



Date: August 1, 2014

To: Thomas J. Bonfield, City Manager

Through: W. Bowman Ferguson, Deputy City Manager

From: Marvin G. Williams, Director of Public Works

Subject: City Code Revision of the Right-of-Way Ordinance

Executive Summary

Chapter 62, Article II Construction, Excavation, etc., Division 1 of the City of Durham Code of Ordinances is known as the Right-of-Way Ordinance. This ordinance states that it is unlawful to install private facilities and to construct or repair a street without a permit. The Public Works Department wishes to revise the current Right-of-Way Ordinance to clearly define the work that is allowed to be performed in the public right-of-way, the type of license or franchise, and/or permit required to do the work, and the approval process for the license.

Recommendation

The Public Works Department recommends that the City Council adopt the proposed changes to the Durham City Code, Chapter 62, Article II, Division 1, as attached.

Background

Chapter 62, Article II Construction, Excavation, etc., Division 1 of the City of Durham Code of Ordinances is known as the Right-of-Way Ordinance. This ordinance states that it is unlawful to install private facilities and to construct or repair a street without a permit. The Public Works Department enforces this ordinance and operates the permitting and the license agreement programs. The Department wishes to revise this ordinance to better align it with current practices and to streamline the license agreement approval process.

Issues and Analysis

Below is a list of issues with the current Right-of-Way Ordinance and how the revised ordinance addresses them:

Current Ordinance	Issue	Revised Ordinance
<i>“Director of transportation and utilities”</i>	The current ordinance uses old terminology used when the Department of Transportation was part of Public Works.	The revised ordinance will reference the Public Works Department instead. <i>Sec. 62-50 Definitions</i>
<i>“It shall be unlawful for any</i>	The current ordinance	The revised ordinance includes a

<p><i>person to build or construct any sidewalks, curbs, gutters or paving on the streets for private interests until a permit has been secured”</i></p>	<p>provides a short and specific list of work requiring a permit.</p>	<p>longer and more general list of the type of work requiring a permit (authorization). <i>Sec. 62-52 Work in Public Way requiring prior notice; authorizations; standards; fees</i></p>
	<p>The current ordinance does not penalize for illegal work performed in the right-of-way.</p>	<p>The revised ordinance allows the City to charge civil penalties for work performed illegally in the right-of-way. <i>Sec. 62-52 Work in Public Way requiring prior notice; authorizations; standards; fees (g) Civil Penalties</i></p>
	<p>There is no mention of stop work orders in the current ordinance.</p>	<p>The revised ordinance allows the city to issue a stop work order to anyone performing work illegally in the right-of-way. <i>Sec. 62-52 Work in Public Way requiring prior notice; authorizations; standards; fees (h) Stop Work Order</i></p>
<p><i>“Any person performing construction for which a permit is required, as provided in section 62-50, shall furnish the city with a performance bond acceptable by the city, in an amount of \$1,000.00”</i></p>	<p>The current ordinance states a specific amount for performance bonds.</p>	<p>The revised ordinance allows the City to require performance bonds for work in the right-of-way and gives the flexibility to establish the amount depending on the project. This is consistent with the Department’s current construction security policy. <i>Sec. 62-53 General requirements for work in the Public Way (c) Bonds; performance guarantees</i></p>
	<p>There is no mention of inspections in the current right-of-way ordinance. The requirement of right-of-way inspections is established in another section of the City Code (Section 62-155) for the issuance of certificates of compliance.</p>	<p>The revised ordinance allows the City to conduct inspections and re-inspections of work performed in the right-of-way. <i>Sec. 62-53 General requirements for work in the Public Way (i) Inspections; fees</i></p>
<p><i>“At the city's discretion, one or more licenses or permits may be issued in lieu of a franchise, or in combination with a</i></p>	<p>The current ordinance does not specify what work requires a license agreement.</p>	<p>The revised ordinance lists specifically what work requires a license agreement. <i>Sec. 62-56 Franchises and Licenses (b) Licenses</i></p>

<p>franchise”</p>	<p>The current ordinance does not specify the approving authority for franchise agreements and license agreements.</p>	<p>The revised ordinance lists the approving authority for franchise agreements and different types of license agreements. <i>Sec. 62-56 Franchises and Licenses (a) Services in the Public Way subject to a Franchise</i></p>
	<p>There is no mention of third party use in the current ordinance.</p>	<p>The revised ordinance allows companies to utilize available space in or on other companies’ Facilities upon reasonable terms and charges negotiated and agreed between the companies. <i>Sec. 62-55 Additional requirements for location, relocation, maintenance and removal of Facilities in the Public Way (l) Third party use</i></p>

Alternatives

Council may elect to not replace the existing Chapter 62, Article II, Division 1 of the Durham City Code. The issues identified above would not be resolved and remain unclear in the current ordinance.

Financial Impacts

Modifications to the existing Code would not result in any additional financial impact.

SDBE Summary

N/A