

AN ORDINANCE AMENDING CHAPTER 115 OF THE CODE OF ORDINANCES OF THE CITY OF GLADSTONE, MISSOURI, TO UPDATE ITS REGULATIONS RELATING TO MANAGING THE CITY RIGHTS-OF-WAY.

WHEREAS, the City is authorized to enact certain regulations to manage its rights-of-way ("ROW") and recover its management costs for the same under Chapter 67 RSMo. and other authority; and

WHEREAS, the City has been granted the authority to enact legislation to regulate the construction, placement, and operation of telecommunications towers and antennas pursuant to its zoning powers established in Chapter 89 RSMo. and additionally, pursuant to its general and specific police powers established by statute (including Chapters 67, and 392 RSMo.); and

WHEREAS, the City Council's legislative findings include that: (a) the ROW is a unique and physically limited resource; (b) the ROW is critical to the travel and transportation of persons and property in the City; (c) the ROW is intended for public uses and must be managed and controlled consistent with that intent and can be partially occupied by facilities and public service entities to the enhancement of the health, welfare, and general economic well-being of the City and its citizens; (d) to avoid disruption of the market and policy or requirement for a level playing field established by Section 67.5094 RSMo. regarding ownership of underlying land in approving wireless locations, wireless facilities in the ROW should not be subject to preferential zoning or compensation requirements so as not to distort the marketplace for such commercial activities; and (e) such findings require adoption of specific additional regulations to ensure coordination of users, maximize available space, reduce maintenance and costs to the public, and facilitate entry of a maximum most efficient number of Right-of-Way Users that will serve the public interest; and

WHEREAS, consistent with state and federal law and the Council's legislative findings, the Council desires to replace Chapter 115, Rights-of-Way Management, with a new Chapter 115, Managing Excavation and Use of City Rights-of-Way.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GLADSTONE, MISSOURI, AS FOLLOWS:

Section 1. The whereas clauses are hereby specifically incorporated herein by reference.

Section 2. Chapter 115, Rights-of-Way Management, of the City Code is replaced with a new Chapter 115, Managing Excavation and Use of City Rights-of-Way, to read in the form of Exhibit A, attached hereto and incorporated herein by reference.

Section 3. That this Ordinance shall be in full force and effect from and after its passage.

INTRODUCED, PASSED, SIGNED, AND MADE EFFECTIVE BY THE CITY COUNCIL OF THE CITY OF GLADSTONE, MISSOURI, ON THIS 14TH DAY OF JUNE, 2018.



Mayor Bill Garnos

ATTEST:



Ruth E. Bocchino, City Clerk

First Reading: June 14, 2018

Second Reading: June 14, 2018



Request for Council Action

RES ☐ # City Clerk Only

BILL ☒ # 18-28

ORD # 4.435

Date: 6/7/2018

Department: General Administration

Meeting Date Requested: 6/11/2018

Public Hearing: Yes ☐ Date: [Click here to enter a date.](#)

Subject: Revisions to Chapter 115 of the City Code relating to management of the City's Rights-of-Way

Background: Due to continued changes at the state level regarding the City's ability to manage the City's rights-of-way, it was necessary to make revisions to Chapter 115 of the City Code. The revisions bring Chapter 115 into harmony with currently enacted state law regarding management of the City's rights-of-way.

Budget Discussion: Funds are budgeted in the amount of \$ from the Fund. Ongoing costs are estimated to be \$ annually. Previous years' funding was \$

Public/Board/Staff Input:

Provide Original Contracts, Leases, Agreements, etc. to: City Clerk and Vendor

Chris Williams
Department Director/Administrator

PC
City Attorney

SW
City Manager

EXHIBIT A

CHAPTER 115. - MANAGING EXCAVATION AND USE OF CITY RIGHTS-OF-WAY

ARTICLE 1. - IN GENERAL

Sec. 6.115.010. - Purpose and declaration of policy.

This chapter is enacted to set out and clarify the authority of the city and its officers and employees with regards to the use, control, and management of the rights-of-way. The rights-of-way is a valuable public resource that has required, and continues to require substantial investment by the city. In particular, this chapter is enacted to:

- (1) Manage the rights-of-way to allow efficient location of facilities and maximize services to the citizens of the city.
- (2) Allow for the maximum utilization of the rights-of-way to meet the demands due to technical innovations.
- (3) Maintain a competitively neutral and non-discriminatory policy to ROW users and reseller service providers and allow the citizens of the city to receive the benefits of market competition.
- (4) Facilitate orderly construction and maintenance of facilities in the right-of-way, reduce the damage to the facilities or rights-of-way users, and minimize disruption of service to the citizens of the city.
- (5) Encourage responsible construction and maintenance practices in the city rights-of-way.
- (6) Ensure proper restoration of the city's rights-of-way following construction and maintenance of rights-of-way facilities.
- (7) Minimize the physical disruption of the rights-of-way and maintain the aesthetic quality throughout the city.
- (8) Protect the health, safety, and welfare of the citizens of the city.

Sec. 6.115.020. - Definitions.

The following words, terms, and phrases, when used in this chapter, shall have the meanings given to them in this section, except where the context clearly indicates a different meaning:

Abandoned facilities means any equipment materials, apparatuses, devices or facilities that are either declared abandoned by the owner of such equipment or facilities; or, no longer in active use, physically disconnected from a portion of the operating facility or any other facility that is in use or in service, and no longer capable of being used for the same or similar purpose for which the equipment, apparatuses, or facilities were installed; or no longer in active use and the owner of such equipment or facilities fails to respond within 30 days to a written notice sent by the city, or as otherwise may be defined by applicable law.

Administrative fee means the fee charged by the city to recover its actual cost incurred for rights-of-way management; including, but not limited to, costs associated with registering applicants; issuing, processing, and verifying rights-of-way permit applications; inspection of job sites and restoration improvements; determining the adequacy of rights-of-way restoration;

restoring work inadequately performed after providing notice and the opportunity to correct the work; revoking rights-of-way permits and, other costs that may be considered “management costs” or “rights-of-way management costs” in accordance with section 67.1830 RSMo.

Affiliate means any person controlling, controlled by, or under the common control of a ROW user or reseller service provider.

Antenna means any device that transmits and/or receives electromagnetic wireless radio waves or signals for voice, data or video communications purposes including, but not limited to, television, text, AM/FM radio, microwave, cellular telephone, communications service, or otherwise.

Applicant means any person requesting permission to use, occupy, lease, or operate facilities in the rights-of-way or to excavate the rights-of-way.

City means the City of Gladstone, Missouri, a municipal corporation and any duly authorized representative.

City council means the city council of the City of Gladstone, Missouri.

Commission means the state public service commission.

Communications service means the transmission via facilities, in whole or in part, of any writing, signs, signals, pictures, sounds, or other forms of intelligence through wire, wireless, or other means, including, but not limited to, any telecommunications service, enhanced service, information service, or internet service, as such terms are now, or may in the future be, defined under applicable law, and including all instrumentalities, facilities, apparatus (communications facilities), and services (among other things, the receipt, forwarding, and delivery of telecommunications) incidental to such transmission or designed to directly or indirectly facilitate or accept such transmission and shall also include “video services” as defined in § 67.2677 RSMo. The term “Communications Service” does not include the rental of conduit or physical facilities.

Construct means and includes construct, install, erect, build, affix, or otherwise place any fixed structure or object, in, on, under, through, or above the rights-of-way.

Day means calendar day unless otherwise specified.

Director of public works or director means the director of public works of the city or his authorized representative.

Emergency includes but is not limited to the following:

- (1) An unexpected or unplanned outage, cut, rupture, leak, or any other failure of a public utility facility that prevents or significantly jeopardizes the ability of the public utility to provide service to customers;

- (2) An unexpected or unplanned outage, cut, rupture, leak, or any other failure of a public utility facility that results or could result in danger to the public or a material delay or hindrance to the provision of service to the public if the outage, cut, rupture, leak, or any other such failure of public utility facilities is not immediately repaired, controlled, stabilized, or rectified; or
- (3) Any occurrence involving a public utility facility that a reasonable person could conclude, under the circumstances, that immediate and undelayed action by the public utility is necessary and warranted.

Excavation means any act by which earth, asphalt, concrete, sand, gravel, rock, or any other material in or on the ground is cut into, dug, uncovered, removed, or otherwise displaced, by means of any tools, equipment, or explosives, except that the following shall not be deemed excavation:

- (1) Any de minimis displacement or movement of ground caused by pedestrian or vehicular traffic;
- (2) The replacement of utility poles and related equipment at the existing general location that does not involve either a street or sidewalk cut; or
- (3) Any other activity which does not disturb or displace surface conditions of the earth, asphalt, concrete, sand, gravel, rock, or any other material in or on the ground.

Excavation permit means a permit authorizing excavation for the construction or installation of facilities in the city's rights-of-way.

Excess capacity means the remaining volume or capacity in any existing or future duct, conduit, manhole, handhold, or other facility, including dark fiber, in the ROW that is used, or authorized by the ROW user to be used, by others.

FCC means the Federal Communications Commission.

Facility means the plant, equipment and property, including but not limited to the poles, pipes, mains, conduits, ducts, cables, wires, plant, equipment, or any other related structure located under, on, or above the surface of the ground within the rights-of-way of the city and used or to be used for the purpose of providing services; provided this term shall not authorize antennas, towers, or other structures or equipment for wireless communications unless having been expressly consented to by the city in writing pursuant to supplemental requirements and regulation of the city.

Facilities maintenance or *maintenance* means the construction, installation, repair, upgrade, or other physical access to the facility in the ROW that does not involve excavation.

Facilities maintenance permit means a permit issued by the city for the ROW user to provide maintenance to its facilities or otherwise perform work in the ROW that does not involve excavation but requires physical access to the facilities in the ROW.

Franchise means a binding and accepted ordinance for certain ROW users to occupy the ROW for the purpose of providing, transporting, or distributing electricity, gas, water, steam, lighting, energy, or sewer service to any person or area in the city's limits and boundaries.

License means the executed agreement between the city and a person to use and occupy the rights-of-way for the purpose of installing incidental temporary facilities within the rights-of-way or incidental uses such as ingress and egress facilities, lateral utility lines, or driveway aprons.

Permit or Rights-of-way (ROW) permit for the purposes of this chapter, means an excavation permit, facilities maintenance permit, or other permit authorizing work in the ROW.

Government entity means any county, township, city, town, village, school district, library district, road district, drainage or levee district, sewer district, water district, fire district, or other municipal corporation, quasi-municipal corporation, or political subdivision of the State of Missouri or of any other State of the United States, and any agency or instrumentality of the State of Missouri or of any other State of the United States or of the United States.

Major project means a project that exceeds the size and conditions of a "minor project."

Managing the public rights-of-way means the actions the city takes, through reasonable exercise of its police powers, to impose rights, duties, and obligations on all users of the rights-of-way, including the city itself, in a reasonable, competitively neutral and nondiscriminatory and uniform manner, reflecting the distinct engineering, construction, operation, maintenance, and public work and safety requirements applicable to the various users of the public rights-of-way, provided that such rights, duties, and obligations shall not conflict with any federal law or regulation.

Minor project means a project involving excavation of the public rights-of-way, whether or not it involves disturbance of sidewalks or streets, in which a single excavation of no greater than 150 square feet is made.

Parkway means the area between the street curb and the rights-of-way line.

Pavement means and includes Portland cement concrete pavement, asphaltic concrete pavement, asphalt treated road surfaces, and any aggregate base material.

Permittee means any person to whom a permit has been issued to work, excavate, or locate specific facilities within the rights-of-way.

Person means any natural or corporate person, business association, or business entity including but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.

Public improvement means any project undertaken by the city for the construction, reconstruction, maintenance, or repair of any public infrastructure, and including without limitation, streets, alleys, bridges, bikeways, parkways, sidewalks, sewers, water mains, drainage facilities, traffic control devices, street lights, public facilities, public buildings, or public lands,

providing that projects undertaken by the city for the construction, reconstruction, maintenance, or repair of any public infrastructure funded by or substantially by user fees imposed upon those using the public infrastructure shall not be deemed "public improvements" and shall not be exempt from the permit requirements of this chapter.

Public lands means any real property of the city that is not rights-of-way.

Repair means the temporary construction work necessary to make the rights-of-way useable.

Reseller service provider means a person providing service within the city limits that does not have its own facilities in the rights-of-way, but instead uses the rights-of-way by interconnecting with the network elements of a ROW user utilizing the rights-of-way, and/or by using excess capacity from a ROW user with no right to physically access facilities or the rights-of-way.

Restoration means the process by which an excavated rights-of-way and surrounding area, including pavement and foundation, is returned to the same condition that existed before the commencement of the work.

Rights-of-way (ROW) means the area on, below, across, or above a public roadway, highway, streets, alleys, bridges, bikeways, parkways, and sidewalks in which the city has an ownership interest and including such adjacent areas of such public ways within such ownership interest as made available by the city for ROW use herein, but not including: (a) the airwaves above a public rights-of-way with regards to cellular or other non-wire telecommunications or broadcast service; (b) easements obtained by utilities or private easements in platted subdivisions or tracts; (c) poles, pipes, cables, conduits, wires, optical cables, or other means of transmission, collection or exchange of communications, information, substances, data, or electronic or electrical current or impulses utilized by a municipally owned or operated utility pursuant to Chapter 91, RSMo, or pursuant to a charter form of government; or (d) easements obtained by utilities or private easement in platted subdivision or tracts.

Rights-of-way (ROW) use agreement means the rights and obligations extended by the city to a person, corporation, association, firms, partnerships, or others to erect facilities or other structures within the city rights-of-way for the purpose of providing any form of communications service to any person or area within the city's limits and boundaries for which a franchise or license is not applicable subject to the regulations and requirements herein.

Routine service operation means a work that makes no material change of the facilities and does not disrupt traffic.

Rights-of-way (ROW) user ("ROW user" or "ROW-user") means all persons and entities, whether a commission registered utility or otherwise, owning, controlling, leasing, maintaining, using, or installing facilities in the rights-of-way of the city, not otherwise expressly exempted. A ROW user shall not include reseller service provider, ordinary vehicular or pedestrian traffic, or to the extent permitted by law, any governmental entity that has entered into an inter-local agreement with the city regarding the use and occupancy of the city's rights-of-way.

Service means a commodity provided to a person by means of a delivery system that is comprised of the facilities located or to be located in the rights-of-way, including, but not limited to gas, telephone, cable television, internet services, open video systems, alarm systems, steam, electric, water, telegraph, data transmission, petroleum pipelines, or sanitary sewerage.

Street means the pavement and sub-grade of a city residential, collector, or arterial roadway.

Utility means and includes any corporations, companies as associations, joint stock companies or associations, firms, partnerships, limited liability companies and individuals and includes their lessors, trustees, and receivers; which provide communications, electric, natural gas, or other such services to their customers. For purposes of this chapter, this term does not include the city except as maybe required by law.

Utility easement means any easement owned by the city and acquired, established, dedicated, or devoted for public utility purposes.

Work means excavation and/or the construction, installation, repair, or maintenance of any type of facility within the rights-of-way.

Sec. 6.115.030. - Applicability; exceptions.

Unless otherwise provided in a license, franchise, or rights-of-way use agreement, or where limited by applicable law, any person that utilizes the city's rights-of-way, is subject to the requirement of this chapter. No person shall commence or continue with the operation of any facilities or structures in the ROW except as provided and in compliance with this chapter. Because numerous types of users and uses of the ROW may be subject to various or changing regulatory schemes under federal or state law, any such limitation or qualification that may be applicable to less than all users and uses of the ROW are not duplicated herein, but are nevertheless incorporated herein, whenever application is so required by law, including but not limited to applicable provisions of Chapter 67 RSMo. and other applicable state and federal law. The requirements of this chapter shall be in addition to any obligation contained in any license, franchise, or rights-of-way use agreement except in those instances where the provisions of this chapter and a license, franchise, or rights-of-way use agreement which existed on the date of adoption hereof and specifically inconsistent with like provisions of occupancy or construction and excavation within the city's rights-of-way until:

- (1) The expiration of said franchise or rights-of-way use agreement; or
- (2) An agreement to an unexpired franchise or rights-of-way use agreement is added; or
- (3) Both parties agree to defer full compliance to a specific date not later than the present expiration date of the preexisting agreement.

No provision of this chapter shall apply to any circumstance in which such application shall be unlawful under superseding federal or state law and furthermore, if any section, subsection, sentence, clause, phrase, or portion of this chapter is now or in the future superseded or preempted by state or federal law or found by a court of competent jurisdiction to be unauthorized, such provision shall be automatically interpreted and applied as required by law.

Sec. 6.115.040—6.115.090. - Reserved.

ARTICLE 2. - ADMINISTRATION AND AUTHORITY

Sec. 6.115.100. - Director of public works.

The director of public works is the principal city official for administration of the rights-of-way registration and permits. The director of public works may delegate any and all duties under this chapter consistent with the Ordinances of the city.

Secs. 6.115.110—6.115.119. - Reserved.

ARTICLE 3. - PROCEDURES

Division I - Agreements.

Sec. 6.115.200 - Agreement, license, or franchise required; requirements.

- (1) Except where otherwise authorized or required by applicable law, no person may construct, maintain, own, control, or use facilities or other structures in the right-of-way without a franchise, license, or right-of-way use agreement with the city as provided herein.
 - a. *Franchise.* A franchise shall be obtained in conformance with all applicable franchise procedures for any person or utility seeking to use the rights-of-way for purposes of providing service of distribution of electricity, gas, water, steam, lighting, or sewer public utility service in the city.
 - b. *Rights-of-way use agreement.* A rights-of-way use agreement shall be required for all other persons desiring to use the rights-of-way, except as provided herein or otherwise required by law. Such agreement shall conform to all applicable laws and requirements including as provided in this chapter for ROW user providing communication services, if applicable, but shall not be subject to procedures applicable to franchises.
 - c. *License.* Persons desiring to install an incidental use, which includes installation of temporary structures or non-wireless facilities within the rights-of-way and installation of permanent incidental uses such as driveway aprons, ingress or egress facilities, and similar incidental uses that utilize a small area of the rights-of-way and serves the principal structure, on, in, or above the rights-of-way may be permitted without a franchise or rights-of-way agreement pursuant to a license issued by the director. The director may establish such application, requirements, and conditions, applicable to such uses consistent with the purposes of this chapter or as otherwise established by law. The applicant shall be required to pay an application fee and an inspection fee as established by the city. Any person granted a license hereunder shall be subject to the applicable requirements of this chapter. Unless otherwise stated in the license, a license shall be for an indefinite term and shall be revocable at any time on written notice in the public interest by the city.

- (2) The authority granted by the city in any agreement, license, or franchise shall be for non-exclusive use of the rights-of-way. The city specifically reserves the right to grant, at any time, such additional agreements or other rights to use the rights-of-way for any purpose and to any other person, including itself, as it deems appropriate, subject to all applicable laws. The granting of any agreement, license, or franchise shall not be deemed to create any property interest of any kind in favor of the ROW user. All franchises and agreements shall be approved by the city council on a non-discriminatory basis provided that the applicant is in compliance with all applicable requirements. Licenses may be approved by the director on a non-discriminatory basis provided that the applicant is in compliance with all applicable requirements. Such franchises, licenses, and agreements shall be deemed to incorporate the terms of this chapter and other applicable laws of the city, except as may be expressly stated in such agreements, licenses, and franchises. The city may require compensation for use of the rights-of-way or other public property as may be reasonably required by the city council, subject to applicable law.
- (3) Unless prohibited by applicable law, no permit for excavation may be issued unless or until such applicant has a valid franchise, license, or rights-of-way use agreement with the city.
- (4) The city makes no express or implied representation or warranty regarding its rights to authorize the installation or construction of facilities on any particular segment of rights-of-way and shall not be liable for any damage therefrom. The burden and responsibility for making all such determinations in advance of construction or installation shall be entirely upon the ROW user.
- (5) No ROW use agreement, franchise, or license shall grant the right to use facilities owned or controlled by the city or a third party, and no such use shall occur, without the express written consent of such party (on file with the city and subject to other applicable requirements), nor shall any franchise, ROW use agreement, or license excuse such person from first obtaining a pole attachment agreement or other express consent for such right or use before locating on the facilities controlled or owned by the city or a third party.
- (6) Unless otherwise provided, use or installation of any facilities or other structure in, on, or over public lands shall be permitted only if a lease agreement or other separate written approval has been negotiated and approved by the city with such reasonable terms as the city may require.
- (7) Prior to providing service within the city or acquiring or using excess capacity through facilities in the city, reseller service providers shall provide written notice to the city of the intent to do so and register with the city as provided herein. It shall be unlawful for any reseller service provider not having its own agreement or franchise to transmit communications for commercial purposes through any facility owned by a person without a valid agreement or other city authorization for such facilities. Any reseller service provider that buys or leases excess capacity or other services for resale from a ROW user, shall be subject to the terms and conditions of this chapter, including the requirement to first register with the city and obtain any necessary permit, license, certification, grant, registration, franchise agreement, or any other authorization required by any appropriate governmental entity, including, but not limited to, the city, commission, or the FCC. If a person through such lease or purchase owns facilities in the rights-of-way or has the right to physically access or maintain any facilities in the rights-

of-way, then such person no longer meets the definition of a reseller service provider and is required to first obtain a franchise, license, or rights-of-way use agreement as required herein.

- (8) Each ROW user shall maintain its facilities in good and safe condition and in a manner that complies with all applicable federal, state, and local requirements.
- (9) In case of failure on the part of the ROW user, including its successors and assigns, to comply with any of the provisions of this chapter or a ROW use agreement, franchise, or license, or if the ROW user, its successors and assigns should do or cause to be done any act or thing prohibited by or in violation of this chapter or the terms of the authorization of such use, or otherwise loses authority to provide its service in the city, the ROW user, its successors and assigns shall forfeit all rights and privileges permitted by this chapter and any ROW use agreement, franchise, or license, and all rights hereunder shall cease, terminate, and become null and void, provided that said forfeiture shall not take effect until the city shall carry out the following proceedings: Before the city declares the forfeiture or revocation of a rights-of-way use agreement, franchise, or license, it shall first serve a written notice upon the person setting forth in detail the neglect or failure complained of, and the person shall have thirty (30) days thereafter, or such other reasonable period established by the city council, in which to cure the default by complying with the conditions of the ROW use agreement, franchise, or license and fully remedying any default or violation. If at the end of such period the city determines that the conditions have not been complied with and that the person did not reasonably and in the public interest require more than thirty (30) days to cure the default, the city shall take action by an affirmative vote of the city council present at the meeting and voting to terminate the ROW use agreement, franchise, or license, setting out the grounds upon which said agreement or other authorization is to be forfeited or revoked. Nothing herein shall prevent the city from invoking any other remedy or from declaring immediate forfeiture where the default is incapable of being cured by the ROW user, including where such defaults or violations have repeatedly occurred.
- (10) No action or omission of the city shall operate as a future waiver of any rights of the City under this chapter. Except where rights are expressly granted or waived by a permit, ROW use agreement, franchise, or license they are reserved, whether or not expressly enumerated.

Sec. 6.115.205. - Application process.

- (1) Application for franchise or agreement required in accordance with the following:
 - a. *Application.* An application for a franchise or rights-of-way use agreement shall be presented to the director in writing on the form provided by the city and shall include all such information as is required by this section and on the application form. All ROW users shall be responsible for accurately maintaining the information in the application during the term of any franchise or rights-of-way use agreement and shall be responsible for all cost incurred by the city due to the failure to provide or maintain as accurate any application information required herein.
 - b. *Application form.* All applicants shall submit a completed application for a franchise or rights-of-way use agreement on such form provided by the city,

which shall include information necessary to determine compliance with this chapter including, but not limited to:

- i. Identity and legal status of the proposed rights-of-way user.
- ii. Name, address, telephone number, fax number, and e-mail address of each officer, agent, or employee responsible for the accuracy of the application. Each officer, agent, or employee shall be familiar with the local facilities of the proposed ROW user, shall be the person(s) to whom notices shall be sent, and shall be responsible for facilitating all necessary communications including, but not limited to, certification to the city of any material changes to the information provided in such completed application during the term of any franchise or agreement.
- iii. Name, address, telephone number, fax number, and e-mail address of the local representative of the proposed ROW user who shall be available at all time to act on behalf of the ROW user in the event of an emergency.
- iv. Proof of any necessary permit, license, certification, grant, registration, franchise agreement, or any other authorization required by any appropriate government entity including, but not limited to, the FCC or the commission.
- v. Description of the proposed ROW user's intended use of the right-of-way, including such information as to proposed services so as to determine the applicable, Federal, State, and local regulatory provisions as may apply to such ROW user.
- vi. A list of authorized agents, contractors, and subcontractors eligible to obtain permits on behalf of the proposed ROW user. An application may be updated to add such person at the time of permit application if the updated application is submitted by an authorized representative of the ROW user.
- vii. Information sufficient to determine the amount of net assets of the proposed ROW user.
- viii. Information sufficient to determine whether the proposed ROW user is subject under applicable law to franchising, service regulation, payment of compensation for use of the rights-of-way, taxation, or other requirements of the city.
- ix. An application deposit fee of two thousand four hundred dollars (\$2,400) is required for a rights-of-way use agreement application and an application deposit fee of five thousand four hundred dollars (\$5,400) is required for a franchise application. Such deposit fees shall be utilized to offset the city's costs in review and issuance of a rights-of-way use agreement or franchise agreement, consistent with applicable law. Any amount not used by the city for its actual lawfully reimbursable costs will be refunded to the application on request after execution of the rights-of-way use agreement or franchise agreement. If applicable, the applicant shall be obligated to reimburse the city for its reasonable expenses associated with the review, negotiation, and adoption of an appropriate rights-of-way use agreement or franchise agreement that may reasonably exceed the application deposit amount.

- x. Any request including one or more antennas shall also include all requirements for installation of antennas and wireless facilities set forth in the Uniform Wireless Communications Infrastructure Deployment Act (§§ 67.5090 *et. seq.* RSMo.) or other applicable law; and
 - xi. Such other information as may be reasonably required by the city to determine requirements and compliance with the applicable regulation.
- c. *Approval process.* After submission by the proposed ROW user of a duly executed and completed application and application deposit fee and an executed franchise or rights-of-way use agreement as may be provided by the director or as modified by the director in review of the specific circumstances of the application, all in conformity with the requirements of this chapter and all applicable laws, the director shall submit such agreement to the city council for approval. Upon determining compliance with this chapter, the city council shall authorize execution of the franchise or rights-of-way use agreement (or modified agreement otherwise acceptable to the city consistent with the purpose of this chapter) and such executed franchise or agreement shall constitute consent to use the rights-of-way in accordance with this chapter and the agreement; provided that nothing herein shall preclude the rejection or modification of any executed franchise or agreement submitted to the city to the extent such applicable law does not prohibit such rejection or modification, including where necessary to reasonably and in a uniform or non-discriminatory manner reflect the distinct engineering, construction, operation, maintenance, public work, or safety requirements applicable to the person or use.
- d. *Standard for approval or renewal.* In reviewing an application for a new or renewal ROW use agreement or franchise, the city may consider prior conduct of the person in performance of its obligations or compliance with the city's ordinances in the past, or the existence of any outstanding violations or deficiencies. The city may deny or condition any ROW use agreement or franchise where the proposed use would interfere with the public use of the rights-of-way or otherwise conflict with the legitimate public interests of the city, to fulfill the requirements and objections of this chapter or as otherwise provided by law. All ROW use agreements and franchises shall be approved, conditioned, or denied based on compliance with all applicable requirements herein, and conformance with applicable law and the public interest.

Sec. 6.115.210. - Registration.

- (1) Any existing ROW user must register within 30 days of the effective date of the ordinance from which this chapter derives. Prior to providing service (including sale or transfer of product or service) within the city or acquiring or using excess capacity through facilities in the city, all reseller service providers must register with the city. Prior to providing service within the city, transmitting communications through facilities in the city, or constructing in the rights-of-way entities not required to obtain a franchise, license, or rights-of-way use agreement due to superseding federal or state law, shall nevertheless be required to register with the city.
- (2) Any person, who is not a ROW user prior to the effective date of the ordinance and who

wishes to become a ROW user, must first obtain a franchise, license, rights-of-way use agreement, or other authorization from the city.

- (3) A ROW user is authorized, subject to other applicable requirements, to sell or transfer use of excess capacity to reseller service providers or other entities, provided that such entity either: (1) has no right to and does not physically access the facilities while in the ROW, or (2) has a separate franchise or ROW use agreement or other written agreement or consent authorizing the same with the city. In the event of such sale or transfer to a reseller service provider, the ROW user shall notify the city of the same prior to such action so that the city can review compliance regarding doing business in the city. This notice shall not relieve the reseller service provider from its own obligation to register, pay taxes, and obtain any necessary authorization from the city.
- (4) The ROW user shall be responsible for all costs incurred by the city due to the failure to provide any information to the city required for registration.
- (5) Any reseller service provider that buys or leases excess capacity or other services for resale from a ROW user, shall be subject to the terms and conditions of this chapter, including the requirement to first register with the city and obtain any necessary permit, license, certification, grant, registration, franchise agreement, or any other authorization required by any appropriate governmental entity, including, but not limited to, the city, commission, or the FCC. If a person through such lease or purchase owns facilities in the rights-of-way or has the right to physically access or maintain any facilities in the rights-of-way, then such person no longer meets the definition of a reseller service provider and is required to first obtain a franchise, license, or rights-of-way use agreement as required herein.

Sec. 6.115.220. - Registration changes.

Any person required to register herein shall report any changes in its registration within 30 days of the change or upon application for a permit, whichever comes first. Failure to report any change shall be a violation of this chapter.

Sec. 6.115.230. - Registration form.

The valid registration shall be on the form provided by the city and at a minimum shall include the following:

- (1) Identity and legal status of the reseller service provider or other exempt entity, including related affiliates.
- (2) Name, address, telephone number, fax number, and email address of the officer, agent, or employee responsible for the accuracy of the registration statement. This officer, agent or employee shall be familiar with the local facilities of the reseller service provider or other exempt entity, shall be the person to whom notices shall be sent, and shall be responsible for facilitating all necessary communications.
- (3) Name, address, telephone number, fax number and email address of the local representative of a person who shall be available at all times to act on behalf of the reseller service provider or other exempt entity in the event of an emergency.
- (4) Proof of any necessary permit, license, certification, grant, registration, franchise agreement, or any other authorization required by any appropriate governmental entity,

including, but not limited to, the city, the FCC, or the commission.

- (5) Information that identifies the owner of the facilities that will be used by the reseller service providers.
- (6) A list of authorized agents, contractors, or subcontractors eligible to obtain permits on behalf of the reseller service provider or other exempt entity. A registration may be updated to add such person at the time of permit application if the updated registration is submitted by an authorized representative of the reseller service provider or other exempt entity.
- (7) Such other information as may be reasonably required by the city to complete the registration statement.

Sec. 6.115.240. - Transferability.

Except as provided in this chapter, or as otherwise required by law, no license, franchise agreement, rights-of-way use agreement, or registration may be transferred or assigned without the written application to and consent of the city. Consent to transfer a license, franchise agreement, rights-of-way use agreement, or registration shall not be unreasonably withheld by the city, and any costs incurred shall be paid by the ROW user to the extent allowed by law.

Secs. 6.115.250—6.115.300. - Reserved.

Division II. - Permits for work within City Rights-of-Way.

Sec. 6.115.310. - Permits required.

- (1) No person shall perform work in the rights-of-way without a rights-of-way permit, unless an exemption to the permit requirement as provided in this chapter applies.
 - a. *Excavation permit.* Except as otherwise provided herein, no ROW user or other person shall perform excavation work in the ROW without an excavation permit. Any person desiring to excavate in the ROW shall first apply for an excavation permit, in addition to any other building permit, license, easement, or other authorization required by law, unless such excavation must be performed on an emergency basis as provided herein. An excavation permit should be obtained for each project unless otherwise provided for in this chapter. A separate special permit or lease shall be required for excavation in or use of any public lands.
 - b. *Facilities maintenance permit.* No person shall perform facilities maintenance at a specified location in the rights-of-way without first obtaining a facilities maintenance permit from the director of public works, except where such facilities maintenance is expressly authorized by an existing valid excavation permit for the applicable facilities maintenance location or is exempt herein. In addition to the applicable conditions and obligations set forth in this chapter, conditions of a facilities maintenance permit shall be as established in such permit and shall include requirements of notice to and approval by the city whenever traffic lanes are to be obstructed, manhole covers or safety barriers removed or altered, temporary or other barricades installed, and other events set forth in the facilities permit. A facilities maintenance permit shall not be required for:

- i. ROW users performing routine maintenance which does not require excavation, does not disrupt traffic or pedestrians, and requires no more than four (4) hours to complete, provided that at minimum two (2) hours' notice is provided to the city during normal business hours;
 - ii. Emergency situations; or
 - iii. Contractors working on the construction or reconstruction of public improvements and which are operating pursuant to a contract with the city for such construction.
 - c. *Other permit.* No person owning or occupying any land abutting on a public rights-of-way shall construct, maintain, or permit in or on the portion of the public rights-of-way to which such land is adjacent, any fixed structure, material, or object without having obtained the appropriate permit and authorization from the city.
- (2) Application for a permit shall be submitted to the director of public works by the ROW user for whom the facilities will be installed.
 - (3) If the director of public works determines that the applicant has satisfied the requirements of this chapter, the director of public works shall issue a permit.
 - (4) Any ROW user who is found to be working in the public rights-of-way without a permit, failing to provide for required safety and traffic control measures, or otherwise violating any requirements herein will be directed to stop work until a permit is acquired and properly posted at the work site. The only exception allowed is for emergency repair work as defined herein; provided notice to the city of the emergency shall be provided at the earliest possible time. Fees shall be doubled for starting work without a valid permit.
 - (5) The city shall promptly, but not longer than 31 days, process all completed excavation permit applications. In order to avoid excessive processing and administrative costs to either the city or the rights-of-way user, the city may establish procedures for bulk processing of permits and periodic payment of permit fees.
 - (6) All applications for installation of above-ground equipment or facilities within the rights-of-way shall comply with the requirements of section 6.115.520 of this chapter.

Sec. 6.115.320. - Permit form.

The applicable rights-of-way permit application shall be on the form provided by the director of public works and at a minimum shall include the following:

- (1) Compliance with all necessary registration and authorization requirements of this chapter.
- (2) If applicable to the work, attachments and scaled drawings showing the location and area of the proposed project, the location of all existing and proposed facilities at such location, the length, size, type, and proposed depth of any conduit or other enclosures, the number and character of each proposed cut or excavation, and the relationship of all facilities to all existing streets.
- (3) A traffic control plan, if applicable, including a work schedule indicating the extent and duration of such plan.
- (4) All applicable permit fees as provided in this chapter.
- (5) Payment of all monies due the city for permit fees and costs, for prior excavation costs, for any loss, damage, or expense suffered by the city because of the applicant's prior

excavations of the rights-of-way or for any emergency actions taken by the city, unless the payment of such money is in dispute and timely appealed as provided hereafter.

- (6) Performance and maintenance bonds as provided in this chapter.
- (7) Designation of a local person familiar with the facilities that shall act as a local agent for the ROW user and shall be responsible for satisfying any information requirement of this chapter. The application shall contain such person's name, address, telephone number, and email address. Such person shall be the person to whom relocation notices and other such notices shall be sent, and with whom rests the responsibility to facilitate all necessary communications. The ROW user shall be responsible for all costs incurred by the city due to the failure to provide such information to the city.

Sec. 6.115.330. - Permit fees.

- (1) The applicable rights-of-way permit fee shall be recommended by the director of public works, approved by the city council, and set out in the schedule of fees and charges as maintained in the city clerk's office.
- (2) The director is to establish separate fee structures for minor and major projects, and for major projects, shall include standards for recovery of actual, substantiated costs based on additional staff involvement required by the size and complexity of such projects.
- (3) The rights-of-way permit fee shall include an administrative fee and inspection fee but shall not include attorney's fees or any fee prohibited by applicable law.
- (4) Fees paid for the rights-of-way permit, which is subsequently revoked by the director of public works are not refundable.
- (5) In the event the scope of the project is revised during the course of the work, the director of public works may recalculate the fee based on a change in the scope of work, and may require an additional administrative fee.
- (6) The ROW user shall be responsible for all reasonable costs borne by the city that are directly associated with ROW user's installation, maintenance, repair, operation, use, and replacement of its facilities in the rights-of-way that are not otherwise accounted for as part of the permit fee established pursuant to this chapter, to the extent permitted by law. All such costs shall be itemized and the city's books and records related to these costs shall be made available upon request of the ROW user.

Sec. 6.115.340. - Permit conditions and ROW work.

- (1) The director of public works may impose reasonable conditions upon the issuance of a permit and the performance of the permittee in order to protect the public health, safety, and welfare, to ensure the structural integrity of the rights-of-way, to protect the property and safety of the other users of the rights-of-way, and to minimize the disruption and inconvenience to the traveling public. Conditions may include the requirement that an outside consultant be hired with the consultant's compensation to be paid for by the applicant.
- (2) When an excavation permit is requested for purposes of installing additional facilities and the performance and maintenance bond for additional facilities is reasonably determined to be insufficient, the posting of an additional or larger performance and maintenance bond for the additional facilities may be required.

- (3) A ROW user shall perform all work in full accord with any and all applicable engineering codes adopted or approved by the parties and in accordance with applicable statutes of the state, and the rules and regulations of the commission or any other local, state, or federal agency having jurisdiction over the parties. A ROW user shall perform all work in conformance with all applicable codes and established rules and regulations and shall be responsible for all work in the rights-of-way pursuant to its permit, regardless by whom the work is done by. Every permit issued shall be deemed to incorporate the requirements and terms of this chapter, and all applicable ordinances, to the extent permitted by law
- (4) Except in cases of an emergency or with the approval of the director of public works, no rights-of-way work may be done when conditions are unreasonable for such work.
- (5) A ROW user shall not disrupt a rights-of-way such that the natural free and clear passage of water through the gutters or other waterways is interfered with. Private vehicles may not be parked within or next to the permit area.
- (6) If work is being done for the ROW user by another person, a subcontractor or otherwise, the person doing the work and the ROW user shall be liable and responsible for all damages, obligations, and warranties herein described, including ensuring that the excavation or facilities maintenance of said person is performed consistent with its permit and applicable law (including that the contractor shall be properly licensed under the State of Missouri and local ordinances) and shall be responsible for promptly correcting acts or omissions by said person.
- (7) The ROW user shall not at any one time excavate or encumber more of the rights-of-way than shall be reasonably necessary to enable the ROW user to complete the project in the most expeditious manner.
- (8) The ROW user shall, in the performance of any work required for the installation, repair, maintenance, relocation, and/or removal of any of its facilities, limit all excavations to those that are necessary for efficient operation.
- (9) The permittee shall not permit such an excavation to remain open longer than is necessary to complete the repair or installation.
- (10) Non-emergency work on arterial and collector streets may not be performed between the hours of 7:00 a.m. to 8:30 a.m. and 4:00 p.m. to 6:00 p.m., in order to minimize disruption of traffic flow. The permittee shall perform work on the rights-of-way at such times that will allow the least interference with the normal flow of traffic and the peace and quiet of the neighborhood. At no time shall traffic be restricted to less than two lanes on arterial streets.
- (11) The ROW user excavating in the rights-of-way shall cause the excavation to be done with the least possible injury to the pavement, sidewalk, curbing, parkway, or other surface and shall place the materials from the excavation where they will cause the least possible inconvenience to the public and permit the uninterrupted passage of water along the gutters.
- (12) Before new excavation or construction is commenced and until sodding, planting, concreting, paving, or other final surfacing is in place, which will avoid washing or spreading of dirt and mud onto other property, sidewalks, curbs, gutters, streets, and the rights-of-way, the ROW user shall erect and maintain approved temporary erosion control measures to prevent such washing or spreading of materials. At the end of each day and as required throughout the day during the course of excavating or construction,

dirt and mud on the sidewalks, curbs, gutters, streets, and the rights-of-way resulting from work must be removed.

- (13) Upon completion of the ROW work involving installation of new facilities, the ROW user shall supply the city copies of as-built and detailed maps showing the exact location of facilities installed in the ROW.
- (14) The director of public works may limit the number or size of conduits or other facilities that may be installed by each ROW user based on the reasonable needs to ensure that no one (1) ROW user may unreasonably consume a disproportionate amount of the available rights-of-way to deter competition or deprive the public or others of the reasonable use of the rights-of-way.
- (15) The director of public works may impose other reasonable conditions regarding the timing, safety precautions, space, or specific implementation of the specific work proposed.

Sec. 6.115.350. - Permit non-transferable.

Issued permits are not transferable without the written consent of the director of public works.

Sec. 6.115.360. - Permit validity.

- (1) A permit shall only be valid for the area of the rights-of-way specified within the permit. No permittee may cause any work to be done outside the area specified in the permit, except as provided herein. Any permittee who determines that an area greater than that which is specified in the permit must be excavated must do the following prior to the commencement of work in that greater area: (a) make application for a new permit or a permit extension and pay any additional fees required thereby; and (b) receive a new rights-of-way permit or permit extension.
- (2) A permit shall be valid only for the dates specified in the permit. No permittee may commence work before the permit start date or, except as provided herein, may continue working after the end date. If a permittee does not complete the work by the permit end date, the permittee must apply for and receive a new rights-of-way permit or a permit extension for additional time. This supplementary application must be submitted to the city three days prior to the permit end date. Failure to apply for a permit extension may result in an immediate order to cease work within the rights-of-way until a new permit application has been filed and appropriate fees paid. One extension may be granted at no additional cost.

Sec. 6.115.370. - Inspection.

- (1) In addition to the required scheduled inspections, the director of public works may choose to inspect the ongoing permitted work in the rights-of-way at any time to ensure that all requirements of the approved permit and ordinances of the city are being complied with by the ROW user.
- (2) At the time of any inspection, the director of public works may order the immediate cessation of any work, which poses a serious threat to the life, health, safety, or well-

being of the public. The director of public works may issue a notice of noncompliance to the ROW user for any work, which does not conform to the applicable standards, conditions, code, or terms of the permit or this chapter. The notice shall state that the failure to correct the violation will be cause for revocation of the permit.

Sec. 6.115.380. - Permit displayed.

Permits issued shall be conspicuously displayed by the permittee at all times at the indicated work site and shall be available for inspection by the director of public works, other city employees, and the public.

Sec. 6.115.390. - Completed work.

The permittee shall notify the office of the director of public works upon completion of the authorized work permit.

Sec. 6.115.400. - Permit denial.

- (1) The director of public works has discretion to deny a permit to protect the public health, safety, and welfare, to prevent interference with the safety and convenience or ordinary travel over the rights-of-way, or when necessary to protect the rights-of-way and its users. In exercising this discretion, the director of public works shall be guided by the safety and convenience of anticipated travel of the public over the rights-of-way and the public benefits offered by the ROW user and may consider one or more of the following factors in denial of the permit:
 - a. The applicant fails to provide all necessary information requested by the city for managing the public right-of-way;
 - b. The applicant has failed to return the right-of-way to its previous condition under a previous permit;
 - c. The director has provided the applicant with a reasonable, competitively neutral, and nondiscriminatory justification for requiring an alternative method for performing the work identified in the permit application or a reasonable alternative route that will result in neither additional installation expense up to ten (10) percent to the applicant nor a declination of service quality;
 - d. The director determines that denial is necessary to protect the public health and safety, provided that such does not extend to those items under the jurisdiction of the commission, such denial shall not interfere with a public utility's right of eminent domain of private property, and such denial shall only be imposed on a competitively neutral and nondiscriminatory basis;
 - e. The area is environmentally sensitive as defined by state statute or federal law or is historic district as defined by city ordinance;
 - f. Such other lawful reasons.
- (2) Notwithstanding the above provisions, the director of public works may issue a permit in any case where the permit is necessary to:
 - a. Prevent substantial economic hardship to a user of the applicant's service; or
 - b. Allow such user to materially improve the service provided by the applicant.

Sec. 6.115.410. - Permit exemptions.

The following are exempt from the requirements of a rights-of-way permit for work in the rights-of-way:

- (1) ROW users performing routine service operations that do not require excavation in the rights-of-way and do not disrupt traffic.
- (2) Adjacent property owners, provided the work does not involve excavation more than 18 inches below the surface and all existing facilities are identified according to this chapter and state law. However, this exception applies to excavation only. Any construction activity or permanent structures in the rights-of-way will require any applicable permits and authorizations.

Sec. 6.115.420. - Emergency work.

A permit is required for emergency situations. If due to an emergency, it is necessary for the ROW user to immediately perform work in the rights-of-way, and it is impractical for the ROW user to first get the appropriate permit, the work may be performed, and the required permit shall be obtained as soon as possible during the next city working day, or as otherwise directed by the director of public works. In the event the city becomes aware of an emergency requiring facilities work, the city shall attempt to contact a representative of each ROW user affected, or potentially affected, by the emergency work. If no response is received by a particular ROW user to whom contact is attempted, the director of public works may take whatever action he/she deems necessary to respond to the emergency, the cost of which shall be borne by the person whose action or inaction occasioned the emergency or by the ROW user if the emergency was occasioned by an act of nature.

Secs. 6.115.430—6.115.500. - Reserved.

Division III. - Rights-of-way Use and Facility Locations.

Sec. 6.115.510. - Use of rights-of-way and locations generally.

- (1) The ROW-user's use of the rights-of-way shall in all matters be subordinate to the city's use or occupation of the rights-of-way. Without limitations of its rights, the city expressly reserves the rights to exercise its governmental powers now and hereafter vested in or granted to the city. In situations where multiple users are within the same location, first the municipal use shall have priority followed by persons with a valid and current rights-of-way use agreement, franchise, License, or other authorization with the city, followed by all others. All ROW users shall construct and maintain their facilities so as not to interfere with other users of the rights-of-way.
- (2) ROW-users shall coordinate the placement of facilities in a manner that minimizes adverse impact on any public improvement, as reasonably determined by the city. Where placement is not regulated, the facilities shall be placed with adequate clearance from such public improvements so as not to impact or be impacted by such public improvements as defined in the city's Design and Construction Manual. The design, location, and nature of all facilities shall be subject to the review and approval of the

director of public works. Such review shall be on a non-discriminatory basis in application of city policy including ensuring safe, efficient, and appropriate use of the Row consistent with this chapter and applicable law, and approvals shall not be unreasonably withheld. City height limitations, applicable zoning restrictions, and general city policies with regard to all users of the ROW shall also be applicable to all facilities. For facility applications, the most restrictive adjacent underlying zoning district classification shall apply unless otherwise zoned and designated on the official zoning map.

- (3) No equipment or facilities that exceed 30 inches in height above ground level, except utility poles, shall be placed within the sight distance areas of intersections as determined under the city's sight distance standards and the most current edition of the Manual of the American Association of State Highway and Transportation Officials. Appropriate sight distances for such equipment or facilities related to driveways, alleys, or other entrances onto streets other than at intersections, shall be determined on a case-by-case basis by the director of public works, in order to provide reasonably safe locations for such equipment or facilities.
- (4) The ROW-user shall consider any request made by the city concerning placement facilities in private easements in order to limit or eliminate future street improvement relocation expenses.
- (5) All facilities shall be located and laid so as not to disrupt, adversely impact, or interfere with any pipes, drains, sewers, irrigation systems, or other structures or public improvements already installed. In addition, the ROW-user shall, in doing work in connection with its facilities, avoid, so far as may be practicable, disrupting or interfering with the lawful use of the streets, alleys, sidewalks, or other public lands of the city.
- (6) All facilities of the ROW-user shall be placed so that they do not interfere with the use of rights-of-way and public lands, either existing or proposed. The city, through its director of public works, shall have the right to consult and review the location, design, and nature of the facility prior to installation. The City may, in its discretion, designate certain locations or facilities in the rights-of-way to be excluded from use by the ROW user, including but not limited to, ornamental or similar specially-designed street lights or other facilities or locations which, in the reasonable judgment of the director of public works, do not have electrical service adequate or appropriate for the provider's facilities, or cannot safely bear the weight or wind loading thereof, or any other facility or location that in the reasonable judgment of the director of public works is incompatible with the proposed facilities, or would be rendered unsafe or unstable by the installation.
- (7) The ROW-user shall not interfere with the facilities of other ROW-users without their permission. If and when the city requires or negotiates to have a ROW-user cease using its existing poles and to relocate its facilities underground, all other ROW-users using the same poles shall also relocate their facilities underground at the same time. The cost of such relocations shall be borne in accordance with this chapter and the applicable tariff governing that ROW-user.
- (8) All facilities and other appurtenances laid, constructed, and maintained by the ROW user shall be laid, constructed, and maintained in accordance with acceptable engineering practice and in full accord with any and all applicable engineering codes adopted or approved by the parties and in accordance with applicable statutes of the state, as well as the rules and regulations of the commission or any other local, state, or federal agency

jurisdiction over the parties.

- (9) The ROW-user shall cooperate promptly and fully with the city and take all reasonable measures necessary to provide accurate and complete on-site information regarding the nature and location of its facilities within the rights-of-way, both underground and overhead, when requested by the city or its authorized agent for a public improvement. Such location and identification shall be at the sole expense of the ROW-user without any expense to the city, its employees, agents, or authorized contractors.
- (10) It shall be the responsibility of the ROW-user to take adequate measures to protect and defend its facilities in the rights-of-way from harm and damage.
- (11) The city shall have the power to prohibit or limit the placement of new or additional equipment or facilities within the right-of-way if there is insufficient space to accommodate all of the request of potential ROW users. In making such decisions, the city shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, public health and safety, the public's priority needs for the particular utility service, the condition of the right-of-way, the time of the year with respect to essential utilities, the protection of existing equipment in the right-of-way, and future city plans for public improvements and development projects which have been determined to be in the public interest.
- (12) All new facilities or structures shall collocate on existing poles or within existing conduit, trenches, or other facilities to minimize unnecessary use of right-of-way space, reduce potential existing or future interference and obstructions and to reduce the cost to the public or others therefrom, and to maximize the public's ability to use and license appropriate private or public uses of the public rights-of-way in the public interest (except where preempted by law or where good cause is established as determined by the city applying these objectives.) Where existing poles or facilities are available, or exist at or near the proposed use, unless otherwise approved, the applicant must either use such facilities or file a written request verified by the applicant for exception specifying the specific reasons why such facilities are not available or feasible to be used and addressing the objectives hereof.
- (13) ROW users may be required prior to any excavation or installation within the rights-of-way, to provide sufficient notification and joint installation opportunities on a shared cost basis to potential users of the rights-of-way as may be provided for by separate city policy. Such notifications and adopted policies shall be designed to maximize collocation of ROW users, to minimize the disturbance of the rights-of-way and to maximize usable capacity.
- (14) Pursuant to city authority, including by Section 67.1830(f) RSMo., and to properly manage the limited space in the city's rights-of-way, minimize obstructions and interference with the use of the rights-of-way by the public, and to ensure public safety, preserve property values, and enforce the public policy to maintain neutrality as to ownership of wireless locations, while also seeking to facilitate delivery of broadband technologies to city residents and businesses wireless facilities, shall be permitted in the rights-of-way only in compliance with the requirements applicable to other facilities and users in the rights-of-way, and the additional requirements set forth in this section for wireless antennas and facilities. Any wireless facilities authorized in the ROW shall be only as authorized in a binding approved ROW use agreement, pole attachment

agreement, or other written authorization with the city and subject to approval, denial, or condition relating to location, design, height, appearance, safety, specifications for use of city structures, and such zoning, building, or other regulations, including specifically chapter 166, except as may be limited by law.

a. *Definitions.* For the purposes of this subsection, the following defined terms shall mean:

i. “Small Wireless Facility” – an Antenna and associated equipment of: (1) no more than four (4) cubic feet in volume (comprised of no more than twelve (12) square feet of exterior surface area (excluding the surface width equal to the width of the support structure or pole to which it is mounted) on an imaginary enclosure around the perimeter thereof, excluding cable or cable conduit of four inches (4”) or less); (2) located with the consent of the owner on an Existing Structure such as an electrical transmission tower, water tower, utility pole, building, or street light ; (3) not exceeding six feet (6’) above the top of the existing structure for a total height not exceeding forty-five (45’) feet (nor taller more than 6’ above the average of similar poles within 300’ feet); (4) a similar color to the existing structure; (5) any portion above the existing structure shall be concealed and of the same dimensions and appearance so as to appear to be a natural extension of the existing structure; provided that up to two (2) rod antenna less than two inches (2”) in diameter and a height of not more than thirty-four inches (34”) may be located exposed directly over the existing structure in lieu of an enclosure or concealment; and (6) shall not emit noise audible from the building line of any residential zoned or used property. Volume shall be the measure of the exterior displacement of the small wireless facility.

ii. “Existing Structure” – Any structure capable of supporting an antenna, small wireless facility and associated equipment (other than a fully disguised support structure) in full conformance with the design and other requirements of this section and is: (1) existing prior to the date of all applicable permit applications seeking city authorization for installation of such facilities thereon and (2) not built or installed in anticipation of such specific installation or erected as a means to evade approvals applicable to a non-existing structure.

b. *General conditions.* Any wireless facility in the ROW shall be authorized only for entities that have a current and unexpired lawful ROW use agreement, franchise, or other written authorization with the city as required by this chapter and shall be subject to conditions relating to the location (including prohibited or limited locations), design, height, appearance, safety, radio-frequency, and other interference issues as may be lawfully imposed by the city where necessary or appropriate to protect the public, and to conform to policies and interests of the public as may be set forth in special district plans, historic areas, or other policies as may be reasonably adopted by the public works director to address changing infrastructure, technology, and uses of the rights-of-way and/or city facilities.

c. *“Fast-Track” small wireless collocation.* Any wireless facility meeting the requirements of a “Small Wireless Facility” provided in this Subsection may be

authorized to use and be located in the ROW with approval of the director subject to the following additional requirements:

- i. Only one small wireless facility shall be permitted per structure in the rights-of-way;
 - ii. No ground equipment shall be authorized;
 - iii. No small wireless facility shall be located in a manner which obstructs or causes a safety concern for vehicle or pedestrian traffic; and
 - iv. If the proposed structure the applicant proposes to locate its small wireless facility is not structurally sound, but the director of public works finds such to be a desired location, the director of public works can require the applicant to install a new substantially similar structure at its cost.
- d. *New Structures.* Wireless facilities shall not be permitted in the rights-of-way on new structures, provided that if evidence warranting an exception is provided by the applicant pursuant to section 6.115.510, the city council may grant an exception authorizing a new structure for a wireless facility if it also determines on a non-discriminatory basis such proposed application is in the public interest in light of the purposes of this section and chapter, and provided such use and location has received prior, separate zoning authorization as required by and in compliance with chapter 166, to the extent permitted by law. In such circumstances where any small wireless facilities are permitted in the rights-of-way on a new structure, such uses shall be subject to reasonable regulations or conditions and including any applicable specifications, compensation, and other terms established by the city in such approval or agreements as necessary or appropriate to preserve the purposes of this section and chapter.
- e. *All other wireless in ROW.* Any wireless facility located on an existing structure but not meeting the requirements of subsections (2) *General conditions* or (3) *"Fast Track" small wireless collocation* above, may be approved, subject to conditions as may be imposed consistent with the purposes of this section, only upon approval by the council upon a determination by the council that such wireless facility is: (1) in the public interest to provide a needed service to persons within the city, (2) cannot feasibly meet all of the requirements but varies from such requirements to the minimum extent necessary, (3) does not negatively impact appearance or property values in light of the location, design, and circumstances to be approved, (4) does not create any reasonable safety risk, and (5) complies with all zoning, ROW, and other applicable requirements.
- f. *Wireless facility compensation.* Compensation shall be as follows unless otherwise lawfully provided for in the agreement authorizing such use:
1. If a wireless facility is to be located on a city owned structure, a pole attachment agreement or other authorization shall be required with terms including insurance, indemnification, and a monthly payment of \$200.00 per attachment or such other compensation as may be lawfully provided for in such agreement;
 2. Pursuant to its authority under § 67.1830(6)(f) RSMo., and as may be authorized by § 67.5094(11) RSMo., the ROW user wishing to install wireless facilities within the rights-of-way shall also pay to the city, in addition to the fees herein, a one-time administrative and zoning fee of \$500.00 per each

wireless antenna installation to partly cover the city's costs and risks of allowing installation of wireless facilities within the rights-of-way.

- g. *Application Requirements.* Any application including one or more wireless antennas or facilities shall include all requirements for (1) installation of any facilities in the ROW as set forth in this chapter, (2) this section, and (3) installation of wireless antennas and facilities set forth in the Uniform Wireless Communications Infrastructure Deployment Act (§§ 67.5090 *et. seq.* RSMo.), or other applicable law including written proof of consent of landowner (copy of the ROW use agreement) and of structure owner (document authorizing use of the structure).

Sec. 6.115.520. - Above-ground facilities.

- (1) All new facilities may be located above-ground only if approved by the city council for good cause. Unless extraordinary circumstances exist, good cause shall not include authorization for above-ground facilities requiring new poles or major modification to existing above-ground structures. Above-ground pedestals, vaults, cabinets, or other facilities may be installed only if approved by the city where alternative underground facilities are not feasible or where underground requirements are otherwise waived pursuant to the provisions of this subsection. Existing conduit shall be used where feasible and available. Where reasonable and appropriate and where adequate rights-of-way exists, the ROW user shall place above-ground facilities underground in conjunction with city capital improvement projects and/or at specific locations requested by the city provided that such placement is practical, efficient, and economically feasible. This prohibition shall not include replacement poles that are of similar dimension of the existing pole.
- (2) No equipment, equipment boxes, or other facilities (including transformer boxes, telephone risers, junction boxes, or equipment boxes), shall be placed in the rights-of-way that exceed 66 inches in height above ground level, or 20 square feet in surface. Such equipment and facilities are to be located only within the width of utility easements that exist alongside property lines between adjacent properties, and subject to the sight line restrictions of section 6.115.510 of this chapter. The city reserves the right to modify proposed locations of such equipment and facilities if the location identified by the applicant is deemed to create a safety hazard or to adversely affect the property value of the premises where the equipment or facilities are to be located.
- (3) If more than one equipment box or other facility is to be erected under any one application for a city construction permit, all equipment locations for such a project shall be clearly identified in drawings accompanying the application, and the impact of the entire system on the safety or property values in the areas affected shall be evaluated by the city, and the city shall have the right to impose alternative locations for such equipment prior to issuing a construction permit.

Sec. 6.115.530. - Underground facilities.

All facilities shall be located underground whenever possible as provided herein. The ROW user shall comply with all city requirements as well as any utility commission regulations it must

adhere to. If this requirement is waived as provided herein, the facility shall be located as determined by the director of public works, including but not limited to any requirements placed on the ROW user by the commission. Specific locations where facilities will be required to be underground may be identified in the city's technical specifications and standard drawings.

Sec. 6.115.540. - Facility corridors.

- (1) The director of public works may assign specific corridors within the rights-of-way, or any particular segment thereof as may be necessary, for each type of facility that is currently or, pursuant to current technology, the director of public works expects will someday be located within the rights-of-way. All rights-of-way permits issued by the director of public works shall indicate the proper corridor for the ROW user's facilities. Any such corridor shall be specified in the city's technical specifications and standards.
- (2) Any ROW user whose facilities are currently in the rights-of-way in a position at a variance with the designated corridors shall, no later than at the time of the next reconstruction or excavation of the area where its facilities are located, move the facilities to its assigned position within the rights-of-way, unless this agreement is waived by the director of public works for good cause shown, upon consideration of such factors as the remaining economic life of the facilities, public safety, user service needs, and hardship to the ROW user.

Sec. 6.115.550. - Conduits.

If, in the preparation and planning of a rights-of-way project, the director of public works deems it appropriate for a conduit to be constructed in the rights-of-way, the director of public works shall contact all appropriate ROW-users for their input on the planning and design of such conduit. If a ROW-user desires to construct, maintain, or operate facilities along such rights-of-way, the director of public works may require the ROW-user to use such conduit, and to contribute to the expense of such conduit, provided, however, the ROW-user's use of the conduit is reasonable and appropriate under the circumstances.

Sec. 6.115.560. - Coordination.

- (1) Applicants may apply jointly for permits to excavate within the rights-of-way at the same time and place. Applicants who apply jointly for a rights-of-way permit may share in the payment of the permit fee. Applicants must agree among themselves as to the portion each shall pay.
- (2) The ROW user shall participate in any joint planning, construction, and advance notification of work, including coordination and consolidation of excavation work as required by the director of public works. In addition, the ROW user shall cooperate with other ROW users and the city for the best, most efficient, most aesthetic, and least obtrusive use of the rights-of-way.

Sec. 6.115.570. - Facility relocation.

- (1) The ROW user shall promptly remove, relocate, or adjust, at its own cost and expense, any facilities located within the rights-of-way as directed by the city for a public improvement or when reasonably required by the city by reason of public safety when such is required by public necessity, or public convenience and security require it, or such other findings in the public interest that may require relocation, adjustment, or removal at the cost of the ROW user. Such removal, relocation, or adjustment shall be performed by the ROW user at the ROW user's sole expense without expense to the city, its employees, agents, or authorized contractors and shall be specifically subject to rules, regulations, and schedules of the city pertaining to such. ROW users shall proceed with relocations at due diligence upon notification by the city to begin relocation.
- (2) The ROW user shall promptly remove, relocate, or adjust any facilities located in private easement subject to the following:
 - a. The relocation is required as provided herein;
 - b. The city has condemned or the ROW user has disclaimed to the city the portion of the private easement necessary for the public improvement; and
 - c. The ROW user shall relocate the facilities into the expanded rights-of-way at the city's direction or into any remaining portion of the private easement not condemned by or disclaimed to the city.
- (3) As soon as working drawings are available for public improvements that will require the ROW user to relocate its facilities, the city shall provide the ROW user with written notice of relocations and the anticipated bid letting date of said improvement. The ROW user shall respond with any conflicts and a proposed construction schedule within 30 days.
- (4) Following notice by the city in the form of the delivery of final design plans for such public improvements, the ROW user shall remove, adjust, or relocate its facilities in accordance with the schedule, provided the project is not delayed by adverse weather conditions and other factors beyond the control of the ROW user. ROW user shall certify to the city, in writing, that its facilities have been relocated or adjusted to clear construction in accordance with project plans provided by the city.
- (5) Any damages suffered by the city, its agents, or its contractors to the extent caused by the ROW user's failure to timely relocate or adjust such facilities, based on the schedule, shall be borne by the ROW user. Damages may include but be limited to:
 - a. Delays to contractor causing increased labor costs or reduced productivity.
 - b. Delays to contractor causing demobilization and remobilization.
 - c. Delays to city causing increased inspection time.
 - d. Delays to residents or motorists causing increased travel costs, inconvenience, or damages.
- (6) In the event the ROW user is required to move its facilities in accordance with this section, a rights-of-way permit will be required however the permit fee shall be waived.
- (7) In the event of an emergency or where construction equipment or facilities create or are contributing to an imminent danger to health, safety, or property, the city may, to the extent allowed by law, remove, re-lay, or relocate such construction equipment or the pertinent parts of such facilities without charge to the city for such action or for restoration or repair. The city shall attempt to notify the person having facilities in the ROW prior to taking such action, but the inability to do so shall not prevent same.

Thereafter, the city shall notify the person having facilities in the ROW as soon as practicable.

- (8) It is the intent of this section for both the city and the ROW user to cooperate with one another so that the need for facility relocation is minimized and, when required and feasible, relocations may be completed prior to receipts of bids by the city for such public improvement.
- (9) Rather than relocate facilities as requested or directed, a ROW user may abandon the facilities if approved by the city as provided in section 6.115.580.
- (10) No action hereunder shall be deemed a taking of property and no person shall be entitled to any compensation therefor. No location of any facilities in the rights-of-way shall be a vested interest or property right.
- (11) The ROW user shall upon request of any other person requesting relocation of facilities and holding a validly issued building or moving permit of the city, and within a reasonable period of time prior to the date upon which said person intends to exercise its rights under said permit, thereupon temporarily raise, lower, or relocate its wires or other facilities as may be required for the person to exercise the rights under the permit, and the ROW user may require such person to make payment in advance for any expenses incurred by said ROW user pursuant to said person's request.

Sec. 6.115.580. - Unused and abandoned facilities.

- (1) A ROW user owning abandoned facilities in the rights-of-way must either:
 - a. Remove its facilities and replace or restore any damage or disturbance caused by the removal at its own expense. The director of public works may allow underground facilities or portions thereof to remain in place if the director of public works determines that it is in the best interest of public safety to do so. At such time, the city may take ownership and responsibility of such abandoned facilities left in place; or
 - b. Provide information satisfactory to the city that the ROW user's obligations for its facilities in the rights-of-way have been lawfully assumed by another authorized ROW user; or
 - c. Submit to the city a proposal and instruments for transferring ownership of its facilities to the city. If the ROW user proceeds under this sub-section, the city may, at its option purchase the equipment, require the ROW user, at its own expense, to remove it, or require the ROW user to post a bond in an amount sufficient to reimburse the city for reasonable anticipated costs to be incurred to remove the facilities.
- (2) Facilities of a ROW user who fails to comply with this section, and whose facilities remain unused for two years, shall be deemed to be abandoned after the city has made a good faith effort to contact the ROW user, unless the city receives confirmation that the ROW user intends to use the facilities. Abandoned facilities are deemed to be a nuisance. The city may exercise any remedies or rights it has at law or in equity, including but not limited to, (a) abating the nuisance, (b) taking possession and ownership of the facility and restoring it to a useable function, or (c) requiring the removal of the facility by the ROW user.

Sec. 6.115.590. - Vacation of rights-of-way.

- (1) If the city vacates a rights-of-way which contains facilities of a ROW user, and if the vacation does not require the relocation of the ROW user's facilities, the city shall reserve, to and for itself and all ROW users having facilities in the vacated rights-of-way, an easement for the rights to install, maintain, and operate any facilities in the vacated rights-of-way and to enter upon such vacated rights-of-way at any time for the purpose of reconstructing, inspecting, maintaining, or repairing the same.
- (2) If the vacation requires the relocation of facilities, and
 - a. If the vacation proceedings are initiated by a ROW user, the ROW user must pay the relocation costs.
 - b. If the vacation proceedings are initiated by the city, and the city provides expanded rights-of-way or public easement in which to relocate the ROW user's facilities, the ROW user must pay the relocation costs unless otherwise agreed to by the city and the ROW user.
 - c. If the vacation proceedings are initiated by the city and the city does not provide expanded rights-of-way or public easement in which to relocate the ROW users facilities or the vacation is not needed due to public necessity, or public convenience and security require it, or such other findings in the public interest that may require relocation, adjustment, or removal at the cost of the ROW user, the city shall pay the relocation costs unless otherwise agreed to by the city and the ROW user.
 - d. If the vacation proceedings are initiated by a person other than the ROW user or the city, such other person must pay the relocation costs.

Secs. 6.115.600—6.115.650. - Reserved.

Division IV. - Traffic Control and Street Closures.

Sec. 6.115.660. - Traffic control.

Any ROW user found to be working without providing for required safety and traffic control will be directed to stop work until the appropriate measures are implemented in accordance with the current edition of the Manual on Uniform Traffic Control Devices. The permit information shall include contact names, and phone numbers, for those responsible for traffic control that may be reached 24 hours a day to resolve problems with the work zone.

Sec. 6.115.670. - Notice of closure.

The ROW user shall notify the city not less than ten working days in advance of any construction, reconstruction, repair, location, or relocation of facilities which would require any street closure or five working days in advance of any construction, reconstruction, repair, location, or relocation of facilities which reduces traffic flow to less than two lanes of moving traffic for more than four hours. Any other person doing work that will disrupt vehicular or pedestrian traffic shall notify the city not less than one day in advance of any work. The department of public safety shall also be notified the day of the work. Except in the event of an emergency defined herein, no such closure shall take place without notice and prior authorization

from the city.

Sec. 6.115.680. - Signs and barricades required.

All work performed in the rights-of-way or which in any way impacts vehicular or pedestrian traffic shall be properly signed, barricaded, and otherwise protected at the permittee's expense. Such excavations and barricades shall be lighted at night with danger signals in such a manner that all traffic may be warned of the existence and location of such excavations and barricades. Such signage shall be in conformance with the latest edition of the Manual on Uniform Traffic Control Devices.

Sec. 6.115.690. - Traffic control plan.

All safety and traffic control measures must be implemented according to an approved traffic control plan required by the permit.

Secs. 6.115.700—6.115.750. - Reserved.

Division V. - Excavation Procedures.

Sec. 6.115.760. - Location of existing facilities.

The ROW user shall provide, identify, and locate any underground facilities in conformance with the 'Missouri One Call' system, and notice shall be provided directly to the city's department of public works - water and sanitary sewer divisions.

Sec. 6.115.770. - ROW user liable for damages.

- (1) The ROW user shall be liable for any damages to facilities due to work prior to obtaining location of facilities, or for any damage to facilities that have been properly identified prior to excavation. The permittee shall not make or attempt to make repairs, relocation, or replacement of damaged or disturbed facilities without the approval of the owner of the facilities.
- (2) Whenever there is an excavation by the ROW user, the ROW user shall be responsible for providing adequate traffic control to the surrounding area determined by the director of public works. In the event the excavation is not completed in a reasonable period of time, the ROW user may be liable for actual damages to the city for delay caused by the ROW user pursuant to this chapter.
- (3) The ROW user, responsible for the excavation, who leaves any debris in the rights-of-way shall be responsible for providing safety protection in accordance with the latest edition of the Manual of Uniform Traffic Control Devices and any applicable federal or state requirements.
- (4) In the event the ROW user severely disturbs or damages the any tree or other landscaping in the rights-of-way to the detriment of the health and safety of the tree, the ROW user shall be required to remove and replace the tree at the ROW user's cost. Further, in review of the ROW user's plan, the director of public works, in his or her discretion, may

require the ROW user to directionally bore around any tree in the rights-of-way. Replacement trees shall be a minimum two-inch caliper and bushes shall be a minimum two gallons. All areas damaged by excavation work shall be restored to as good, or better, condition as before the commencement of work.

- (5) The ROW user shall be liable for any damages to property outside of the public rights-of-way. The ROW user shall restore any damage to private property as a result of their activity including replacement of trees, which are severely disturbed, or damaged, as a result of their work within the rights-of-way. The granting of a permit for work within the rights-of-way does not authorize the permittee to work outside the rights-of-way.
- (6) Tree trimming and landscape pruning may be permitted to occur only after prior written notice to the city of the extent of trimming and pruning to be performed and the prior written approval thereof by the director of public works. The type and extent of trimming and pruning shall be in accordance with the requirements of the city.
- (7) The person doing the excavating or other ROW work under the requirements of this chapter shall immediately, after the work is completed and the refill is made, clean up and haul away all surplus earth, rock, debris, or other rubbish. The ROW user shall remove dirt from the wheels of all vehicles leaving any site where mud has accumulated on the wheels before such vehicles enter any public street of the city. It shall be unlawful for any ROW user to permit any vehicles to leave such place with mud on the wheels which is liable to be dispersed over any public street of the city and it shall be unlawful for any driver of a vehicle to enter upon the public streets of the city without having removed or had mud removed from the wheels prior to such entry. Each occurrence shall be a separate offense. The ROW user shall be responsible for damages to the city, or its contractors, resulting from such failure and shall indemnify the city and its contractors as provided herein and pay the costs for remedying such failure.
- (8) The ROW User shall load materials on any vehicle so no portion thereof shall be spilled or be liable to be spilled on the streets of the city. It shall be unlawful for any ROW user to permit any vehicle to enter upon the streets of the city loaded in violation of this provision and it shall be unlawful for any Person to operate a vehicle on the streets of the city which is loaded in such manner that it spills or is liable to spill mud, dirt, or other materials on the streets.

Sec. 6.115.780. - Standard of work.

Any excavation, backfilling, repair, and restoration, and all other work performed in the rights-of-way shall be done in conformance with the city's technical specifications, standards, and applicable building codes.

Sec. 6.115.790. - Excavation restoration.

- (1) After any excavation, the ROW user shall, at its expense, and in a timely manner or as set forth in the permit, restore all portions of the rights-of-way to the same condition or better condition than it was prior to the excavation thereof. This shall include the sodding, or seeding, of all established lawn areas as directed by the permit or the director with the same species of grass as that disturbed by the excavation.

- (2) The ROW user shall employ a testing laboratory, as approved by the director of public works, which shall verify the proper backfilling on any street cut. The ROW user shall pay all costs associated with such testing. This provision shall be waived when flowable fill is used as backfill or with the permission of the director of public works.
- (3) If an excavation cannot be backfilled immediately and must be left unattended, the ROW user shall securely and adequately cover any street cuts, or protect any unfilled grassed area excavation. The ROW user has sole responsibility for maintaining proper barricades, safety fencing, and/or lights as required, from the time of the opening of the excavation until the excavation is surfaced and open for travel.
- (4) In addition to repairing its own street cuts, the ROW user must restore any area within five feet of the new street cut that has previously been excavated, including the paving and its aggregate foundations.
- (5) All earth, materials, sidewalks, paving, crossings, utilities, public improvement, or improvements of any kind damaged or removed by the ROW user shall be fully repaired or replaced promptly by the ROW user at its sole expense and to the reasonable satisfaction of the city. However, a ROW user shall not make or attempt to make repairs, relocations, or replacement of damaged or disturbed facilities without the approval of the owner of the facilities. The ROW user shall notify the director upon completion of the excavation work authorized by the permit. The director of public works has the authority to inspect the repair or replacement of the damage, and if necessary, to require the ROW user to do the additional necessary work. Notice of the unsatisfactory restoration and the deficiencies found will be provided to the ROW user and a reasonable time not to exceed ten calendar days will be provided to allow for the deficiencies to be corrected. Upon determination by the director of public works that such repair or replacement is a public safety matter, all such repair or replacement shall be corrected within 24 hours' notice from the city, or the director of public works may direct the city to make such repair or replacement and bill the ROW user for the city's costs.

Sec. 6.115.800. - Failure to restore.

If the ROW user fails to restore the rights-of-way in the manner and to the condition required by the director of public works, or fails to satisfactorily and timely complete all restoration the city may, at its option, serve written notice upon the ROW user and its surety that, unless within five days after serving of such notice, a satisfactory arrangement can be made for the proper restoration of the rights-of-way, the city shall immediately serve notice of failure to comply upon the surety and the ROW user, and the surety shall have the right to take over and complete the work; provided, however, that if the surety does not commence performance within ten days from the date of notice, the city may take over the work and prosecute same to completion, by contract or otherwise at the expense of the ROW user, and the ROW user and its surety shall be liable to the city for any and all excess cost assumed by the city by reason of such prosecution and completion.

Sec. 6.115.810. - Guarantee of restoration.

- (1) In restoring the rights-of-way, the ROW user guarantees its work and shall maintain it for four years following its completion. During the four years the ROW user shall, upon

notification from the director of public works, correct all restoration work to the extent necessary, using any method as required by the director of public works. Said work shall be completed within a reasonable time, not to exceed 15 calendar days, of the receipt of notice from the director of public works. In the event the ROW user is required to perform new restoration pursuant to the foregoing guarantee, the director of public works shall have the authority to extend the guarantee period for such new restoration for up to an additional four years from the date of the new restoration, if the director of public works determines any overt action by the ROW user not to comply with the conditions of the rights-of-way permit and any restoration requirements or otherwise reasonably necessary to fulfill the requirements of this chapter.

- (2) When any corrective action has been completed and inspected by the director of public works' satisfaction, the four-year maintenance period will begin.
- (3) The four-year guarantee period shall be applicable to failure of the pavement surface as well as failure below the pavement surface. Settlement of the excavation or cracking, breaking, or rutting of the surface shall be prima facie evidence of failure of the backfill.

Sec. 6.115.820. - Restoration marker.

All excavations by the ROW user shall have a metal marker inserted into the excavation of the restored pavement, which shall identify the ROW user.

Sec. 6.115.830. - Notice and inspection.

Upon completion of all rights-of-way restoration activities, the ROW user shall notify the public works department to schedule a closeout inspection.

Secs. 6.115.840—6.115.900. - Reserved.

Division VI. - Mapping Requirements

Secs. 6.115.910—6.115.1000. - Reserved.

Division VII. - Appeals or Waivers

Sec. 6.115.1010. - Waivers.

The director of public works shall have the authority to grant waivers as provided in this chapter. To be effective, any such waiver shall be evidenced by a statement in writing by the ROW user, indicating the reasons for the waiver request, the authority for the waiver under this chapter, and any conditions of the waiver. The statement must be signed by the director of public works to be valid.

Sec. 6.115.1020. - Appeals.

Whenever a person shall deem themselves aggrieved by a decision or action taken by the director of public works, the person may file an appeal to the city manager within ten calendar days of the date of the notice of such decision or action.

Sec. 6.115.1030. - Actions on appeal to the city manager.

- (1) In cases of applicability or interpretation of the rules, the city manager may revoke such decision or action taken by the director of public works.
- (2) In cases where compliance with such decision or action taken by the director of public works would cause undue hardship, the city manager may extend the time limit of such decision or action, or may grant exceptions to, or waive requirements of, or grant a variance from the specific provisions of rules. The city manager shall give due consideration to the purposes of the rules in preserving public safety and convenience, integrity of public infrastructure, and the operational safety and function of the public rights-of-way.
- (3) Pending a decision by the city manager, the order of the director of public works shall be stayed, unless the director of public works determines that such action will pose a threat to public safety or the integrity of the public infrastructure.

Secs. 6.115.1040—6.115.1100. - Reserved.

ARTICLE 4. - INSURANCE, BONDING, AND LIABILITY

Sec. 6.115.1110. - Insurance.

Prior to any work, the ROW user shall furnish to the city a certificate of insurance in a company approved by the enforcement agency or the city, evidencing that such applicant has a comprehensive general liability and property damage insurance that includes contractual liability coverage with minimum limits in no event less than the maximum amounts of liability set forth in Section 537.610 RSMo applicable to political subdivisions. The policies of insurance shall be in such form and shall be issued by such company or companies as may be satisfactory to the city. The city, and such additional persons and entities as may be deemed to have exposure to liability as a result of the performance of the work, as determined by the city, shall be named as additional insured with full and equivalent coverage as the insured and with the duty of defense on all insurance policies required hereunder. A certificate of insurance providing compliance with this section shall be submitted to the city and shall include a provision that the insurance coverage cannot be cancelled or not renewed without thirty (30) days advance written notice to the city. If the person is self-insured, it shall provide the city proof of compliance regarding its ability to self-insure and proof of its ability to provide coverage in the above amounts. Any self-insurance or deductible above fifty thousand dollars (\$50,000.00) must be declared to and pre-approved by the city. The insurance requirements in this section or otherwise shall not apply to any entity to the extent and for such period during an agreement, franchise, or permit issued hereunder if such entity is exempted from such requirements pursuant to Section 67.1830(6)(a) and has on file with the city clerk an affidavit certifying that the entity has twenty-five million dollars (\$25,000,000.00) in net assets and facts otherwise establishing the ROW user is otherwise therefore so exempted unless otherwise provided by agreement or franchise. The city reserves the right to waive any and all requirements under this section when deemed to be in the public interest. Nothing herein shall be deemed to waive the City's sovereign immunity.

Sec. 6.115.1120. - Bonding.

Prior to any work, and for four years thereafter, maintain a performance and maintenance bond in a form approved by the city counselor. The amount of the bond will be \$5,000.00 or the value of the restoration, whichever is the greater, for a term consistent with the term of the permit plus four additional years, conditioned upon the ROW user's faithful performance of the provisions, terms and conditions conferred by this chapter. An annual bond in the amount of \$50,000.00 automatically renewed yearly during the period shall satisfy the requirements of this section. In the event the city shall exercise its rights to revoke the permit as granted herein, then the city shall be entitled to recover under the terms of said bond, the full amount of any loss occasioned. ROW user submitting bonds shall comply with the following requirements:

- (1) A copy of the maintenance and performance bond must be on file with the city clerk.
- (2) No maintenance or performance bond will be required of any governmental entity or of any residential property owner working in the rights-of-way adjacent to his/her residence, who does not utilize a contractor to perform the excavation. The bond requirement herein shall not apply to an applicant who has on file with the city clerk an affidavit certifying that the applicant has twenty-five million dollars (\$25,000,000.00) in net assets and facts demonstrating that the ROW user does not have a history of permitting noncompliance within the city.

Sec. 6.115.1130. - Indemnification.

Any person performing excavation or a ROW user as a condition of use of the ROW, shall at its sole cost and expense fully indemnify, release, defend (with counsel acceptable to the city), and hold harmless the city, agents of the city when acting in their capacity as municipal officials, employees, and agents, from and against any and all claims, demands, suits, proceedings and actions, liability and judgment by other persons for damages, losses, costs, and expenses, including attorney fees, from the action or inaction of the person performing excavation or ROW user, its agents, representatives, employees, contractors, subcontractors, or any other person for whose acts the ROW user may be liable, in constructing, operating, maintaining, repairing, restoring, or removing facilities or other structure, or use of the rights-of-way or the activities performed, or failed to be performed, by the ROW user under this chapter or applicable law, or otherwise, except to the extent arising from or caused by the sole or gross negligence or willful misconduct of the city, its elected officials, officers, employees, agents, or contractors. Nothing herein shall be deemed to prevent the city, or any agent from participating in the defense of any litigation by their own counsel at their own expense. Such participation shall not under any circumstances relieve the person from his duty to defend against liability or his duty to pay any judgment entered against the city or its agents. This indemnification shall survive the expiration or termination of any ROW use agreement, franchise, license, permit, or other authorization.

Secs. 6.115.1140—6.115.1200. - Reserved.

ARTICLE 5. - VIOLATIONS AND PENALTIES

Sec. 6.115.1210. - Violation.

- (1) If the director of public works determines that the ROW user has committed a violation of any law or condition placed on the rights-of-way permit, the director of public works shall make a written demand upon the ROW user to remedy such violation. The demand shall state that the continued violation may be cause for revocation of the permit or legal action if applicable.
- (2) A violation will allow the director of public works, at his discretion, to place additional conditions on the rights-of-way permit, specifically related to the manner in which the violation is cured by the ROW user. Within five calendar days of receiving notification of the violation, ROW user shall contact the director of public works with a plan for correction of the violation. ROW user's failure to contact the director of public works, ROW user's failure to submit an acceptable plan, or ROW user's failure to reasonably implement the approved plan shall be cause for immediate revocation of the rights-of-way permit and/or issue a stop work order.

Sec. 6.115.1220. - Revocation.

- (1) Permittees hold rights-of-way permits issued pursuant to this chapter as a privilege and not as a right. The city reserves its rights, as provided herein, to revoke any rights-of-way permits, without refund of the permit fee, in accordance with this chapter or in the event of a substantial breach of the terms and conditions of any law or the rights-of-way permit. A substantial breach shall include, but not limited to the following:
 - a. The violation of any material provision of the rights-of-way permit.
 - b. An evasion or attempt to evade any material provision of the rights-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens;
 - c. Any material misrepresentation of any fact in the permit application;
 - d. The failure to complete the work by the date specified in the permit, unless a permit extension is obtained or unless the failure to complete the work is due to reasons beyond the permittee's control;
 - e. The failure to correct within the time specified by the city, work that does not conform to applicable national safety codes, industry construction standards, or local safety codes that are no more stringent than national safety codes, upon inspection and notification by the city of the faulty condition; and
 - f. Such other lawful reasons.
- (2) If a rights-of-way permit is revoked, the permittee shall also reimburse the city for the city's reasonable costs, including administrative costs, restoration costs, and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

Sec. 6.115.1230. - Penalty.

Any person or entity violating any provision of this chapter is guilty of a public offense, and upon conviction thereof shall be fined in a sum of not less than \$200.00 nor more than \$500.00. Every day that this chapter is violated shall constitute a separate offense. The city shall have the authority to maintain civil suits or actions in any court of competent jurisdiction for the purpose of enforcing the provisions of this chapter. In addition to any other remedies, the city may institute injunction, mandamus, or other appropriate action or proceeding to prevent violation of

this chapter.

Secs. 6.115.1240—6.115.1300. - Reserved.

ARTICLE 6. - OTHER RIGHTS AND LAWS

Sec. 6.115.1310. - Force majeure.

Each and every provision hereof shall be subject to acts of God, fires, strikes, riots, floods, war, and other circumstances beyond the ROW user's or the city's control.

Sec. 6.115.1315. - No Cause of Action Against the City.

A ROW user shall have no damages remedy or monetary recourse whatsoever against the city for any loss, cost, expense, or damage arising from any of the provisions or requirements of any ROW use agreement or franchise, or because of the enforcement thereof by said city, or from the use of the rights-of-way. Nothing herein shall preclude the ROW user from seeking injunctive or declaratory judgment relief against the city where such relief is otherwise available and the requirements therefor are otherwise satisfied.

Sec. 6.115.1320. - Federal, state, and city jurisdiction.

This chapter shall be construed in a manner consistent with all applicable federal, state, and local laws. Notwithstanding any other provisions of this chapter to the contrary, the construction, operation, and maintenance of the ROW user's facilities shall be in accordance with all laws and regulations of the United States, the state, and any political subdivision thereof, or any administrative agency thereof, having jurisdiction. In addition, the ROW user shall meet or exceed the most stringent technical standards, as long as those standards are not inconsistent, set by regulatory bodies, including the city, now or hereafter having jurisdiction. The ROW user's rights are subject to the police powers of the city to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. The ROW user shall comply with all applicable laws and ordinances enacted pursuant to that power. Finally, failure of the ROW user to comply with any applicable law or regulation may result in a forfeiture of any permit, registration, or authorization granted in accordance with this chapter.

Sec. 6.115.1330. - Severability.

If any section, subsection, sentence, clause, phrase, or portion of this chapter is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Sec. 6.115.1340. - City's failure to enforce.

The city's failure to enforce or remedy any noncompliance of the terms and conditions of this chapter or of any permit or agreement granted hereunder shall not constitute a waiver of the city's rights nor a waiver of any person's obligation as herein provided.

Sec. 6.115.1350. - Reservation of rights.

- (1) In addition to any rights specifically reserved to the city by this chapter, the city reserves unto itself every right and power which is required to be reserved by a provision of any ordinance under any registration, permit, or other authorization granted under this chapter. The city shall have the right to waive any provision of this chapter or any registration, permit, or other authorization granted thereunder, except those required by federal or state law, if the city determines as follows:
 - a. That it is in the public interest to do so; and
 - b. That the enforcement of such provision will impose an undue hardship on the person.
- (2) To be effective, such waiver shall be evidenced by a statement in writing signed by a duly authorized representative of the city. Further, the city hereby reserves to itself the right to intervene in any suit, action, or proceeding involving the provisions herein.
- (3) Notwithstanding anything to the contrary set forth herein, the provisions of this chapter shall not infringe upon the rights of any person pursuant to any applicable state or federal statutes, including, but not limited to the right to occupy the rights-of-way.