

Sec. 90-283. - Public rights-of-way use regulations.

(a) *Definitions.* The following terms shall have the following meanings unless otherwise defined by context:

*City clerk* means the duly-appointed city clerk of the city or his/her designee.

*City facilities* means any facilities located within the public rights-of-way and owned by the city.

*Director* means the city's public works director or his/her designee.

*Emergency rights-of-way (or ROW) work* includes, but is not limited to, ROW work made necessary by exigent circumstances to repair, control, stabilize, rectify, or correct an unexpected or unplanned outage, cut, rupture, leak, or any other failure of a facility when such failure results or could result in danger to the public or a material delay or hindrance to the provision of service.

*Excavating* 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 as excluded by applicable law.

*Facilities* means a network or system, or any part thereof including but not limited to one or more lines, pipes, wires, cables, fibers, conduit facilities, cabinets, poles, vaults, pedestals, boxes, appliances, antennas, transmitters, radios, towers, gates, meters, appurtenances, or other equipment.

*Person* means an individual, partnership, limited liability corporation or partnership, association, joint stock company, trust, organization, corporation, or other entity, or any lawful successor thereto or transferee thereof.

*Person(s) having facilities within the rights-of-way* means any person having ownership or control of facilities located within the rights-of-way.

*Rights-of-way or ROW* means unless otherwise restricted herein, the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, boulevard, drive, bridge, tunnel, parkway, waterway, public easement, or sidewalk, and including such adjacent areas within the public ways within control of the city, in which the city now or hereafter holds any interest, which, consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining facilities. "Rights-of-way" shall not include:

- (1) City facilities or the city's property other than ROW, such as city-owned or operated buildings, parks, or other similar property;
- (2) Airwaves used for cellular, nonwire telecommunications, or broadcast services;
- (3) Easements obtained by ROW users on private property;
- (4) Railroad rights-of-way or ground used or acquired for railroads; or
- (5) Facilities owned and used by the city for the transmission of one or more services.

No reference herein to rights-of-way shall be deemed to be a representation or guarantee by the city that its interest or other right to control the use of such property is sufficient to permit its use for the delivery of service.

*Rights-of-way (or ROW) permit* means a permit granted by the city to a ROW user for ROW work.

*Rights-of-way (or ROW) user* means a person performing ROW work within the rights-of-way or having, operating, or maintaining facilities within the ROW. A ROW user shall not include ordinary vehicular or pedestrian use.

*Rights-of-way (or ROW) work* means action by a ROW user to:

- (1) Install, change, replace, relocate, remove, maintain, or repair facilities within the rights-of-way; or
- (2) To conduct work of any kind within or adjacent to the rights-of-way that results in an excavation, obstruction, disruption, damage, or physical invasion or impact of any kind to the rights-of-way or the use thereof.

*Service* means providing or delivering an economic good or an article of commerce, including, but not limited to gas, telephone, cable television, Internet, open video systems, video services, alarm systems, steam, electricity, water, telegraph, data transmission, petroleum pipelines, sanitary or stormwater sewerage, or any similar or related service, to one or more persons located within or outside of the city by use of facilities located within the rights-of-way.

*Within* means in, along, under, over, or across rights-of-way.

(b) *Agreement requirements.*

- (1) *ROW use agreement or franchise required.* Except where otherwise authorized or required by applicable law, a franchise or rights-of-way agreement shall be required as follows:
  - a. *Franchise.* A franchise shall be obtained in conformance with all applicable franchise procedures for any ROW user seeking to use the rights-of-way for the purpose of providing, transporting, or distributing electricity, gas, water, steam, lighting, energy, or sewer service to any person or area within the city's limits and boundaries.
  - b. *ROW use agreement.* A ROW use agreement shall be required for ROW users seeking to use the rights-of-way for the purpose of providing communications services to any person or area within the city's limits and boundaries, except as provided herein or otherwise required by law. A ROW use agreement shall conform to all applicable laws and requirements, including as provided herein, but shall not be subject to procedures applicable only to franchises. For the purpose of this requirement, 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, 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 RSMo 67.2677. The term "communications service" does not include the rental of conduit or physical facilities.
  - c. *Incidental uses.* Notwithstanding the above requirements, persons desiring to install an incidental use within the rights-of-way, which includes installation of temporary structures or minor incidental uses in the rights-of-way, such as driveway aprons, ingress or egress facilities, lateral or private sewer lines, and similar incidental uses, that utilize a small area of the rights-of-way and serves the principal structure, may be permitted without a franchise or rights-of-way use agreement pursuant to a ROW permit issued herein.
  - d. *Beautification improvements.* Notwithstanding the requirements herein, persons desiring to perform beautification projects that involve plantings, hardscape, and other beautification improvements in the city's rights-of-way or other public property may be permitted without a franchise, lease, or rights-of-way agreement pursuant to a license issued by the director. The director shall have discretion to establish such application, requirements, and conditions applicable to such uses (including maintenance requirements or procedures, including when city council approval is required, to authorize the city to take over maintenance of the same) consistent with the purposes of this chapter or as otherwise established by law. Any person granted a license hereunder shall be subject to the applicable requirements of this chapter, including the requirements relating to insurance, standards for ROW work, and to obtain a ROW permit as applicable, and the ordinances of the city, including specifically compliance with the city's tree and landscaping specifications and permit requirements in chapter 102.
- (2) *Application required.* An application for a franchise or ROW use agreement, shall be provided to the city on city forms and shall include all such information as is required by this article and as determined necessary by the director. The ROW user shall be responsible for accurately maintaining the information in the application during the term of any franchise or ROW use agreement and shall be responsible for all costs incurred by the city due to the failure to provide or maintain as accurate any application information required herein. An application shall minimally include:
  - a. Identity and legal status of the applicant;
  - b. Name, address, telephone number, and email 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

- applicant, 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 ROW use agreement;
- c. Name, address, telephone number, and email address of the local representative of the applicant who shall be available at all times to act on behalf of the applicant in the event of an emergency;
  - d. 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 Federal Communication Commission ("FCC") or the Missouri Public Service Commission;
  - e. Description of the applicant's intended use of the rights-of-way, including such information as to proposed services to determine the applicable, federal, state, and local regulatory provisions as may apply to such user;
  - f. A list of authorized agents, contractors, and subcontractors eligible to obtain permits on behalf of the applicant. The list may be updated to add such person at the time of permit application if the updated information on the application is submitted by an authorized representative of the applicant;
  - g. Information sufficient to determine the amount of net assets of the applicant to determine if certain exemptions are required;
  - h. Information sufficient to determine whether the applicant is subject under applicable law to franchising, service regulation, payment of compensation for the use of the rights-of-way, taxation, or other requirements of the city;
  - i. Any request including one or more antennas shall also include all applicable requirements for installation of antennas and wireless facilities set forth in the Uniform Wireless Communications Infrastructure Deployment Act (RSMo 67.5090 et seq.), the Uniform Small Wireless Facility Deployment Act (RSMo 67.5110 et seq.), Ordinance No. 1175, and other applicable regulations and laws;
  - j. An application deposit of \$500.00, or such other amount determined to be required, which shall be utilized to partly offset the city's cost in reviewing and issuing an agreement, consistent with applicable law; provided any amount not used by the city for its actual lawfully reimbursable costs will be refunded upon request after execution of a ROW use agreement or franchise. 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 ROW use agreement or franchise that may exceed the application deposit.
  - k. Such other information as may be reasonably required by the director to determine requirements and compliance with applicable regulation.
- (3) *Grant and nature of approval; terms.* The authority granted by the city in any ROW use agreement, license, or franchise shall be for non-exclusive use of the rights-of-way. Such grant does not in any way limit the continuing authority of the city through the proper exercise of its statutory powers to adopt and enforce ordinances necessary to provide for the health, safety, and welfare of the public. 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 ROW use agreement, license, or franchise shall not be deemed to create any property interest of any kind in favor of the ROW user, nor shall it create any relationship of agency, partnership, joint venture, or employment between the parties, nor shall it operate as an express or implied representation or warranty regarding the city's rights to authorize the installation or construction of facilities on any particular segment of rights-of-way and the city 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. The ROW user shall be solely liable for any damages to facilities or other property due to ROW work performed prior to obtaining the location of all facilities that have been properly identified prior to such work. All franchises and ROW use agreements shall be approved by ordinance or resolution of the city council on a non-discriminatory basis when the person is in compliance with all applicable requirements. Licenses may be approved by the director on a non-discriminatory basis if the person is in compliance with all applicable requirements. Each franchise, license, and ROW use agreement shall include terms of use and be deemed to incorporate the terms of this chapter and other applicable laws of the city, except as may be expressly stated in such use agreement, license, or franchise.

- (4) *Use of city or third-party facilities.* No ROW use agreement, franchise, or license shall grant the right to use facilities owned 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 other applicable requirements), nor shall any franchise, ROW use agreement, or license excuse such person from first attachment agreement or other express consent for such right or use before locating on facilities controlled or owned by third party.
- (5) *Lease required for public lands.* Unless otherwise provided, use or installation of any facilities in non-rights-of-way public property of the city 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.
- (6) *Condition precedent to permit.* Unless otherwise required by applicable law, no ROW permit may be issued unless such person has a valid franchise or rights-of-way use agreement with the city, if required by this section.
- (7) *Transferability.* Except as provided in this chapter or as otherwise required by law, no franchise, ROW use agreement, ROW permit, or license may be transferred or assigned without the written application to and consent of the city based on the requirements and policies of this chapter. The city shall not unreasonably withhold its consent as provided herein, but any costs incurred shall be paid by the ROW user to the extent allowed by law.
- (8) *No waiver.* 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 ROW permit, ROW use agreement, franchise, or license they are reserved, whether or not expressly enumerated.
- (9) *Exempt entity registration.* 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 by providing the city the information required by the rights-of-way application in this section. It shall be the duty of such exempt entity to report any changes to such registration information within 30 days of such change.

(c) *ROW permits.*

(1) *Application requirements.*

- a. Any person desiring to perform ROW work must first apply for and obtain a ROW permit, in addition to any other building permit, license, easement, franchise, or authorization required by law. ROW permits shall be valid for 60 days unless otherwise stated in the permit. A ROW permit shall not be required for:

1. Routine maintenance on previously approved small wireless facilities, as defined by RSMo 67.5111,
2. Replacement of such small wireless facilities that are the same or smaller in size, weight, and height, or
3. Installation, placement, maintenance, operation, or replacement of micro wireless facilities, as defined by RSMo 67.5111, that are strung on cables between utility poles in compliance with applicable safety and building codes;

Provided such work will not involve excavation, affect traffic patterns, obstruct traffic in the ROW, or materially impede the use of a sidewalk, and provided the ROW user submits as-builts of such new small wireless facilities or micro wireless facilities so the city may maintain an accurate inventory of facilities installed in the ROW.

In addition, no ROW permit shall be required for:

1. Public work done under the authority of the city council; or
  2. Routine maintenance which does not require excavation, does not disrupt traffic or pedestrians, and requires no more than four hours to complete, provided that a minimum two hours' notice is provided to the city during normal business hours.
- b. In the event of a need for emergency ROW work, the person conducting the work shall as soon as practicable notify the city of the location of the work and shall apply for the required ROW permit as soon as practicable following the commencement of the work, not to exceed the third business day thereafter. The director may design and issue general permits for emergency ROW work for several different locations or throughout the city.
  - c. An application for a ROW permit shall be submitted to the director. The director may design and make available standard forms for such applications, requiring such information as allowed by law and as the director

determines in his or her discretion to be necessary and consistent with the provisions of this chapter and to accomplish the purposes of this chapter. Each application shall at minimum contain the following information for the proposed ROW work, unless otherwise waived by the director:

1. The name, address, and telephone number of a representative whom the city may notify or contact at any time (i.e., 24 hours per day seven days per week) concerning the work;
  2. If different from the applicant, the name, address, and telephone number of the person on whose behalf the proposed work is to be performed;
  3. A description of the proposed work, including a conceptual master site plan and an engineering site plan or other technical drawing or depiction showing the nature, dimensions, location, and description of the applicant's proposed work or facilities, their proximity to other facilities that may be affected by the proposed work, and the number of street crossings and their locations and dimensions, if applicable;
  4. Projected commencement and termination dates and anticipated duration of the work or, if such dates are unknown, a representation that the applicant shall provide the director with reasonable advance notice of such dates once they are determined;
  5. Copies of any required certificates of insurance or performance and maintenance bonds.
- d. To the extent not prohibited by applicable law, each such application shall be accompanied by the following payments:
1. An application fee approved by the city to cover the cost of processing the application;
  2. Any other amounts due to the city from the applicant, including but not limited to prior delinquent fees, costs, and any loss, damage, or expense suffered by the city because of the applicant's or ROW user's prior work in the rights-of-way or for any emergency actions taken by the city, but the director may modify this requirement to the extent the director determines any such fees to be in good-faith dispute.
- e. Applicants shall participate in any joint planning, construction, and advance notification of ROW work, including coordination and consolidation of any excavation of or disturbance to the rights-of-way, as directed by the director. When deemed necessary to accomplish the goals of this section and to the extent permitted by law, the city reserves the right, when feasible and reasonable, to require the sharing of facilities by ROW users. Applicants shall cooperate with each other and other ROW users and the city for the best, most efficient, least intrusive, most aesthetic, and least obtrusive use of the rights-of-way.
- f. The director may establish procedures allowing applicants to ascertain whether existing capacity may be available from other persons utilizing the rights-of-way along the intended path of any proposed work.

(2) *Application review and determination.*

- a. The director shall promptly review each completed application for a ROW permit and shall grant or deny all such applications as provided herein within 31 days of receipt thereof. Unless the application is denied, the director shall issue a ROW permit upon determining that the applicant:
  1. Has submitted all necessary information;
  2. Has paid the appropriate fees; and
  3. Is in full compliance with this chapter and all other city ordinances.

The director may establish procedures for bulk processing of applications and periodic payment of fees to avoid excessive processing and accounting costs.

- b. It is the intention of the city that interference with, damage to, excavation or disruption of, or the placement of facilities within the city's rights-of-way should be minimized and limited in scope to the extent allowed by law to achieve the purposes of this chapter. When reasonable, not prohibited by applicable law, and necessary to accomplish such purposes, the director may require as alternatives to the proposed ROW work either less disruptive methods or different locations for facilities, provided that any required alternative:
  1. Shall not increase expenses by more than ten percent of the applicant's costs for the work as proposed;
  2. Shall not result in a decline of service quality; and

3. Shall be competitively neutral and nondiscriminatory.
- c. The director may also impose reasonable conditions upon the issuance of a ROW permit and the performance of ROW work 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 other users of the rights-of-way, and to minimize the disruption and inconvenience to the traveling public.
- d. Each ROW permit issued by the director shall include:
  1. Projected commencement and termination dates;
  2. Location of affected rights-of-way and identification and description of any pavement or curb cuts included in the work;
  3. Information regarding scheduling and coordination of work, if necessary;
  4. The location of any of the applicant's facilities, both those proposed and existing, and the location of any known facilities owned by another person that may be affected by the proposed work;
  5. An acknowledgement and representation by the applicant to comply with the terms and conditions of the ROW permit and this chapter. Every ROW permit issued hereunder shall incorporate the requirements and terms of this chapter, agreements, and all applicable ordinances, to the extent permitted by applicable law;
  6. If the ROW permit is for the installation and collocation of a small wireless facility, such permit shall include a condition that the installation and collocation shall be completed within one year of issuance of the ROW permit or the ROW permit shall become null and void and shall no longer authorize installation or collocation of the small wireless facility; and
  7. Such conditions and requirements as are deemed reasonably necessary by the director to protect structures and other facilities in the rights-of-way from damage, to restore such rights-of-way, and any structures or facilities, to ensure the reasonable continuity and sight-lines of pedestrian and vehicular traffic, and to protect property values, the aesthetics of adjoining properties and neighborhoods, and the public health, safety, and welfare.
- e. The director may deny an application, if denial is deemed to be in the public interest, for the following reasons:
  1. Delinquent fees, costs, or expenses owed by the applicant or ROW user;
  2. Failure to provide information required by the application or this chapter;
  3. The applicant or ROW user being in violation of the provisions of this chapter or other pertinent and applicable city ordinances;
  4. Failure to return the ROW to its previous condition under previously issued ROW permits or after prior excavations by the applicant or ROW user;
  5. For reasons of environmental, historic, or cultural sensitivity, as defined by applicable federal, state, or local law;
  6. For the applicant's refusal to comply with alternative ROW work methods, locations, or other reasonable conditions required by the director in accordance with applicable law;
  7. Any violations or noncompliance caused by or through the ROW user of any applicable city, state, or federal law or regulation, including compliance with the Americans with Disabilities Act, except where such violation is prohibited by applicable law for being a basis for denial; or
  8. For any other reason to protect the public health, safety, and welfare, provided that such denial does not fall within the exclusive authority of the Missouri Public Service Commission or interfere with a ROW user's right of eminent domain of private property and provided further that such denial is imposed on a competitively neutral and nondiscriminatory basis.

(3) *Permit revocation and ordinance violations.*

- a. The director may revoke a ROW permit without fee refund after notice and an opportunity to cure, but only in the event of a substantial breach of the terms and conditions of the permit or this chapter. Prior to revocation, the director shall provide written notice to the ROW user identifying any substantial breach and allowing a reasonable

period of time not longer than 30 days to cure the problem, which cure period may be immediate if certain activities must be stopped to protect the public safety. The cure period may be extended by the director where ROW user shows good cause as reasonably determined in the director's discretion. A substantial breach includes, but is not limited to, the following:

1. A material violation of a provision of the ROW permit or this chapter;
  2. An evasion or attempt to evade any material provision of the ROW permit or this chapter, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its residents;
  3. A material misrepresentation of fact in the ROW permit application;
  4. A failure to complete ROW work by the date specified in the ROW permit, unless an extension is obtained or unless the failure to complete the work is due to reasons beyond the ROW user's control;
  5. A failure to correct, upon reasonable notice and opportunity to cure as specified by the director, work that does not conform to applicable national safety ordinances, industry construction standards, this chapter, or any other applicable ordinances; or
  6. Such other lawful reasons.
- b. Any breach of the terms and conditions of a ROW permit shall also be deemed a violation of this chapter, and in addition to revocation, the director may initiate prosecution of the ROW user for such violation.
- (d) Work in the ROW; location, type, and design of facilities.

(1) *Jurisdiction, inspection, and stop work orders.*

- a. All facilities and ROW work shall be subject to inspection by the city and the supervision of all federal, state, and local authorities having jurisdiction in such matters to ensure compliance with all applicable laws, ordinances, departmental rules and regulations, and the ROW permit.
- b. The director shall have full access to all portions of the ROW work and may issue stop work orders and corrective orders to prevent unauthorized work, substandard work, or any work otherwise in violation of this chapter. Such orders:
  1. May be delivered personally or by certified mail to the address(es) listed on the application for the ROW permit or the person in charge of the construction site at the time of delivery;
  2. Shall state that substandard work, work not authorized by the ROW permit, or work otherwise in violation of this chapter is being carried out, summarize such work and provide a period of not longer than 30 days to cure the problem, which cure period may be immediate if certain activities must be stopped to protect the public safety; and
  3. May be enforced by equitable action and in such case the person responsible for the substandard or unauthorized work or violation shall be liable for all costs and expenses incurred by the city in enforcing such orders, including reasonable attorney's fees, in addition to any and all penalties established in this chapter. Or, the director may have the violation or substandard work corrected and the city's costs shall be reimbursed by the ROW user through surety or otherwise.

Every person failing to comply with such notice shall be deemed in violation of this chapter.

- c. A ROW user shall not be relieved of its obligation to comply with any of the provisions of this chapter or its applicable agreement, franchise, or other authorization by reason of any failure of the city to enforce prompt compliance.
- d. As a condition for use of the rights-of-way, 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, franchise, ROW permit, or license, 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.

(2) *Review required.* The design, location, and nature of all facilities shall be subject to the review and approval of the

director. Such review shall be on a non-discriminatory basis in application of city policy and approvals shall not be unreasonably withheld. City height limitations, applicable zoning restrictions, and general city policies with regard to all users of the rights-of-way shall be applicable to all facilities. The director may establish regulations or policies as may be deemed necessary or appropriate to affect the provisions of this chapter.

(3) *Underground facilities.*

- a. In conjunction with the city's long-standing policy favoring underground construction, and except as provided herein or where prohibited by applicable law, no person may erect, construct or install facilities above the surface of the rights-of-way without the written permission of the city, based on good cause established by applicant and found by the city. In addition, all new fiber optics, coaxial, and similar cable facilities shall be located within existing conduit, trenches, or other facilities to minimize unnecessary use of rights-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 rights-of-way in the public interest except where preempted by law or where good cause is established and written permission granted by the city. Such permission may be granted by the city council when other similar facilities exist above ground or when conditions are such that underground construction is impossible, impractical, or economically unfeasible, as determined by the city, and when in the city's judgment the aboveground construction has minimal aesthetic impact on the area where the construction is proposed. 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. New poles shall be authorized as established in article III of this chapter.
- b. During installation of facilities and to the extent authorized by law, existing underground conduits shall be used whenever feasible and permitted by the owner thereof.
- c. In the case of new construction or property development, the developer or property owner shall give reasonable written notice, to other potential ROW users as directed by the city, of the particular date on which open trenching will be available for installation of facilities. Costs of trenching and easements required to bring facilities within the development shall be borne by the developer or property owner; except that if the facilities are not installed within five working days of the date the trenches are available, as designated in the notice given by the developer or property owner, then once the trenches are thereafter closed, the cost of new trenching shall be borne by the person installing the facilities.

(4) *Aboveground facilities.*

- a. To the extent not prohibited by applicable law, the director may designate certain locations or facilities in the ROW to be excluded from use by the applicant for its facilities, including, but not limited to:
  1. Ornamental or similar specially-designed street lights;
  2. Designated historic areas;
  3. Facilities, equipment, structures, or locations that do not have electrical service adequate or appropriate for the proposed facilities or cannot safely bear the weight or wind loading thereof;
  4. Facilities, equipment, structures, or locations that in the reasonable judgment of the director are incompatible with the proposed facilities or would be rendered unsafe or unstable by the installation; and
  5. Facilities, equipment, structures, or locations that have been designated or planned for other use or are not otherwise available for use by the applicant due to engineering, technological, proprietary, legal, or other limitations or restrictions.
- b. Aboveground facilities shall be a neutral color and shall not be bright, reflective, or metallic. Black, gray, and tan shall be considered neutral colors, as shall any color that blends with the surrounding dominant color and helps to camouflage the facilities. Facilities shall be located in such a manner as to reduce or eliminate their visibility. A sight-proof landscape screen may be required by the director for any authorized aboveground facilities taller than three feet in height or covering in excess of four square feet in size. Such screening shall be sufficient to reasonably conceal the facility. A landscape plan identifying the size and species of landscaping materials shall be



approved by the director prior to installation of any facility requiring landscape screening. The person having facilities within the ROW shall be responsible for the installation, repair, maintenance, or replacement of screening materials. Alternative screening or concealment may be approved by the director to the extent it meets or exceeds the purposes of these requirements. Above-ground facilities and any required screening shall not be erected, placed, planted, or allowed to grow in such a manner as to materially impede vision of vehicular or pedestrian users of the ROW.

- c. Aboveground facilities shall be constructed and maintained in such a manner so as not to emit any unnecessary or intrusive noise and shall comply with all other applicable regulations and standards established by the city or state or federal law.
- d. *Wireless antennas and facilities.* Pursuant to city authority, including RSMo 67.1830(6)(f) and the Uniform Small Wireless Facility Deployment Act (RSMo 67.5110 et seq.), 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, while also seeking to facilitate delivery of broadband technologies to city residents and businesses, wireless facilities shall be permitted in the rights-of-way in compliance with the requirements applicable to other facilities and users in the rights-of-way, and the additional requirements set forth in this subsection.
  1. *General conditions.* Any wireless facility in the ROW 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 director to address changing infrastructure, technology, and uses of the rights-of-way and/or city facilities. A wireless facility shall not be located or installed in a manner that results in interference with or impairs the operation of existing utility facilities or city or third-party attachments. Wireless antennas or facilities shall further comply with (1) all applicable requirements for installation of any facilities in the ROW as set forth in this chapter including a ROW permit, (2) the requirements of this subsection, and (3) requirements for installation of wireless antennas and facilities set forth in the Uniform Wireless Communications Infrastructure Deployment Act (RSMo 67.5090 et seq.), Uniform Small Wireless Facility Deployment Act (RSMo 67.5110 et seq.), applicable zoning, building, and other regulations and approvals, specifically including sections IV and VII of Ordinance No. 1175.
  2. *Specific conditions.*
    - i. *Small wireless facilities.* Any small wireless facility meeting the requirements for small wireless facility as defined by section XV of Ordinance No. 1175 shall be authorized to be located in the rights-of-way with approval of the director subject to the following additional requirements:
      - (a) If proposing to install a new pole, compliance with the spacing requirements in article III of this chapter;
      - (b) Compliance with RSMo 67.5113.3(9) to the satisfaction of the city;
      - (c) For collocations on city poles, all make-ready estimates for the pole, including replacement costs where necessary for the safety and reliability of the pole, as determined by the city;
      - (d) Attestation that the proposed small wireless facility meets the volumetric requirements to meet the definition of a small wireless facility in section XV of Ordinance No. 1175; and
      - (e) Any other requirements which may be applicable to the proposed small wireless facility pursuant to the Uniform Small Wireless Facility Deployment Act (RSMo 67.5110 et seq.).
    - ii. *All other wireless in ROW.* Any wireless facility located on a utility pole or existing structure as defined by section XV of Ordinance No. 1175 but not meeting the requirements of (a) small wireless facilities above, may be approved, subject to conditions as may be imposed consistent with the purposes of this section, only upon approval by the city council upon a determination by the city 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 of a "small wireless facility," 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.

3. *Application requirements.* Any application including one or more wireless antennas or facilities shall include all applicable and lawful requirements for: (a) installation of any facilities in the rights-of-way as set forth in this section; (b) the requirements of this subsection; and (c) requirements for installation of wireless antennas and facilities set forth in the Uniform Wireless Communications Infrastructure Deployment Act (RSMo 67.5090 et seq.), Ordinance No. 1175, and other applicable law, including written proof of consent of the landowner and of the structure owner.
4. *Wireless facility compensation.* If the small wireless facility is to be located on a city owned utility pole, an annual payment of \$150.00 per attachment shall be required.
- (5) *Cooperation.* If the application of this subsection excludes locations for aboveground facilities to the extent that the exclusion conflicts with the reasonable requirements of the applicant, the director shall cooperate in good faith with the applicant to attempt to find suitable alternatives, but such the city shall not be required to incur any financial cost or to acquire new locations for the applicant.
- (6) *Subordinate uses.* ROW users use shall be in all situations subordinate and subject to public municipal use.
- (7) *Property repair and alterations.*
  - a. During any ROW work, the person doing the work shall protect from damage any and all existing structures and property belonging to the city and any other person. Any and all rights-of-way, public property, or private property disturbed or damaged during the work shall be repaired or replaced by the person doing the work or the person on whose behalf the work is being done, and such person shall immediately notify the owner of the fact of any damaged property. Such repair or replacement on public property shall be completed within a reasonable time specified by the director and to the director's satisfaction. Nothing herein shall authorize the ROW user to enter upon private property without the owner's consent.
  - b. Any alteration to the existing water mains, sewerage or drainage system, or to any city, state or other public structures or facilities in the rights-of-way required on account of the construction, installation, repair, or maintenance of facilities within the rights-of-way shall be made at the sole cost and expense of the owner of such facilities.
- (8) *Removal, abandonment, transfer, and relocation of facilities.*
  - a. The ROW user shall promptly remove, relocate, or adjust any facilities located in the rights-of-way as directed by the city 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 within the time frames established by the city and at the ROW user's sole expense without any 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.
  - b. 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 rights-of-way 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 rights-of-way as soon as practicable.
  - c. A person having facilities in the rights-of-way shall, on the reasonable request of any person, other than the city, holding a validly issued permit, after reasonable advance written notice, protect, support, or temporarily disconnect or relocate facilities to accommodate such person and the actual cost, reasonably incurred, of such actions shall be paid by the person requesting such action. The person having facilities in the rights-of-way taking such action may require such payment in advance.

- d. Rather than relocate facilities as requested or directed, a ROW user may abandon the facilities if approved by the city subsection h. of this section.
- e. At the city's direction, all facilities shall be moved underground and the cost shall be solely the obligation of the person having facilities within the ROW (or as otherwise allowed or required by law).
- f. Any damages suffered by the city, its agents or its contractors to the extent caused by the ROW user's failure to timely relocate, remove, or adjust its facilities, or failure to properly relocate, remove, or adjust such facilities, shall be borne by the ROW user. Where the ROW user shall fail to relocate facilities as required by the city, the city may, but shall not be required to, upon notice to the ROW user remove the obstructing facilities with or without further delay and the ROW user shall bear all responsibility and liability for the consequences therefrom, and the city shall bear no responsibility to the ROW user or others for damage resulting from such removal.
- g. 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.
- h. If a person having facilities within the ROW:

- 1. Installs the facilities within the ROW without having complied with the requirements of this chapter; or
- 2. Abandons the facilities,

the city may require the removal of the facilities, remove the facilities at the expense of the person having facilities within the ROW, or require the transfer of the facilities as provided herein:

- 1. If the city requires removal of the facilities, the person shall obtain a ROW permit and shall abide by all requirements of this chapter. The liability, indemnity, insurance, and bonding requirements required herein shall continue in full force and effect during and after the period of removal and restoration and until full compliance by the person with the terms and conditions of the ROW permit and the requirements of this chapter.
- 2. If the person fails to remove the facilities after having been directed to do so, the city may, to the extent permitted by law, decide that the ownership of the facilities should be transferred to the city, or to such person as directed by the city. In either case the owner of the facilities shall submit a written instrument, satisfactory in form to the city, transferring to the city, or to such person as directed by the city, ownership of the facilities. The city may sell, assign, or transfer all or part of the facilities so transferred. The city shall not remove or seek to possess or transfer the facilities until 30 days have passed following written notice by the director to the person having facilities within the ROW of the city's intent to so act. The director may choose not to act on good cause shown by the person having facilities within the ROW.
- i. *Nuisance.* Facilities abandoned or otherwise left unused in violation of this chapter 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.

(9) *Standards for ROW work.*

- a. Except for emergency ROW work as provided in subsection 90-283(c)(1)b., ROW work shall be performed only upon issuance and in accordance with the requirements of a ROW permit, the director's specifications for ROW work, applicable provisions of this chapter, and any subsequent ordinances or regulations that may be adopted by the city regarding ROW work. At all times during the work, ROW permits shall be conspicuously displayed at the work site and shall be available for inspection by the director.
- b. ROW users shall at all times be subject to the lawful exercise of the police powers of the city, including but not limited to all police powers regarding zoning, supervision of the restoration of the rights-of-way, building and safety regulations, and policies and specifications established by the director to carry out the intent and requirements of this chapter, in effect or as may be amended. Installation of all facilities in the rights-of-way are subject to and must be in compliance with all zoning and safety and building code requirements and policies and

specifications. For applications for installation of any facility in the rights-of-way, the most restrictive adjacent underlying zoning district classification shall apply unless otherwise specifically zoned and designated on the official zoning district map.

- c. If at any time it appears that the duration or scope of the ROW work is or will become materially different from that allowed by the ROW permit, the ROW user shall inform the director. The director may issue a waiver, an extension or a revised ROW permit, or require that the ROW user reapply for a ROW permit in accordance with all requirements of this chapter.
- d. ROW users shall not open or encumber more of the rights-of-way than is reasonably necessary to complete the ROW work in the most expeditious manner or allow excavations to remain open longer than is necessary to complete the work. The width of the excavation shall be no greater than is necessary for doing the work. 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.
- e. All ROW work that affects vehicular or pedestrian traffic shall be properly signed, barricaded, and otherwise protected at the ROW user's expense. The ROW user shall be solely responsible for providing adequate traffic control to the area surrounding the work as determined by the director. All traffic control devices shall be in compliance with the current version of the standard specifications and the Manual of Traffic Control Devices (MUTCD), unless otherwise agreed to by the director. All surplus excavation materials, tools, or supplies at the site of the ROW work shall be barricaded and lighted at night. The ROW user assumes the sole responsibility for maintaining proper barricades, plates, safety fencing, and/or lights as required from the time of opening of the ROW until completion.
- f. The ROW user shall perform the ROW work at such times that will allow the least interference with the normal flow of traffic and the peace and quiet of the neighborhood, as permitted by the director. Unless otherwise provided by the director in the permit, nonemergency ROW work on arterial and collector streets may not be accomplished during 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.
- g. The ROW user shall notify the city no less than three working days in advance of any ROW work that would require any street closure or would reduce traffic flow to less than two lanes of moving traffic for more than four hours. Except in the event of emergency ROW work, no such closure shall take place without notice and prior authorization from the city.
- h. All ROW work shall be in accordance with all applicable sections of the Occupational Safety and Health Act of 1970, the National Electrical Safety Code, applicable engineering code, and other federal, state, or local laws and regulations that may apply, including, without limitation, local health, safety, construction ordinances, and laws and accepted industry practices, all as hereafter may be amended or adopted. The ROW user shall comply with the excavation requirements of Missouri One Call established by RSMo 319.010 et seq., as amended. In addition, all ROW users shall be subject to all technical specifications, design criteria, policies, resolutions, and ordinances now or hereafter adopted or promulgated by the city in the reasonable exercise of its police power relating to permits and fees, sidewalk and pavement cuts, facility location, construction coordination, surface restoration, and other requirements on the use of the rights-of-way. In the event of a conflict among ordinances and standards, the most stringent ordinance or standard shall apply (except insofar as that ordinance or standard, if followed, would result in facilities that could not meet requirements of federal, state, or local law).
- i. All facilities shall be installed and located to cause minimum interference with the rights and convenience of property owners, other ROW users, and the city. All ROW users shall construct and maintain its facilities so as not to interfere with other users of the rights-of-way. Facilities shall not be placed where they will disrupt or interfere with other facilities or public improvements or obstruct or hinder in any manner the various utilities serving the residents and businesses in the city or public improvements and shall be solely responsible for such.
- j. All facilities shall be of good and durable quality. 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.

- k. All ROW work shall be conducted in accordance with good engineering practices, performed by experienced and properly trained personnel so as not to endanger any person or property or to unreasonably interfere in any manner with the rights-of-ways or legal rights of any property owner, including the city, or unnecessarily hinder or obstruct pedestrian or vehicular traffic.
  - l. All safety practices required by law shall be used during ROW work, including commonly accepted methods and devices to prevent failures and accidents that are likely to cause damage, injury, or nuisance to the public.
  - m. Any contractor or subcontractor of a ROW user must be properly licensed under laws of the state and all applicable local ordinances, and each contractor or subcontractor shall have the same obligations with respect to its work as a ROW user would have pursuant to this chapter. A ROW user:
    - 1. Must ensure that contractors, subcontractors, and all employees performing ROW work are trained and experienced;
    - 2. Shall be responsible for ensuring that all work is performed consistent with the ROW permit and applicable law;
    - 3. Shall be fully responsible for all acts or omissions of contractors or subcontractors;
    - 4. Shall be responsible for promptly correcting acts or omissions by any contractor or subcontractor; and
    - 5. Shall implement a quality control program to ensure that the work is properly performed.
  - n. A ROW user shall not place or cause to be placed any sort of signs, advertisements, or other extraneous markings on the facilities or in the ROW, whether relating to the ROW user or any other person, except such necessary minimal markings approved by the city as necessary to identify the facilities for service, repair, maintenance, or emergency purposes or as may be otherwise required to be affixed by applicable law or regulation.
  - o. Unless otherwise approved in writing by the city, a ROW user shall not remove, cut, or damage any trees, or their roots, within the ROW.
  - p. Street crossings will be bored at the direction of the director.
  - q. 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.
  - r. 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.
  - s. 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.
- (10) *Restoring and maintaining the rights-of-way.*
- a. To complete any ROW work, the ROW user shall restore the ROW and surrounding areas, including but not limited

to any pavement, foundation, concrete slabs or curbs, screening, landscaping, or vegetation and shall comply with other reasonable conditions of the director. All work shall comply with all such specifications as may be established by the director. The ROW user shall restore the rights-of-way and surrounding areas and shall comply with other reasonable conditions of the director. Restoration of the ROW shall be completed within the dates specified in the ROW permit unless the director issues a waiver, extension, or a new or revised ROW permit.

- b. The ROW user shall not permit an excavation to remain open or ROW work to continue in the ROW longer than is necessary to complete the repair, installation, or action, and in no event, may an excavation or ROW work remain open or continue beyond the expiration of the ROW permit or any approved extension. Unless otherwise approved by the director in writing, all excavations shall be filled in or covered at the end of each working day. Street plate bridging (SPB) to cover open excavations shall be authorized subject to requirements contained in the standard specifications.
- c. It shall be the duty of any person making an excavation in the ROW to backfill such excavations and restore the surface in accordance with the city's minimum prescribed standards for such surfaces, on file with the city, or the following standards, as determined by the director:
  1. If the excavations are made in the improved portion of the ROW, 12 inches of granular backfill will be placed over exposed facilities and controlled low strength material (CLSM) will fill the hole within eight inches of the finished surface for concrete pavements. There will be a plastic membrane placed between the rock base and the CLSM to prevent the material from bleeding into the rock base. The remaining eight inches will be restored by placing a 28-day minimum strength, 4,500 PSI concrete mix.
  2. If the excavations are made in the improved portion of an asphalt or combination street, 12 inches of granular backfill will be placed over exposed facilities, and CLSM will fill the hole within nine inches of the finished surface. There will be a plastic membrane placed between the rock base and the CLSM to prevent the material from bleeding into the rock base. The remaining nine inches will be restored by placing a six-inch thick, 28-day minimum strength, 4,500 PSI concrete mix under a three-inch asphalt concrete lift of type C mix to meet existing grades.
  3. Construction of asphalt driveway entrances in residential ROW will be constructed of six inches of compacted rock base and three inches of type C asphalt concrete mix. Construction of asphalt driveway entrances in commercial ROW will be constructed of four inches of compacted rock base, seven and one-half inches of type X and three inches of type C asphalt concrete mix. Concrete driveway approaches will consist of a four-inch compacted rock base and be a minimum of six inches thick in residential ROW and eight inches thick in commercial ROW.
  4. The initial cut in a street pavement shall be equal to the width of the trench with the option of being jack hammered or saw cut. The final cut in an asphaltic concrete street pavement shall be one foot wider than the trench width and shall be made only by saw cutting of the pavement.
  5. For cuts in concrete paved streets, concrete pavement replacement shall be full slab length (joint-to-joint) and full slab width (curb or gutter to street centerline) unless specifically authorized otherwise by the director.
  6. Refill excavation with suitable unfrozen materials free from trash, rubbish, vegetative and deleterious material, and/or rocks over three inches in maximum dimension. Unless otherwise provided or approved by the director, each layer shall not exceed eight inches in depth and shall be compacted thoroughly.
  7. Compaction shall meet or exceed the most current version of the standards and conditions of the city and the ASTM International (American Society for Testing and Materials). If inspections were not requested or a valid ROW permit obtained, the city may require compaction testing by a registered professional engineer licensed in the State of Missouri at the ROW user's expense.
- d. If a ROW user fails to restore the ROW within the date specified either by the ROW permit, or any extension thereof as granted by the director, the city may perform its own restoration. The city may also opt to perform its own restoration regardless of any failure by the ROW user, in which case the ROW permit, or any amendment or

revision thereto, shall note such option. In either event, if the city performs the restoration, the ROW user shall be responsible for reimbursing the city's reasonable actual restoration costs within 30 days of invoice. The City may use the required performance bond to repair the same, if necessary.

- e. When an excavation has been made in the ROW, and after the same has been properly backfilled, the person making the excavation shall notify the director that the same is ready for final repair. The director or his duly authorized agent shall inspect the same. The judgment of the director or his authorized agent as to when an excavation has been properly backfilled to permit final repair shall be conclusive. If any person fails to contact the director for an inspection within a reasonable time, as determined by the ROW permit, after completion of the work, to ensure that the rights-of-way or other public place has been restored to as good a condition as it was previous to such excavation being made, the excavation shall not be deemed complete and the ROW user shall be in violation of this chapter.
  - f. Every ROW user to whom a ROW permit has been granted shall guarantee for a period of four years the restoration of the ROW in the area where the ROW user conducted excavation. During this period, the ROW user shall, upon notification from the director, correct all restoration work to the extent necessary as required by the director. Said work shall be completed within a reasonable time, not to exceed 30 calendar days from receipt of the director's notice unless otherwise permitted by the director. If a ROW user fails to restore the ROW within the time specified, the city may perform the work and the ROW user shall be responsible for reimbursing the city's reasonable actual restoration costs within 30 days of invoice. The city may use the required performance bond to repair the same, if necessary. The director may extend the cure period on good cause shown.
  - g. A ROW user shall not be relieved of the obligation to complete the necessary rights-of-way restoration and maintenance because of the existence of any performance bond required by this article.
- (11) *Written notices.* Any person performing ROW work shall provide written notice to all property owners within 185 feet of the site at least 48 hours prior to any installation, replacement, or expansion of its facilities. Notice shall include a reasonably detailed description of work to be done, the location of work, and the time and duration of the work.
- (e) *Bonds; insurance; surety; indemnification.*
- (1) *Performance and maintenance bonds.*
    - a. Prior to any ROW work, a ROW user shall establish in the city's favor a performance and maintenance bond in an amount to be determined by the director to ensure the restoration of the rights-of-way. The bond shall continue in full force and effect for a period of 48 months following completion of the work. In lieu of a bond required herein, and when the proposed ROW work involves no or only minor disruption to the ROW, as determined in the sole direction of the director, the director may require a \$500.00 cash deposit from the ROW user to guarantee compliance with the requirements of the ROW user's permit and this chapter. The director may also waive this requirement on good cause shown when the work involves no or only minor disruption or damage to the rights-of-way.
    - b. If a ROW user fails to complete the ROW work in a safe, timely, and competent manner, or if the completed restorative work fails without remediation within the time period for the bond (as determined by the director), then after notice and a reasonable opportunity to cure there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the city as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the ROW user and the cost of completing work within or restoring the rights-of-way, plus a reasonable allowance for attorneys' fees, up to the full amount of the bond all in accordance with applicable law. The city may also recover against the bond any amount recoverable against a security fund or letter of credit where such amount exceeds that available under a security fund or letter of credit.
    - c. Upon completion of ROW work to the satisfaction of the director and upon lapse of the bond period, including any extension by the director, the city shall release the bond.
    - d. The bond shall be issued by a surety with an "A" or better rating of insurance in Best's Key Rating Guide, Property/Casualty Edition, shall be subject to the approval of the city's attorney, and shall contain the following endorsement:

"This bond may not be cancelled, or allowed to lapse, until 60 days after receipt by the city, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."

- e. In lieu of the bond required herein, the ROW user may establish in the city's favor such other security as the director may determine to be commensurate with the noted bonding requirements, including but not limited to an annual bond to be maintained in the minimum amount of \$25,000.00.
  - f. The bond requirements in this section or otherwise shall not apply to a ROW user to the extent and for such period as the ROW user is exempted from such requirements pursuant to RSMo 67.1830(6)(a) and has on file with the city clerk an affidavit certifying that ROW user has \$25,000,000.00 in net assets and is otherwise therefore so exempted, unless otherwise provided by a ROW use agreement or franchise or the city determines such exemption has not been adequately shown. Additionally, in accordance with RSMo 67.5121(4), the bonds required for "small wireless facilities" as defined in the Uniform Small Wireless Facility Deployment Act shall not exceed \$1,500.00 per "small wireless facility" or more \$75,000.00 for all "small wireless facilities" within the ROW of a ROW user. This exception to the city's bonding requirements shall only apply as related to such "small wireless facilities" and shall not otherwise alter the obligations of a ROW user to provide appropriate bonds to the city for any other activities or operations. The city may waive any and all requirements under this subsection when deemed to be lawful and in the public interest.
- (2) *Insurance.*
- a. All ROW users shall maintain, for the duration of any ROW work and, when applicable, for as long as the ROW user has facilities within the rights-of-way, at least the following liability insurance coverage: Worker's compensation and employer liability insurance to meet all requirements of Missouri law and commercial general liability insurance with respect to the construction, operation, and maintenance of the facilities, and the conduct of the ROW user's business in the city, in the minimum amounts of the individual and combined sovereign immunity limits established by RSMo 537.610 for political subdivisions. These insurance requirements shall not be construed to limit the liability of any person or to impose any liability on the city or to waive the city's sovereign immunity.
  - b. All insurance policies shall be with sureties qualified to do business in the State of Missouri, with an "A" or better rating of insurance by Best's Key Rating Guide, Property/Casualty Edition, and in a form approved by the city.
  - c. All insurance policies shall be available for review by the city, and a ROW user having facilities within the rights-of-way shall keep on file with the city current certificates of insurance.
  - d. All general liability insurance policies shall name the city, its officers, officials, boards, board members, contractors, commissions, commissioners, agents, and employees as additional insureds and shall further provide that any cancellation or reduction in coverage shall not be effective unless 30 days' prior written notice thereof has been given to the director. A ROW user shall not cancel any required insurance policy without submission of proof that it has obtained alternative insurance that complies with this chapter.
  - e. The director may exempt in writing from these insurance requirements any self-insured ROW user, provided that the ROW user demonstrates to the director's satisfaction that the ROW user's self-insurance plan is commensurate with said requirements, that the ROW user has sufficient resources to meet all potential risks, liabilities, and obligations contemplated by the requirements of this chapter, and that the city's additional insured coverage has no deductible. The insurance requirements in this section or otherwise shall not apply to a ROW user to the extent and for such period as the ROW user is exempted from such requirements pursuant to RSMo 67.1830(6)(a) and has on file with the city clerk an affidavit certifying that ROW user has \$25,000,000.00 in net assets and is otherwise therefore so exempted unless otherwise provided by a ROW use agreement or franchise or the city determines such exemption has not been adequately shown. Additionally, in accordance with RSMo 67.5121(3), a self-insured ROW user shall not be required to obtain insurance naming the city as an additional insured solely to the extent such ROW user is utilizing "small wireless facilities" as defined in the Uniform Small Wireless Facility Deployment Act within the ROW. This exception to the city's insurance requirements shall only



apply as related to such "small wireless facilities" and shall not otherwise alter the obligations of a ROW user to provide appropriate insurance to the city for any other activities or operations. The city may waive any and all requirements under this subsection when deemed to be lawful and in the public interest.

(3) *Indemnification.*

- a. Any ROW user granted a ROW permit, and any person having facilities within the rights-of-way, as partial consideration for the privilege granted, shall, at its sole cost and expense, indemnify, hold harmless, and defend the city, its officials, officers, boards, board members, contractors, commissions, commissioners, agents, and employees, against any and all claims, suits, causes of action, proceedings, and judgments for damages or equitable relief arising out of:
1. Any ROW work, including but not limited to the construction, maintenance, repair, or replacement of the facilities;
  2. The operation or maintenance of its facilities;
  3. Failure to secure consents from landowners; or
  4. Any actions taken or omissions made by the person pursuant to the authority of this chapter.

Provided however, that in accordance with RSMo 67.5121(2), a ROW user solely to the extent a ROW user is operating "small wireless facility" as defined in the Uniform Small Wireless Facility Deployment Act within the ROW shall only indemnify and hold the city, its officers and employees, harmless against any damage or personal injury caused by the negligence of the ROW user, its employees, agents, or contractors. This exception shall only apply to the ROW user's "small wireless facilities" and shall not otherwise alter the obligations of a ROW user to provide indemnification to the city for any other activities or operations.

- b. The foregoing indemnity provisions include, but are not limited to, the city's reasonable attorneys' fees incurred in defending against any such claim, suit, or proceeding prior to the person assuming such defense. Once a person assumes such defense, the city may at its option continue to participate in the defense at its own expense.
- c. Notwithstanding anything to the contrary contained in this article, the city shall not be so indemnified or reimbursed in relation to any amounts solely caused by:
1. The city's own negligence, willful misconduct, intentional or criminal acts; or
  2. The city acting in a proprietary capacity to deliver service(s) within the city.
- d. Recovery by the city of any amounts under insurance, a performance bond, or otherwise does not limit a person's duty to indemnify the city in any way; nor shall such recovery relieve a person of amounts owed to the city, or in any respect prevent the city from exercising any other right or remedy it may have.
- (f) *Rights-of-way user fees.*

- (1) *Required fees and credit.* Unless otherwise provided by franchise, rights-of-way use agreement, other authorization, or applicable law, each ROW user shall pay to the city as an annual compensation for the use of the rights-of-way, a user fee as follows: Linear foot fee: \$1.90 per linear foot of facilities in the rights-of-way, or portion thereof, on an annual basis with a minimum fee of \$4,000.00 per year, or as otherwise established by the city council from time to time. Provided that all ROW users shall be entitled to a credit against the user fees due hereunder equal to the payment(s) from such ROW user for the same time period for the business license or gross receipts tax paid by the ROW user; provided, however, such credit cannot exceed the amount due under this subsection and may not be carried forward or back to any other time period, and a credit shall not apply to any taxes paid under protest or otherwise paid with qualification unless so required by law.
- (2) *Timing of payment of user fees.* Unless otherwise agreed to in writing, all rights-of-way user fees shall be due and payable on an annual basis in advance prior to commencement of each permitted installation and no later than issuance of an excavation or rights-of-way permit, with the annual payment prorated to the following March 1, and thereafter on or before March 1 of each subsequent year for the following calendar year. No portion of any user fee shall be subject to refund due to abandonment or removal of the facilities during a prepaid period.
- (3) *Interest of late payments and under payments.* If any rights-of-way user fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest on the payment due and on any unpaid balance shall accrue from the

due date until received, at the rate of nine percent of the total amount past due or at such other rate as may be required by applicable law.

- (4) *Fee statement; retroactive adjustments.* Unless otherwise provided in writing, the following requirements apply: Each rights-of-way user fee payment shall be accompanied by a statement showing the manner in which the rights-of-way user fee was calculated. If any fee statement is determined to understate the fees owed, then such additional amount owed shall be made with a corrected statement, including interest on said amount as provided herein. Not later than February 15 of each year, each ROW user shall submit to the city a verified statement certifying the total linear feet occupied in the rights-of-way during the prior calendar year and the location of each segment(s). If the ROW user seeks a credit for gross receipts business license taxes paid to the city during the prior calendar year, it shall also include in such verified statement and for such prior calendar year: (1) all gross revenues received subject to the tax to be credited, (2) total amount of such tax paid to the city, and (3) the dates of each tax payment, and check numbers or other documentation sufficient for the city to verify its receipt of all such payments. Such credit may be applied to the next annual user fee payment provided such credit and calculation is shown on the statement accompanying the payment. The city retains the right to disallow any credit or portion thereof if the city determines the credit is not documented or otherwise authorized.
  - (5) *No accord and satisfaction.* No acceptance by the city of any user fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any use fee payment be construed as a release of any claim of the city.
  - (6) *Maintain records.* ROW users shall at all times maintain complete and accurate books of account and records of the business, ownership, and operations of the ROW user with respect to the facilities in a manner that allows the city to determine whether the ROW user has properly calculated its user fees in compliance with this subsection. Should the city reasonably determine that the records are not being maintained in such manner, the ROW user shall correct the manner in which the books and/or records are maintained so that the ROW user comes into compliance with this subsection. All financial books and records which are maintained in accordance with FCC regulations and the regulations of any governmental entity that regulates utilities in Missouri, and generally accepted accounting principles shall be deemed to be acceptable under this subsection. Such books and records shall be maintained for a period of at least three years.
  - (7) *Right of inspection.* The city or its designated representatives shall have the right to inspect, examine, or audit, during normal business hours and upon seven calendar day notice, all documents, records, or other information that pertains to the facilities within the rights-of-way and/or ROW user's user fee obligations. In addition to access to the records of the ROW user for audits, upon request, ROW user shall provide reasonable access to records necessary to verify compliance with the terms of this subsection.
  - (8) *Fees and compensation not a tax.* The fees and costs provided for in this subsection, and any compensation charged and paid for the use of the rights-of-way as provided for in this subsection, are separate from, and additional to, any and all federal, state, city, or other local taxes as may be levied, imposed, or due.
- (g) *Penalties and appeals.*
- (1) *Final determination.* The director shall make a final determination as to any matter concerning the grant, denial, or revocation of a ROW permit as provided in this article. On the request of an applicant or a ROW user and within a reasonable period of time, the director also shall make a final determination as to any other issue relating to the use of the ROW, the imposition of any fee, or the application of any provision of this chapter; provided, however, that this review shall not apply to matters being prosecuted in the municipal court. Any final determination of the director shall be subject to review as provided herein.
  - (2) *Appeal and exhaustion.* Any person aggrieved by a final determination of the director may appeal in accordance with article XV of [chapter 2](#). To the fullest extent permitted by law, the review procedures of article XV of [chapter 2](#) shall be exhausted before any action may be filed in any court against the city or its officers, employees, boards, officials, or commissions. Nothing herein shall be deemed to unlawfully limit any remedy that is required to be available as a matter of law.
  - (3) *General penalty.* In addition to any other penalties or remedies for violations that may exist in law or equity, any

person violating any provision of this chapter shall be subject to the penalty provisions of Sec. 1-9 of this Code.

(4) *Enforcement.* The city shall be entitled to enforce any provision of this chapter through all remedies lawfully available, and any person determined to have violated the terms of this chapter shall further be liable to pay the city's costs and attorneys' fees in enforcing such provisions. Additionally, any user of city services, rights-of-way, or other city facilities or property, shall, as a condition of such use or continued use, to the full extent permissible by law, be liable to pay the city's costs and attorneys' fees incurred in enforcing any lawful requirement applicable to such use, whether arising in contract, statute, ordinance, or other enforceable duty as to such use.

(h) *Miscellaneous.*

- (1) *As-builts.* After the completion of ROW work, the ROW user shall provide to the city as-built drawings, maps or other comparable records as determined by the director, drawn to scale and certified to the city as reasonably depicting the location of all facilities constructed pursuant to the ROW permit. Such records may be provided to the director in the form maintained by the ROW user, but when available to the ROW user, shall be submitted in automated formats that are compatible with city systems, as determined by the director, or in hard copy otherwise.
- (2) *City's right to cure.* Upon failure of a ROW user to commence, pursue, or complete any ROW work required by law or by the provisions of this chapter to be done in any ROW, within the time prescribed and to the reasonable satisfaction of the city, the city may, at its option, after 30 days' notice, cause such work to be done and the ROW user shall pay to the city the cost thereof in the itemized amounts reported by the city to the ROW user within 30 days after receipt of such itemized report.
- (3) *Tree trimming.* Upon ten days' written notice and with the approval and supervision of the city, or as otherwise provided by law, a ROW user shall have the authority to trim trees that overhang rights-of-way of the city so as to prevent the branches of such trees from coming in contact with its facilities, at its own expense subject to the supervision and direction of the city. Nothing in this paragraph shall authorize the trimming of trees on private property without permission of the property owner. All cut materials shall be properly disposed.
- (4) *City facilities.* To the extent not prohibited by applicable law, during ROW work by a ROW user, the city shall have the right to install, and to thereafter maintain, at its own cost in any excavation to or other applicable disturbance of the ROW any parallel facilities of its own that do not unreasonably interfere with the operations of other facilities.
- (5) *City ROW use.* Nothing in this chapter shall be in preference or hindrance to the right of the city and any board, authority, commission, or public service corporation of the city to use or occupy the rights-of-way or to perform or carry on any public works or public improvements of any description.
- (6) *Reservation of rights.* 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, and as may be authorized by RSMo ch. 67 and other authority applicable to regulation of the use of the rights-of-way. 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 any right that may exist to occupy the rights-of-way.

(i) *Self-preemption.* 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 section 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.

( Ord. No. 2222, § 1, 2-19-2019)