



City of Grand Island

Tuesday, April 10, 2018

Council Session

Item F-1

#9683 - Consideration of Amendments to Chapter 32 of the Grand Island City Code Relative to Streets and Sidewalks

Staff Contact: John Collins, P.E. - Public Works Director

Council Agenda Memo

From: Keith Kurz PE, Assistant Public Work Director

Meeting: April 10, 2018

Subject: Consideration of Amendments to Chapter 32 of the Grand Island City Code Relative to Streets and Sidewalks

Presenter(s): John Collins PE, Public Works Director

Background

All agreements with the Nebraska Department of Transportation (NDOT) for Federal-aid Transportation projects include the following requirements for encroachments in the public Right-of-Way.

The Local Public Agency (LPA), at no cost to the project, shall clear the entire existing Right-of-Way of this project of any private or non-LPA uses or occupancy of the area above, below, or on the existing Right-of-Way. Also, the LPA agrees to keep the old and new Right-of-Way free of future encroachments, except those specifically authorized by permit.

The LPA must have all encroachments cleared from the Right-of-Way before requesting a Right-of-Way Certificate and must attest to said clearance.

Through guidance from NDOT, underground lawn irrigation systems on the public Right-of-Way are considered encroachments on Federal-aid Transportation projects. Unless required to secure funding, underground lawn irrigation systems no longer need permitting or license agreements to remain in the public Right-of-Way, as long as the LPA allows underground lawn irrigation systems to be placed in the public Right-of-Way.

Discussion

In order to comply with the encroachment requirements specified in the agreements for Federal-aid Transportation projects, Grand Island City Code is being revised to specifically address underground lawn irrigation systems located in public Right-of-Way. This type of encroachment may still require permitting to secure federal funds, but in certain projects this type of encroachment no longer needs to be permitted with a license

agreement to remain in the public Right-of-Way, as long as the LPA allows this type of encroachment within the public Right-of-Way.

Items that are permitted in the public Right-of-Way by license agreements are subject to the requirements of Section 32-71 Indemnification Required.

The reason for this code amendment allows for flexibility based upon the requirement for any given project.

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

Public Works Administration recommends that the Council approve the revisions to Chapter 32 of the City Code.

Sample Motion

Move to approve the ordinance.

ORDINANCE NO. 9683

An ordinance to amend Chapter 32, Article VII, of the City Code of the City of Grand Island; to amend Sections 32-69; to repeal any ordinance or parts of ordinances in conflict herewith; and to provide for publication and the effective date of this ordinance.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA:

SECTION 1. Grand Island City Code Chapter 32 Streets and Sidewalks, Article VII. Occupancy of Public Right of Way, Section 32-69 is hereby amended to read as follows:

§32-69. General

(1) It shall be unlawful for any person, as defined in §1-2 of this code, to use, occupy or obstruct any portion of any street, alley, sidewalk, easement or other public right-of-way or real estate owned by or under the control of the City of Grand Island without first applying for, securing and executing a License Agreement and paying the processing fee in accordance with the City of Grand Island Fee Schedule, which fee shall not be refundable. The procedure for application and review of a license agreement shall be as follows:

(A) An applicant or their agent shall file an application and a processing fee shall be paid in the Public Works Department on forms to be provided by the City.

(B) The Public Works Department shall review the information provided on the application and shall distribute copies of said application to such departments and agencies within the City as may have an interest in or be affected by the proposed use set out in the application for review, comment and/or recommendations.

Approved as to Form	☐ _____
April 5, 2018	☐ City Attorney

ORDINANCE NO. 9683 (Cont.)

(C) The application for license agreement shall be approved, unless a department or agency of the City finds that the proposed use violates a federal, state or local statute, regulation, ordinance, code, rule, regulation or policy or impedes, impairs, diminishes the use of the public land by the City, the public or other person which has a lawful right to use and/or occupy said lands.

(2) The Public Works Director or his/her designee, upon receipt of comments and/or recommendations from the aforementioned departments and agencies, may approve, or disapprove, in whole or in part an application for license agreement. The director or his/her designee may specify such conditions and terms to be included in the requested license agreement as are necessary and prudent to protect the interests of the City, public, or any person which has a lawful right to use and/or occupy said lands. The director shall inform the applicant or their agent in writing of any decision disapproving in whole or in part the application for license agreement, said decision to be sent to the address shown on the application.

(3) In the event an application submitted under (1) above is disapproved in whole or in part, the applicant, within fifteen (15) days of the date of the decision by the Public Works Director or his/her designee, may request that the application be placed on the agenda at a regular meeting of the Mayor and City Council for review and final decision. A request for review shall be made in writing and filed in the Public Works Department, along with the appeal fee set out in the Grand Island Fee Schedule.

(4) This section shall not apply to:

(A) personal property which is not affixed or attached to the real estate except movable buildings or structures; and

ORDINANCE NO. 9683 (Cont.)

(B) underground lawn ~~sprinkling-irrigation~~ systems encroaching into public Right-of-Way ~~except when license agreements are required to obtain on any improvement project that is to receive~~ Federal ~~or State~~ Transportation Funds ~~shall obtain a license agreement subject to the requirements pursuant to this article~~for an ~~improvement project~~.

(i) A processing fee is not required for a license agreement for underground lawn ~~sprinkling-irrigation~~ systems encroaching into public Right-of-Way, so long as it is in connection with Federal Transportation Funded projects.

(ii) Placement and maintenance of underground lawn irrigation systems and related components in the public Right-of-Way is at the sole risk of the owner thereof. Any such occupancy and use of the public Right-of-Way shall be subject to and inferior to the occupancy and use of the public Right-of-Way by the City, its franchisees, public utilities, and the interests of the general public.

~~(56)~~ Underground vault space under public sidewalk on buildings constructed prior to 1972 in the Downtown Improvement Parking District, as defined in Section 13-1 of the Grand Island City Code, are maintained solely at the sufferance of the City. The City reserves the authority to require structural upgrades or removal if in the interest of public safety.

Amended by Ordinance No. 9372, effective 04/03/2012

Amended by Ordinance No. 9391, effective 08/14/2012

SECTION 3. Any ordinances or parts of ordinances in conflict herewith be, and hereby are, repealed.

ORDINANCE NO. 9683 (Cont.)

SECTION 4. This ordinance shall be in force from and after its passage and publication as provided by law.

Enacted: April 10, 2018.

Jeremy L. Jensen, Mayor

Attest:

RaNae Edwards, City Clerk