THE CITY OF ASHEVILLE

STAFF REPORT

Council Meeting Date: April 13, 2021

Subject: Amendment to Chapter 16 Article II Section 16-39 of the Municipal Code and Amendment to City Fees and Charges Manual

Staff Resource(s): Jade Dundas, Capital Projects Director; Greg Shuler, Public Works Director

Action Requested: Adoption of an amendment to Chapter 16 Article II Section 16-39 of the City Code related to Public Right of Way Cuts to clarify that City capital projects are exempt from the permit fee; and approval of an amendment to the Fiscal Year 2020-21 Fees and Charges Manual to clarify this exemption.

Background:

- City ordinance requires Public Works to assure that all cuts (excavations) that are within the City rights of way have a permit issued.
- Permits help provide information related to the work being performed, project duration, contact information for the contractor performing the work; ensure that the work is being inspected; and help to ensure that a warranty is in place after the work is completed.
- These requirements are also included in all City-managed public infrastructure projects.
- Prior to this proposed ordinance amendment, it has been required that City contractors get a permit to perform City work.
- The proposed change allows for City staff to complete permitting on behalf of the project and clarifies that City capital projects are exempt from this right of way cut permit fee.
- This proposed change will have no impact on the City's Utility Cut Patching Program and the associated fees that the City's Water and Stormwater utilities are required to pay.

Vendor Outreach Efforts:

- Not Applicable

Council Goal(s):

- Transportation and Accessibility; A Well-Planned and Livable Community

Committee(s):

- None

Pro(s):

- Reduces cost of projects by eliminating permitting work completed and charges by contractors.
- Ensures that Public Works staff is informed of work in the right of way and records pavement, sidewalk and shoulder cut activity.
- Improves communication about internal work activities and promotes consistency between departments.

Con(s):

- This will lower the revenue collected in the Street Cut program.

Fiscal Impact:

- This adjustment will have a negative financial impact on the Street Cut Fund of approximately $15,000 annually.
- Although this is a revenue loss to the Street Cut Fund, the overall cost to the City capital budget will be lower since contractors that are charged this permit fee currently charge an administrative markup to cover the cost of their administrative expenses.

Suggested Motion:

- Motion to approve the proposed amendments to (1) Chapter 16 Article II Section 16-39 related to Public Right of Way Cuts exempting City capital projects from the permit cut fee; and (2) to the City's Fiscal Year 2020-21 Fees and Charges Manual clarifying the fee exemption for City projects.

Attachment(s):

- Ordinance Amendment to Article II, Section 16-39 of the City Code
- Ordinance Amendment to 2020-21 City Fees and Charges Manual

ORDINANCE NO. _____

ORDINANCE AMENDING CHAPTER 16 ARTICLE II SECTION 16-39 RELATED TO PUBLIC RIGHT OF WAY CUT CLARIFYING THAT CITY CAPITAL PROJECTS ARE EXEMPT FROM THE PERMIT FEE

WHEREAS, the City Council of the City of Asheville has the authority pursuant to Article II of the City Charter, to adopt changes to its General Ordinances; and

WHEREAS, North Carolina General Statute 160A-296(6) authorizes cities to regulate digging in the streets and to impose a fee with respect to activities conducted in its rights-of-ways and North Carolina General Statute 160A-307 authorizes cities to regulate curb cuts; and

WHEREAS, Chapter 16, Article II of the Asheville Municipal Code of Ordinances establishes a process for permitting construction activities that will cause excavation of pavement and/or soil within the municipal right of way; and

WHEREAS, this ordinance requires that all contractors receive a permit and pay a fee for right of way cuts regardless of the entity for which they are contracting; and

WHEREAS, this requirement has been interpreted by some City departments to require that contractors performing work on City capital projects also receive a permit and pay a fee in order to conduct work within the right of way; and

WHEREAS, fees charged to contractors performing work for the City are charged back to the City at an increased fee to ensure that the contractor's cost of administration is covered, thereby unnecessarily increasing the cost of City projects; and

WHEREAS, there is nothing in state statutes that requires a city to pay this type of fee for its own projects; and

WHEREAS, the proposed amendment clarifying that City capital projects are exempt from the fee would reduce the cost of City projects by allowing City Staff to complete permitting on behalf of the City project, instead of the contractor;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT:

Section 1: Chapter 16, Article II of the Asheville Code of Ordinances regarding Public Right-of-Way Cuts is hereby amended as follows:

(a) **Amend Sec. 16-39 by replacing it in its entirety with the following:**

Sec. 16-39. Permit Fee Exemption for City capital projects.

a) When the intent of the project is to maintain or improve Public Works maintained infrastructure, departments are exempted from payment of the applicable permit fees and the penalties associated with the program during the performance of capital projects.

b) Project managers will submit a permit application on behalf of the project. The permits will be issued for record purposes only with no fee charged. Permit closeout will also be the responsibility of the project manager.
c) Pavement, concrete, soil and trench restoration for City projects will follow all applicable City Standards.
d) Departments managing a project will ensure that a warranty of no less than one year is provided by the contractor performing the work.
e) The Department overseeing the project will provide inspection for the work using internal or external resources. Inspection staff must have the appropriate certifications in order to be capable of ensuring that the work is performed to meet all applicable standards and contract requirements. If Department staff cannot meet this requirement and Public Works staff has to inspect, then the fee may be required to be paid.
f) The applicable Public Works staff will be involved, to the extent possible, in the review of plans related to work in the right of way. Public Works will also be involved in the close out of contracts, including final walk throughs.
g) Close out documentation will be provided to Public Works upon completion of the project. Documentation will include, but will not be limited to, as-built drawings (when applicable), warranty information, and operating and maintenance information.
h) This exemption does not in any way exempt City Departments from participating in and paying the fees associated with the Utility Cut Patching Program.

Section 2: If any section, subsection, sentence, clause, or phrase of this ordinance is, for any reason, held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

Section 3: All ordinances or parts of ordinances in conflict are hereby repealed to the extent of such conflict.

Section 4: This ordinance will become effective upon adoption.

Read, approved, and adopted this 13th day of April, 2021.

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City Clerk Mayor

Approved as to form:

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City Attorney

ORDINANCE NO. _____

ORDINANCE AMENDING THE FISCAL YEAR 2020-2021 FEES & CHARGES

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT:

Page 67 of the Fiscal Year 2020-2021 Fees and Charges Manual, Public Works Department Utility Cut Permit and Patching, is hereby amended to add the following:

* City capital projects are exempt from Utility Cut permit fees.

This ordinance shall be in full force and effect upon adoption.

Read, approved and adopted this 13th day of April, 2021.

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City Clerk Mayor

Approved as to Form:

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City Attorney