW. Revisions to the ordinance were adopted on December 5, 2016 (Ordinance 2016-11-111) regarding signage, notification, parkway tree excavation, and open excavation requirements along with a new “one-dig” utility coordination policy. Council recently adopted amendments to the ROW ordinance on February 20, 2017 (Ordinance 2017-02-008) regarding the installation of personal wireless telecommunications facilities along with a provision to allow the Mayor to administratively approve license agreements for use of public ROW for underground utility installation. This latter amendment was intended to address the increasing number of requests for ROW licenses to install high speed fiber optic utilities.

Due to ambiguities in the language of Section 20-600 authorizing the Mayor to execute license agreements for underground utilities, revisions are proposed to that section to clarify the administrative authority of the Mayor on these types of license situations. The proposed language provides clarity insofar as the Mayor having authority to enter into and execute ROW license agreements for the installation of underground utilities. Further, the amendment includes express language that any utility installation which is to occur on the surface of the ground or overhead in a ROW must still be approved by the City Council.

Financial Impact

There are no additional costs to the City for the proposed revisions to Section 20-600 of Chapter 20.

Recommendations

It is recommended that An Ordinance Amending Urbana City Code Chapter 20 Concerning Use of Rights-of-Ways (Authority to Enter into and Execute Right-Of-Way Use Licenses) be adopted.

Attachments: An Ordinance Amending Urbana City Code Chapter 20 Concerning Use of Rights-of-Ways

ORDINANCE NO. 2017-03-016

AN ORDINANCE AMENDING URBANA CITY CODE
CHAPTER 20 CONCERNING USE OF RIGHTS-OF-WAY

(Authority to Enter into and Execute Right-Of-Way Use Licenses)

WHEREAS, the City of Urbana ("City") is a home rule unit of local government pursuant to Article VII, Section 6, of the Illinois Constitution, 1970, and may exercise any power and perform any function pertaining to its government and affairs, including the power to regulate for the protection of the public health, safety, and welfare; and

WHEREAS, the City Council heretofore did enact Urbana City Code Chapter 20 to regulate the public right-of-way and other public places within the City for the protection of the public health, safety, and welfare; and

WHEREAS, after due and proper consideration, the City Council finds that amending Chapter 20, as provided herein, will protect the health, safety, and welfare of the public.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Urbana, Champaign County, Illinois, as follows:

Section 1. Urbana City Code Chapter 20, "Public Right-of-Way and Other Public Places", Section 20-600 shall be and is hereby amended as provided herein with the language to be deleted shown with strike-through and with the language to be added shown underlined

20-600. Consent to license agreements.

~~The Mayor, on behalf of the City, is authorized to enter into and execute license agreements which contain terms which provide for the items below thereby giving the consent of the City to a underground utility to use City streets or other property for the installation and maintenance of its facilities, including, drains, pipeline, conduit, materials or other equipment under City streets or other City property, but not including permanent building structures, above ground utilities, or types of facilities that are expressly prohibited in this Code from being installed and maintained in the right of way. The minimum requirements for an agreement are as follows:~~

(a) The city council, in its discretion and consistent with applicable law, may authorize by ordinance, the mayor to execute license agreements on behalf of the city for use of public rights-of-way where such use will involve the placement or installation of any facility on the surface of or above the ground in a public right-of-way.

(b) Notwithstanding anything to the contrary contained in subsection (a) of this section, the mayor, in the mayor's discretion and consistent with applicable law, shall have the

authority, without city council consent, to enter into and execute license agreements for the use of public rights-of-way where such use is strictly confined to drains, pipeline, conduit, vaults, materials, fiber, cable, or other equipment which is or are located entirely below the surface of the right-of-way or rights-of-way sought to be used by the applicant.

(c) Terms of license agreement.

The following terms and conditions shall, at a minimum, be included in every license agreement which provides for the use of any public right-of-way.

(a1) Location. The license shall specify the length and width of licensed property and shall include an accurate map of the exact location.

(b2) Term. Unless otherwise noted, the initial term of the agreement shall be twenty (20) years. Upon expiration of this initial term or any renewal term, the agreement shall automatically renew for a subsequent term of five (5) years, unless, not less than ninety (90) days prior to expiration, either party gives written notice of its intent not to renew. The agreement may be terminated at any time upon the express written consent of both parties. Either party may terminate the agreement for cause by giving written notice to the other party at least forty-five (45) calendar days prior to the proposed termination. Such notice of termination shall specify the reason or reasons for such termination and shall specifically state that such termination shall become effective thirty (30) calendar days after the date thereof in the event the reason or reasons for such notice of the termination are not fully and completely concurred.

(c3) Plans and specifications. The plans and specifications shall be subject to the approval of the city engineer and shall comply with all ordinances and regulations of the city.

(d4) Compensation. Compensation shall be paid per negotiated agreement.

(e5) Transfer. The license granted pursuant to this article may not be transferred or assigned.

(f6) Installation and maintenance. The license shall require the licensee to comply with all ordinances or regulations of the city. The licensee shall be required to restore any pavement disturbed in the course of construction as well as any non-pavement surface. Such restoration shall be to the satisfaction of the city engineer. The agreement shall require the licensee to pay to the city any costs occasioned to the city on account of the licensee's failure to restore.

(~~g~~7) Removal. The license shall require the licensee to remove the equipment upon termination of the agreement at the licensee's expense.

(~~h~~8) Relocation. The license shall require the licensee to relocate the equipment at the licensee's expense at the request of the city.

(~~i~~9) Indemnification. The license shall require the licensee to defend and indemnify the city and its employees and agents for all expenses related to the licensee's use of the city street or other city property.

(~~j~~10) Insurance and security. The license shall require the licensee to maintain insurance in accordance with the requirements of sections 407 and 409 of this chapter.

(~~k~~11) Notice and requirement to update owner information. The license shall provide for the method of notification of each party and shall include a requirement that the city be informed of changes in ownership.

Section 2. Those sections, paragraphs, and provisions of the Urbana City Code that are not expressly amended or repealed by this Ordinance are hereby re-enacted, and it is expressly declared to be the intention of this Ordinance not to repeal or amend any portions of the Urbana City Code other than those expressly set forth in Section 1 of this Ordinance. The invalidity of any section or provision of this Ordinance hereby passed and approved shall not invalidate other sections or provisions thereof.

Section 3. This Ordinance shall not be construed to affect any suit or proceeding pending in any court, or any rights acquired, or a liability incurred, or any cause or causes of action acquired or existing prior to the effective date of this Ordinance; nor shall any right or remedy of any character be lost, impaired, or affected by this Ordinance.

Section 4. The City Clerk is directed to publish this Ordinance in pamphlet form by authority of the corporate authorities, and this Ordinance shall be in full force and effect from and after its passage and publication in accordance with Section 1-2-4 of the Illinois Municipal Code.

This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called, of a majority of the members of the Council of the City of Urbana, Illinois, at a meeting of said Council.

PASSED BY THE CITY COUNCIL this ____ day of _____, _____.

AYES:

NAYS:

ABSENT:

ABSTAINED:

Phyllis D. Clark, City Clerk

APPROVED BY THE MAYOR this ____ day of _____, _____.

Laurel Lunt Prussing, Mayor