



Department Source: Public Works

To: City Council

From: City Manager & Staff

Council Meeting Date: October 3, 2016

Re: Public Inconvenience Fee (PIF) for Street, Sidewalk and Alley Closures

## Executive Summary

Staff presented a report to Council at the September 6, 2016 council meeting concerning the proposed implementation of a Public Inconvenience Fee for street, sidewalk and alley closures. Council directed staff to work with the Chamber of Commerce and bring back an ordinance implementing a fee for the City of Columbia.

## Discussion

Staff is requesting to amend Chapter 24 of the City Code to implement a Public Inconvenience Fee (PIF) for extended temporary occupancy of public space, including sidewalks, alleys or roadways. Staff recommends establishing this fee using a cost per linear foot per day similar to the model used by Miami, Florida. This fee would serve as an incentive to use public space more efficiently, enhance public mobility and return the use of the sidewalk, alley or roadway to the general public in a timely fashion.

Included in the September 6th council report, staff requested direction to the following:

- Will the PIF area be limited to CID boundary, downtown area including MU campus, or apply Citywide? Staff can look at setting an Average Daily Traffic (ADT) threshold for streets outside these areas.
- Will alley closures be charged a PIF?
- Will there be maximum limits?
- Will providing a covered walkway defer the sidewalk fee?
- Will there be an additional fee for parking space closures or is the meter fee sufficient?

Council directed staff to work with members of the Chamber of Commerce to gather feedback prior to establishing an ordinance implementing a fee. Following are the preliminary questions obtained from Chamber members on September 8<sup>th</sup>, prior to meeting with them.

### **1. None of the Cities listed in staff's report are in Missouri. Do other cities in Missouri charge fees to close sidewalks or travel lanes?**

**Staff Response:** The Chamber found a Kansas City, MO model for consideration called a traffic control permit fee; the methodology is not as straightforward as Miami but does include factors such as ADT, detour length, and duration of closure and a pre-established unit of cost (which the basis is not defined), a factor for lane direction and a factor for driving



lane. A closure scenario is included for cost comparisons. See the attached cost comparison to the modified Miami model the City has proposed (**Exhibit A**).

**2. Two questions about Miami's ordinance (Exhibit B):**

**a. Section 7(e) provides a fee waiver for "construction, excavation, and repair within the public right-of-way." Will this be included in Columbia's proposed ordinance?**

**b. How will a fee waiver be applied to a private developer who is installing new public utilities in the right-of-way? For example, a portion of Ninth Street was recently closed to allow a new public sanitary sewer, public storm sewer, and conduit for a future traffic signal interconnect (public), all in the same trench. This work was paid for by a private developer but the City now owns all of these improvements.**

**Staff Response:** If construction, excavation, and repair are performed by a public entity, staff recommends it be waived; if this work is part of a private development then it should not be waived. If a private developer is installing public infrastructure as part of their development, staff feels those days that the public infrastructure is being installed should not be counted towards total closure days and fee. This will be difficult to track on a daily basis due to the amount of inspectors available so it may be something negotiated up front based upon the contractor's schedule of work.

**3. The City of Philadelphia was one of the cities listed in the staff report. Philadelphia has yearly maximum fees to close an entire downtown City block, \$50,000.**

**a. Does staff support a maximum yearly fee cap? How much?**

**b. Does it seem right to pay \$50,000 to close a downtown City block in Philadelphia, a community with 1.5 million people, for a year, and \$58,000 to close a sidewalk for a sorority house in Columbia?**

**Staff Response:** Staff feels a cap makes sense if the total cost of construction, renovation, or maintenance work is less than a certain dollar threshold. Staff does not have a recommendation of this value and suggests it should be discussed at the public hearing.

**4. Will the proposed fees be applicable on MoDOT maintained roadways in the City limits?**

**Staff Response:** Staff feels the intent is to minimize the traveling public within our community so it should apply to MoDOT roadways. Staff will work with the MoDOT area right of way office to implement a process to inform the City of all sidewalk closure requests longer than seven days.

**5. Is it correct that the City is proposing to exempt public utilities, the City of Columbia, and University of Missouri from this ordinance? Remove public from the utilities exception (issue raised by Centurylink). Would each of the following agencies be exempt from the ordinance also?**

**a. Columbia College**



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- b. **Stephens College**
- c. **Columbia Public Schools**
- d. **Columbia Independent School**
- e. **Columbia Catholic School**
- f. **Boone Electric Cooperative (owned by its members)**
- g. **Magellan pipeline company**
- h. **MediaCom**
- i. **Centurylink**

**Staff Response:** Staff recommends to exempt public entities as defined by Entity Law and Legal Definition-US Legal, Inc "A public entity is defined as follows: (A) any State or local government; (B) any department, agency, special purpose district, or other instrumentality of a State or States or local government; and. (C) the National Railroad Passenger Corporation, and any commuter authority." *Vartinelli v. Stapleton*, 2009 U.S. Dist. Attached is a letter from the Columbia Public Schools requesting their exemption (**Exhibit C**).

6. **If the private agencies listed above are not exempt, why is Columbia Water and Light exempt? Water and Light is treated like a private utility, since we pay a PILOT (Payment in Lieu of Tax) on our utility bills, see below. We should not have to pay a PILOT fee if they are a public entity. The City should be consistent on treating our water and electric utilities as public or private.**

**Staff Response:** Staff feels the following definition exempts our City Utilities. "By City Charter, the water and electric utilities are required to collect Payment-in-Lieu-of-Tax (PILOT), an amount equal to the taxes that would be charged for utilities if the utility were privately owned. These funds are transferred to the City of Columbia General Fund and are used for police, fire and other services provided by the General Fund."

7. **Has there been a calculation on what the proposed Public Inconvenience Fee (PIF) fee total would have been over the last several years?**

**Staff Response:** See attached spreadsheet (**Exhibit D**).

8. **The City should allow a reasonable amount of time for sidewalk and roadway closures based on the type of work being performed and weather conditions. Fees to close the sidewalk/road should only be charged if the work takes an unreasonably long time.**

**Staff Response:** What is proposed is a seven day grace period, and then fees will be implemented, "unreasonably long time" is difficult to interpret and enforce. The City does not have enough inspectors to document that the weather is a factor in the closure.

9. **The fees should be different based on the magnitude of the inconvenience. For example it is a lot worse to make people walk around the block due to a sidewalk/road closure than just to cross the street and use the other side. A one size fits all approach is not equitable.**



**Staff Response:** The intent is to implement a non-ambiguous method of calculating the impact such that the applicant and staff can readily agree upon the methodology for the amount of fees.

**10. It does not seem fair to charge people for both the parking meter bag to close the parking spot and a separate fee to close the parking lane. It should be one or the other but not both.**

**Staff Response:** Staff recommends that if the parking space is used as a lay down area then it should be included; if the parking lane becomes part of the travel way then it should not be included.

**11. If the fees are based on impacts to adjacent businesses, as suggested by the Downtown Leadership Council (DLC), why isn't some of the money being given to the adjacent businesses being impacted?**

**Staff Response:** The intent is to minimize the impacts to the public so the fee is intended to be used to improve public infrastructure.

On September 15<sup>th</sup>, staff met with Chamber members, representatives from the CID, local engineers, bankers, realtors, architects, developers and local business owners. The following questions/comments were presented to staff for consideration.

**12. Are fees collected up front or after completion of the closure?**

**Staff Response:** Fees should be collected up front and final amounts due or refunded based upon final duration of the project and will be settled up before a Certificate of Occupancy is issued.

**13. Does this apply Citywide or just in the downtown area? Chamber suggested MDT boundary.**

**Staff Response:** The Mayor suggested Citywide at the September 6<sup>th</sup> Council meeting.

**14. Look at comparable population cities of our size, and not Miami.**

**Staff Response:** The Chamber did submit examples from the Kansas City area but they are mainly right of way fees much like what we already currently do.

**15. Alley closures – the Chamber is looking for staff to make a recommendation.**

**Staff Response:** Alleys should be included and are addressed in the Miami model sec. 54-3 (e) (8) and treated as a lane closure. Staff feels this should be calculated at a much lower rate due to the use being much less of an inconvenience to the public and suggests a rate of \$0.02 per LF per day rate, which is 1/10<sup>th</sup> of a sidewalk closure.



**16. Maintenance on buildings should be exempt**

**Staff Response:** There is a seven day grace period which should allow sufficient time for most minor maintenance projects. Staff feels major maintenance could be staged such that covered sidewalks or other means could be implemented to mitigate closures.

**17. The size of the project should dictate whether a fee is imposed, set a limit of 10,000 sf and anything smaller would be exempt.**

**Staff Response:** Staff feels this would be difficult to manage as the type of work, such as tuck pointing the exterior brick would be difficult to put into a square foot limitation. If Council chooses to consider the size of the project it may be possible to consider the total cost of the work versus the cost of the closure fee. This scenario puts staff in a position to determine true construction costs for a project, and would be difficult for staff because they have to make assumptions and estimates which may or may not be based on actual bids. The attached **(Exhibit E)** is a letter from the CID with recommendations.

**18. How would it be handled if sidewalks were closed during the day and re-opened at nights and on weekends?**

**Staff Response:** Staff recommends implementing a possible reduction factor such that if opened on nights or weekends that the fee could be reduced by a certain percentage based upon the time of inconvenience. The Kansas City model indicates a reduction factor of 70% to the fee if opened between 6 pm to 7 am.

**19. Chamber recommends the fee applies after 30 days instead of the proposed 7days.**

**Staff response:** The September 6th staff report to Council indicated a seven day period, which seemed to be in line with what Council preferred. Staff recommends enforcement of the PIF begins on day 8 of a closure.

Staff recommends that no changes be made to the current ordinance which allows administrative approval for closures of 30 days or less, and Council authorization for any closure more than 30 days.

**20. Any collected fees MUST be placed back into maintain/funding of sidewalks, ADA issues, infrastructure.**

**Staff Response:** Staff agrees.

**21. Chamber suggests to change the time frame to (6) months between closures to prevent on/off as opposed to the staff recommendation of (1) year.**

**Staff Response:** Staff has no objection as this situation will rarely occur; however we can



work with businesses that plan their work similar to how we recommend stormwater master plans now. If they are going to replace their canopy, wash windows, and paint in the next year with three different contractors we need to know that up front and attempt to plan accordingly

**22. Chamber would like to see a much lower fee than Miami.**

**Staff response:** This needs to be discussed at the public hearing.

**23. Chamber recommends not charging for the parking space if the meter bag is enforced.**

**Staff response:** Staff recommends if the space is utilized as storage then it should be charged. If the space is used as vehicle lane, there will be no charge. This particular lane closure fee is not consistently managed the same by the different cities as some charge the same as a lane closure, some charge a reduced rate and some charge a lump sum per day.

**24. The approval of this should be tied to the approval of the UDO. Then there is no danger of the two being in conflict or creating more questions.**

**Staff Response:** Council directed staff to bring an ordinance to the October 3, 2016 meeting and this should be discussed at the public hearing.

**25. Has the City of Columbia done a Hancock analysis on this fee?**

**Staff Response:** Our Legal Department has made the determination it is not in conflict with Hancock.

**26. If a covered walkway is provided, then the sidewalk closure would not apply.**

**Staff Response:** Staff agrees.

Staff proposes to amend Chapter 24 of the City Code to implement a PIF as follows:

- Sidewalk/curb usage \$.20 per LF per day
  - Parking lane usage \$.30 per LF per day only for use as staging area, not vehicle use
  - Traffic lane usage \$.35 per LF per day
  - Alley usage \$0.02 per LF per day
- A 70% fee reduction factor will be granted if the public sidewalk, parking lane, traffic lane or alley is opened between the hours of 6:00 pm – 7:00 am Monday through Friday and/or on the weekend.
- Provide a seven (7) day free grace period to allow for short term events and maintenance opportunities such as parades, block parties, window washing, hanging of building holiday lights, etc. Fees will be enforced beginning on day 8.



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- Fees must be paid prior to authorization of the closure and before a Certificate of Occupancy is issued.
- Seven day closures for the same project area are allowed only once every six months to prevent multiple week long closure requests.
- Public entities will be exempt from the fee requirement as defined as any State or local government; any department, agency, special purpose district, or other instrumentality of a State or States or local government.
- No changes recommended to the current ordinance which allows administrative approval for closures of 30 days or less, and requiring Council authorization for any closure more than 30 days.
- Fees collected will be put into a project account to fund sidewalk projects and address ADA issues.

To ensure compliance with the PIF, staff recommends consideration of an additional engineering inspection technician position be authorized in the Building & Site Development division. The position's salary and benefits could be offset by the fees collected.

## Fiscal Impact

Short-Term Impact: Unknown  
Long-Term Impact: Unknown

## Vision & Strategic Plan Impact

### Vision Impacts:

Primary Impact: Development, Secondary Impact: Secondary, Tertiary Impact: Tertiary

### Strategic Plan Impacts:

Primary Impact: Infrastructure, Secondary Impact: Secondary, Tertiary Impact: Tertiary

### Comprehensive Plan Impacts:

Primary Impact: Mobility, Connectivity, and Accessibility, Secondary Impact: Infrastructure, Tertiary Impact: Tertiary

## Legislative History

Date	Action
09/06/2016	REP68-16 - Public Inconvenience Fee (PIF) for Street, Sidewalk, and Alley Closures

## Suggested Council Action

If Council agrees with the proposed ordinance to establish a Public Inconvenience Fee, pass the ordinance.