

## EXHIBIT A

**NOTE: Language to be added is shown as underscored. Language to be removed is shown as ~~stricken~~.**

### CHAPTER 26 STREETS, SIDEWALKS AND OTHER PUBLIC PLACES

#### ARTICLE III. - RIGHT-OF-WAY MANAGEMENT

##### DIVISION 1. - GENERALLY

###### Sec. 26-101. - Definitions.

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

*Abandoned equipment or facilities* means any equipment, materials, apparatuses, devices or facilities that are:

- A. Declared abandoned by the owner of such equipment or facilities;
- B. 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; or
- C. ~~Facility that is in use or in service, and no~~ No longer capable of being used for the same or similar purpose for which the equipment, apparatuses or facilities were installed;
- D. A facility or equipment which appears to no longer be in use and the owner or last owner of record maintained by the City fails to respond within thirty days of written notice that said facility or equipment is still in use.; or
- E. Or as otherwise may be defined by applicable law.

*Abutting or adjoining property and land owner* means a person owning or legally occupying any land abutting a public right-of-way.

*Aggrieved* means any person directly impacted by an action or decision of the City such that the person would have standing in a court of law to challenge the action.

*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 occupy or operate facilities using the right-of-way, or to work, excavate, or locate facilities in the right-of-way.

*Attachment agreement* means the written document showing the consent of the owner of the land, facility, structure or equipment housing device for the applicant seeking to use the right-of-way under this Article including the terms and conditions which shall include rent, term and notice requirements.

*Charter* means the Charter of the City of Lee's Summit, Missouri.

*City* means the City of Lee's Summit, Missouri, a municipal corporation and any duly authorized by City Council or Charter provision representative.

*City Council* means the City Council of the City of Lee's Summit, Missouri.

*City Engineer* means the City Engineer of Lee's Summit, Missouri, or an authorized representative.

*Code* means the Code of Ordinances of the City of Lee's Summit, Missouri.

*Commission* means the Missouri Public Service Commission.

Communications Service means the transmission via facilities, in whole or in part, of any writings, 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 deliver 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 right-of-way.

*Day* means calendar day unless otherwise specified.

Design Standards shall mean those reasonable standards as approved by the Director of Public Works and on file in the Office of the City Engineer for any installations within the right-of-way which may, but are not required, to include all or any portion of the following or similar codes, standards or guidelines:

building codes and Uniform Development ordinances, Outside Plant (OSP), utility and contractor industry standards, any federal, State or local government agency guidelines and standards such as MoDOT, IDOT or MARC, the Federal Energy Regulatory Commission (FERC) and the National Telecommunications & Information Administration (NTIA of USDC), any standards or guidelines developed by the Missouri Association of Municipal Utilities or other State counterparts, the American Public Works Association, the American Public Power Association or their International counterparts, private utility associations such as CTIA (wireless industry). These Design Standards shall be in addition to the Design and Construction Manual of the City.

*Emergency* includes, but is not limited to, the following:

- A. An unexpected or unplanned outage, cut, rupture, leak or any other failure of a ROW-user facility that prevents or significantly jeopardizes the ability of a ROW-user to provide service to customers;
- B. An unexpected or unplanned outage, cut, rupture, leak or any other failure of a ROW-user 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 ROW-user facilities is not immediately repaired, controlled, stabilized or rectified; or
- C. Any occurrence involving a ROW-user facility that a reasonable person could conclude under the circumstances that immediate and undelayed action by the ROW-user is necessary and warranted.

*Excavate, excavating or 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, tunneled into, bored into, graded, or otherwise displaced, by means of any tools, equipment or explosives, except that the following shall not be deemed excavation:

- A. Any de minimis displacement or movement of ground caused by pedestrian or vehicular traffic;
- B. The replacement of utility poles and related equipment at the existing general location that does not involve either a street or sidewalk cut; or
- C. 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.

*FCC* means Federal Communications Commission.

*Facility or facilities* means lines, pipes, irrigation systems, wires, cables, conduit facilities, poles, towers, vaults, pedestals, boxes, appliances, antennas, transmitters of any kind, gates, meters, appurtenances, duct, culvert, tube, , satellite dish, micro cell, Pico cell, repeater, amplifier, other device

capable of assisting in the transmission or distribution of a service or commodity, or other equipment used for or related to providing service whether used privately or made available to the public.

*Facility based service provider* means a service provider owning or possessing facilities in the right-of-way.

Franchise Agreement means a negotiated and formal contract setting out the rights and responsibilities of the ROW user which is for a set amount of time and includes a franchise fee payable to the City and approved by the City Council of Lee's Summit as provided for in in the City's Charter at Section 12.1.

*Governmental 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.

License means the rights and obligations extended by City to a ROW-user to own, construct, maintain and operate its structures, equipment and facilities within the ROW granted to a ROW-user by the City upon application for and the granting of a ROW permit.

*Missouri One Call* means the procedural requirements for excavation and utility safety established by RSMo 319.010, et seq.

*Parkway* means the area between a property line and the street curb or the edge of pavement, sometimes called boulevards, tree-shelves or snow-shelves.

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

*Person* means any natural or corporate person, business association or business entity including, but not limited to, a corporation, 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, or its agents, contractors, or subcontractors, for the construction, reconstruction, maintenance, or repair of any public infrastructure, and including without limitation, streets, alleys, bridges, bikeways, parkways, sidewalks, sewers, drainage facilities, traffic control devices, street lights, public facilities, public buildings or public lands; provided 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 article.

*Public lands* means any real property of the City that is not right-of-way.

*Public works committee* means the committee of the City Council appointed by the Mayor Pro Tempore, with the advice and consent of the City Council, according to the Charter and Code, to conduct routine business for the Public Works Department of the City of Lee's Summit, Missouri.

*Reseller service provider* means a right-of-way (ROW) user providing service within the city that does not have its own facilities in the right-of-way, but instead uses the right-of-way by interconnecting with or using the network elements of another ROW-user utilizing the right-of-way, and/or by leasing excess capacity from a facility based service provider.

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

Right-of-way or ROW means generally public property vested in the City in trust for the citizens, in fee or easement, to which the public has a right to access and use for the purpose intended by the

dedication, including but not limited to, the area on, below or above a public sidewalk, roadway, highway, street or alleyway in which the City has an ownership interest or right of management, but not including:

- A. The airwaves above a public right-of-way with regard to cellular or other non-wire telecommunications or broadcast service;
- B. Easements obtained by utilities or private easements in platted subdivisions or tracts;
- C. Railroad rights-of-way and ground utilized or acquired for railroad facilities unless the land or interest therein has been dedicated to public use; or
- D. 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 utility owned or operated by a governmental entity pursuant to RSMo Ch. 91, or pursuant to a charter form of government.

*Right-of-way permit* means the authorization to work, excavate, or locate facilities in the right-of-way.

*Routine service operation* means excavation or work that makes no material change to the facilities and does not disrupt traffic.

*Right-of-Way-User or ROW-user* means a person, its successors and assigns, that uses the right-of-way for purposes of work, excavation, provision of services, or to install, construct, maintain, repair facilities, equipment, or structures thereon or adjacent to for use by another identified entity or person, for which a right-of-way permit and/or a temporary traffic control permit is required, including but not limited to landowners and service providers. A ROW-user shall not include ordinary vehicular or pedestrian traffic.

*Security* means a financial guarantee sufficient as determined by the City Engineer or designee of the Director of Public Works and in a form approved by the City Attorney to guarantee that the right-of-way or other public property will be returned to a condition which is the same or better than at the time any excavation, construction, modification, alteration, repair or use takes places or commences.

*Service* means a commodity provided to a person by means of a delivery system that is comprised of facilities located or to be located in the right-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.

*Service provider* means any person that is a provider of a service for or without a fee that has the requisite certifications and authorizations from applicable governmental entities, including the FCC, to provide such service, including, but not limited to, every cable television service provider, pipeline corporation, gas corporation, electrical corporation, rural electric cooperative, telecommunications company, water corporation, heating or refrigerating corporation or sewer corporation under the jurisdiction of the public service commission; every municipally owned or operated utility pursuant to RSMo Ch. 91, or pursuant to a charter form of government or cooperatively owned or operated utility pursuant to RSMo Ch. 394; every street light maintenance district; every privately owned utility; and every other entity, regardless of its form of organization or governance, whether for profit or not, which in providing a public utility type of service for members of the general public, utilizes pipes, cables, conduits, wires, optical cables, poles, or other means of transmission, collection or exchange of communications, information, substances, data, or electronic or electrical current or impulses, in the collection, exchange or dissemination of its product or services through the public rights-of-way. Service provider includes both facility based service providers and reseller service providers.

*Street* means the pavement and sub-grade of a City access, local, collector or arterial roadway.

*Temporary traffic control* means the temporary management of motorized and non-motorized traffic through the use of official traffic control devices, including but not limited to signs, markings, fence, barricades, lights, delineators, and channelizers, as necessary when the construction, repair, removal, excavation, work, events, or other activity, whether within or adjacent to the public right-of-way, impacts normal traffic conditions.

*Temporary traffic control permit* means the written authorization for a ROW-user to act in a manner that narrows, closes, or otherwise impacts the normal flow of vehicular traffic or pedestrian traffic on any public street or sidewalk.

Unlawful means any act or omission in violation of any applicable law or action that are not authorized by any applicable law including this Article.

*Work or working* means the construction, installation, repair or maintenance of any type of facility within the right-of-way, or alteration of the right-of-way in any fashion that is not performed by the City or one of its contractors unless an exemption as provided in this article applies to the routine maintenance of the facility or alteration.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-102. - Purpose and declaration of policy.

This article is enacted to define the authority of the City and its officers and employees with regard to public ownership, control and management of the right-of-way. The right-of-way is a finite valuable public resource that has required and will continue to require substantial investment by the City and whose use by third parties or the City is not unfettered with other restrictions imposed by law. In particular, this article is enacted to:

- A. Manage the right-of-way (ROW) to allow efficient location of facilities and maximize services to the citizens of the city and maintain a uniform design standard on the ROW.
- B. Allow for the maximum utilization of the City's right-of-way to meet the increasing demands due to technological innovations.
- C. Maintain a competitively-neutral and non-discriminatory policy to ROW-users and allow the citizens of the city to receive the benefits of market competition.
- D. Facilitate orderly construction and maintenance of facilities in the right-of-way, reduce damage to the facilities of ROW-users, and minimize disruption of service to the citizens of the city.
- E. Encourage responsible construction and maintenance practices in the City right-of-way.
- F. Ensure proper restoration of the City right-of-way ~~pursuant to~~ following construction and maintenance of right-of-way facilities.
- G. Minimize the physical disruption of the right-of-way and maintain the aesthetic quality throughout the city.
- H. Minimize any impact to vehicular or pedestrian traffic within the right-of-way.
- I. Maintain the property rights of abutting and adjoining land and property owners as recognized in Barfield v. Sho-Me Power Electric Coop, 852 F.3d 795 (8<sup>th</sup> Cir. 2017), and avoid any enlargement of right-of-way user rights in right-of-way easement areas over those that were granted or obtained at the time of acquisition as interpreted by the City Engineer or Director of Public Works or a competent court of jurisdiction in a final decision.
- J. Minimize physical disruption of the rights-of-way for other users, the City, and travelers while maintaining aesthetic quality throughout the City while also recognizing the rights of abutting or adjoining land and property owners including but not limited to landscaping, uninterrupted use of and undamaged private sewer laterals and waterlines, irrigation systems and storm pipes
- K. Acknowledge the limit on the use of easements or right-of-way to the purpose for which they were obtained as required by case law, Section 523.283, RSMo, and to the extent permitted by law, prohibit or not affirmatively permit different or new burdens not identified or compensated for at the time of acquisition.

- L. To the extent permitted or required by law, protect land dedicated or obtained for a particular purpose or with specific restrictions of use from encroachments that are unwanted or unauthorized within the easement or right-of-way or rights of the City as an owner from utility uses purportedly mandated by regulations, administrative decisions or legislation that are invalid or which have yet to be determined to be lawful by a Court of final jurisdiction but are in dispute.
- M. Protect the authority of City in a manner consistent with federal and state law including, but not limited to, statutory grants of authority, Section 14.4 of the Lee's Summit City Charter, and Article VI, Section 19 of the Missouri Constitution as amended 1971, and as required by Article III, Section 38(a)(prohibition on gifts or grants of property to private entities), as well as Article VI, Sections 23 and 25 (no grant or aid to corporations of public property), Article X, Section 16 and 21 of the Missouri Constitution and as recognized by various State and federal courts.
- N. Protect the health, safety and welfare of the citizens of the city by ensuring all installations and users to the greatest extent possible are constructed and maintained in accordance with quality engineering, industry and government standards.
- O. Ensure that attachment agreements are used to establish consent of entities or persons using the facilities, structures or equipment housing of others for such entity or person's use of the right-of-way.
- P. Maintain the City and the public's right to charge compensation for the privilege to use the public and City's property for private for-profit activities in the future.
- Q. Avoid speculative construction and excavation use, or continued occupation after use ceases, for a structure, facility or equipment, of the limited, finite right-of-way asset of the City.
- R. Provide for a License for those who are granted a ROW permit under this Article and Chapter setting out rights and responsibilities when there is no separate valid and enforceable franchise granted by the City for use of the ROW.
- S. Ensure that use of the ROW does not impede or violate the City's zoning ordinances.

Sec. 26-103. Applicability, Preemption, Enforcement and Eminent Domain.

- A. *Applicability.* Except as provided for herein, and where limited by applicable law, this Article shall apply to all Excavations and all use, construction, operation, and Maintenance of Facilities or structures in the Rights-of-Way of the City. No Person shall commence or continue with the operation of any Facilities or structures in the Rights-of-Way except as provided and in compliance with this Chapter. Because numerous types of users and uses of the Rights-of-Way 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 Rights-of-Way 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.
- B. *Preemption.* No provision of this Article shall apply to any circumstance in which such application shall be unlawful under valid 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 valid law.
- C. *Enforcement.* The City may enforce any provision of this Article or Chapter by any lawful means available to it including but not limited to a municipal court citation or Circuit Court action and shall not be limited in any fashion as well as utilizing any bond or security provided to the City to ensure compliance with this Article or Chapter. Should the City need to file an enforcement action before any Court or administrative body, then the ROW-User or entity whose actions, inactions, or omissions caused the City to enforce this Article or Chapter shall pay to the City its

full costs including attorneys' fees for such enforcement action.

- D. Eminent Domain. Nothing herein shall be deemed or construed to impair or affect, in any way or to any extent, any right the City may have to acquire the property of the ROW-user through the exercise of the power of eminent domain, and nothing herein contained shall be construed to contract away or to modify or abridge, either for a term or in perpetuity, any power of eminent domain the City may have with respect to any facility, system or property, or to alter in any way the interest the City may have in any ROW, easements or other property over which a structure(s), facilities or equipment may be placed.

Secs. 26-104. Acceptance of License Upon acknowledgment or submitting an application and acceptance of a ROW Permit.

Acceptance of the terms and conditions of this Article and Chapter may be acknowledged by the filing of a certificate of acceptance on a form approved by the City Attorney's Office and filing same with the City Clerk or applying for, and being granted, a permit to construct, install, repair, replace maintain or otherwise work in the City's ROW for the purpose of constructing, installing, repairing, replacing, or maintaining any structure, equipment or facility for any service as defined herein regardless of the technology used. Upon such acceptance, the ROW-user shall be bound to the terms and conditions set out herein and as amended from time to time provided no substantive or material rights are altered or restricted by such amendments. The granting and acceptance of a franchise or license notwithstanding, any and all ROW-users are subject to the City's Codes including but not limited to this Article and its zoning ordinances, state and federal law, and holding of a franchise or license shall not excuse such compliance.

26-105—26-110. - Reserved.

#### DIVISION 2. - ADMINISTRATION AND AUTHORITY

Sec. 26-111. - City Engineer.

The City Engineer is the principal city official responsible for administration of the right-of-way registration and permitting processes. The City Engineer may delegate any and all duties under this article consistent with the Charter.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-112. - Public Works Committee.

The Public Works Committee may hear appeals as provided under this article and make recommendations to the City Council for actions on appeals.

(Ord. No. 6869, § 1, 12-17-2009)

Secs. 26-113—26-120. - Reserved.

#### DIVISION 3. - REGISTRATION

Sec. 26-121. - Row-user registration.

- A. All existing ROW-users must register within thirty (30) days of the effective date of this article.

- B. Any person who is not a ROW-user prior to the effective date of this article and who wishes to become a ROW-user must first register with the City before commencing any use of the right-of-way.
- C. No ROW-user shall be authorized to use the right-of-way in any capacity or manner without registering with the city and obtaining any necessary right-of-way permit or temporary traffic control permit from the City Engineer.
- D. 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 including all costs of enforcement to obtain such information which includes, but is not limited to, attorneys' fees.
- E. No ROW-user may attach to a City owned facility, structure or use equipment housing facilities without an attachment agreement approved by City Council. An attachment agreement approved by City Council may be used for all attachments within the City on City owned property provided the terms and conditions apply to all locations individually including any charge for use of the property to which the ROW-user is attaching.
- F. Any ROW-user who has failed to register prior to the passage of this Section and who continues to fail to register in accordance with Subsection A of this Section after passage shall be in deemed in noncompliance of this Article and may be subjected to a requirement for posting higher security in the form of bonds or insurance as well as any other remedy available to City including ouster.
- H. The City reserves the right to grant at any time such additional agreements, permits or other rights to use the right-of-way for any purpose and to any other person including itself, as it deems appropriate, subject to all valid and applicable laws. The granting of a permit shall in no manner create a property interest in any ROW or public lands. All agreements to use the ROW shall be deemed to incorporate the terms and conditions of this Article.
- I. Unless otherwise provided, use or installation of any utility facilities or other structure in or over non-right-of-way public property or public lands shall be permitted without a lease agreement or separate written agreement that is negotiated and approved by the City Council and on such reasonable terms, including compensation, as the City may require.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-122. - Registration changes.

A ROW-user shall report any changes in its registration within sixty (60) days of the change or upon application for a right-of-way permit or temporary traffic control permit, whichever occurs first. Failure to report any change shall be a violation of this article.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-123. - Registration form.

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

- A. Identity and legal status of the ROW-user.
- B. Name, address, telephone number, fax number and email address of each officer, agent, or employee responsible for the accuracy of the registration statement. Each officer, agent or employee shall be familiar with the local facilities of the ROW-user, shall be the person(s) to whom notices shall be sent, and shall be responsible for facilitating all necessary communications.
- C. Name, address, telephone number, fax number and email address of the local representative of the ROW-user who shall be available at all times to act on behalf of the ROW-user 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 FCC or the Commission.
- E. Description of the ROW-user's intended or proposed use of the right-of-way.
- F. Information which identifies reseller service providers as provided hereinafter.
- G. A list of authorized agents, contractors or subcontractors eligible to obtain permits on behalf of the ROW-user. 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 ROW-user.
- H. Information sufficient to determine the amount of net assets of the ROW-user.
- I. Proposed means of security to be provided to the City which is consistent with, or functionally equivalent to, the same type of security provided by law or by similar development owners within the State of Missouri and the City of Lee's Summit which may include a bond, cash deposit or a deed granting the City rights to property on which the City may execute for payment of any costs to abate any nuisance or pay for costs to remove infrastructure or restore the right-of-way to the same pre-use condition.
- J. Proof of permission to use any structure in the right-of-way not owned by the applicant including an Attachment agreement setting out the terms and conditions of use.
- K. Documentation to the satisfaction of the City Engineer that applicable Design Standards for the right-of-way installation use and maintenance of all structures, facilities and equipment will be met or for those users not the applicant, shall not be interfered with. If City owned structures are to be replaced that the City's preferred vendor, specifications and design standards are being met and no City use, current or planned, will be interfered with.
- L. Proof through engineering studies or similar professionally prepared and sealed document indicating that whatever structure or facility a ROW-user intends to use is sufficient structurally and will support what is to be attached under whatever circumstances identified by the City Engineer related to structural integrity such as wind and ice loading.
- M. Proof to the satisfaction of the City Engineer that the ROW-user (or its tenant) is authorized to provide the service the excavation, structure, facility or equipment or has a tenant that is authorized to do so.
- N. Proof to the satisfaction of the City Engineer and Development Services Director that use of the ROW is consistent and in compliance with the zoning regulations applicable to the ROW and the abutting property.
- O. Information sufficient to the satisfaction of the City Attorney to determine if the ROW-user is subject under applicable law to franchising, service regulation, payment of compensation for the use of the ROW, taxation or other requirements of the City.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-124. - Transferability.

Except as provided in this article, or as otherwise required by law, no registration may be transferred without the written consent of the City. Any person not named on a valid registration, including any affiliates or successors in interest to a registered ROW-user, must register in accordance with this article or receive written authorization to transfer the registration. Written authorization to transfer a registration shall be granted according to the same standards for a registration. The City shall not unreasonably withhold its consent to transfer as provided herein. In the event the City shall grant consent to a transfer, the transferee shall be subject to the terms and conditions of this Chapter.

(Ord. No. 6869, § 1, 12-17-2009)

Secs. 26-125—26-130. - Reserved.

#### DIVISION 4. - PERMITS

Sec. 26-131. - Permits required.

- A. Except as otherwise provided herein, no person, service provider, or row-user shall perform excavation or work, as those terms are defined in Section 26-101 hereof, in the right-of-way without a right-of-way permit.
- B. No adjoining property owner shall construct, maintain, or permit in or on the portion of the public right-of-way to which such land is adjacent, any fixed structure, material or object without having obtained the appropriate right-of-way permit.
- C. The application for a right-of-way permit shall be submitted to the City Engineer either by the registered ROW-user or an authorized agent of the ROW-user who will do the work and/or excavation in the right-of-way.
- D. If the City Engineer determines that the applicant has satisfied the requirements of this article, the City Engineer shall issue a right-of-way permit.
- E. Any person who is found to be working or excavating in the public right-of-way without a right-of-way permit will be directed to stop the excavation or work until a right-of-way permit is acquired and available at the excavation or work site.
- F. Except as otherwise provided herein, no person, service provider, or ROW-user shall narrow, close, alter, affect, or otherwise impact the normal flow of vehicular traffic or pedestrian traffic in the right-of-way without a temporary traffic control permit.
- G. The application for a temporary traffic control permit shall be submitted to the City Engineer either by the registered ROW-user or an authorized agent of the ROW-user who will do the temporary traffic control.
- H. If the City Engineer determines that the applicant has satisfied the requirements of this article, the City Engineer shall issue a temporary traffic control permit.
- I. Any person who is found narrowing, closing, altering, affecting or otherwise impacting the normal flow of vehicular traffic or pedestrian traffic in the right-of-way without a temporary traffic control permit will be directed to stop the cause for temporary traffic control, remove all temporary traffic control devices, restore normal traffic conditions and leave the site until a temporary traffic control permit is acquired and available at the site.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-132. - Permit form.

- A. The right-of-way permit application shall be on the form provided by the City Engineer and at a minimum shall include the following:
  1. Compliance with all of the necessary registration requirements of this article, including:
    - a. If the applicant is a person other than the registered ROW-user, proof that the applicant is an agent of the registered ROW-user, authorized to do the excavation or work in the permit request; or
    - b. If the applicant is not performing excavation or work related to facilities in the right-of-way, proof that they are the adjoining property owner or an agent of the adjoining property owner, authorized to do the excavation or work in the permit request.

2. Attachments, including engineering drawings, construction plans, profiles, specifications, and as-builts, in the form maintained by the ROW-user, showing the location and area of the proposed project, that the structures or facilities planned to be used meet generally accepted engineering standards for support and soundness for the use intended including wind and ice loading, and the location of all existing and proposed facilities at such location and certification that the proposed project complies with the Design Standards on file in the Office of the City Engineer; which documents shall be confidential and not disclosed to third parties to the extent permitted by law;
  3. A temporary traffic control permit, if applicable;
  4. An excavation or work plan including a schedule indicating the extent and duration of such plan, including a proposed start and end date;
  5. All applicable right-of-way permit fees as provided in this article;
  6. Payment of all money due to the City for right-of-way permit fees, for prior excavation or work costs, for any loss, damage or expense suffered by the City because of the applicant's prior excavation or work in the right-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; ~~and~~,
  7. Performance and maintenance bonds as provided in this article; and
  8. Attachments, studies or other documents that establish to the City Engineer's satisfaction that use of the right-of-way will not interfere in any manner with the City's use of communication devices or with other users of the right-of-way for communication services.
  9. Documentation that the applicant (or its proposed tenant) is authorized, and obtained all necessary government approvals, to provide service using the structure or excavation being proposed.
- B. The temporary traffic control permit application shall be on the form provided by the City Engineer and at a minimum shall include the following:
1. Compliance with all of the necessary registration requirements of this article, including, if the applicant is a person other than the registered ROW-user, proof that the applicant is an agent of the registered ROW-user authorized to do temporary traffic control;
  2. Attachments, including engineering drawings, construction plans, traffic control plans, and specifications, in a form acceptable to the City, showing the location and area of the proposed project and the location of all existing and proposed traffic control at such location;
  3. A right-of-way permit, if applicable;
  4. A schedule indicating the extent and duration of such plan, including a proposed start and end date;
  5. All applicable temporary traffic control permit fees as provided in this article;
  6. Payment of all money due to the City for temporary traffic control permit fees, for prior temporary traffic control costs, for any loss, damage or expense suffered by the City because of the applicant's prior temporary traffic control in the right-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.
- C. The right-of-way permits issued under this Article shall only be good for the area specified in the application and the permit itself. No work may take place outside the permit boundaries without a separate right-of-way permit.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-133. - Permit fees.

- A. The right-of-way permit fee and temporary traffic control permit fee shall be recommended by the City Engineer, approved by the City Council and listed in the Schedule of Fees and Charges maintained in the City Clerk's office.
- B. Right-of-way permit fees and temporary traffic control permit fees shall be:
  - 1. Based on the actual, substantiated costs reasonably incurred by the City in managing the right-of-way;
  - 2. Based on an allocation among all users of the right-of-way, including the City, which shall reflect the proportionate costs imposed on the City by each of the various types of uses of the right-of-way;
  - 3. Imposed on a competitively neutral and nondiscriminatory basis; ~~and~~
  - 4. Imposed in a manner so that aboveground uses of the right-of-way do not bear costs incurred by the City to regulate underground uses of the right-of-way; and
  - 5. Shall not be offset or construed to replace any business license or other tax the ROW-user is subject to under applicable ordinance, Charter Provision, Code or state law.
- C. In determining the actual costs reasonably incurred by the City in managing the right-of-way, the City may include the following:
  - 1. The cost of issuing, processing and verifying right-of-way permit and temporary traffic control permit applications;
  - 2. The cost of inspecting job sites, traffic control installations and conditions, and restoration projects;
  - 3. The cost of protecting or moving ROW-user construction equipment and materials after reasonable notification to the ROW-user;
  - 4. The cost of determining the adequacy of public right-of-way restoration;
  - 5. The cost of restoring temporary traffic control, excavation or work inadequately performed after providing notice and the opportunity to correct the temporary traffic control, excavation or work, including re-inspection fees; ~~and~~
  - 6. The cost of revoking right-of-way permits or temporary traffic control permits.
- D. Fees paid for a right-of-way permit or a temporary traffic control permit, which is subsequently revoked by the City Engineer, are not refundable.
- E. The right-of-way permit fee shall be imposed based on a per City block basis, but not to exceed continuous linear work of more than six hundred sixty (660) feet in length.
- F. The temporary traffic control permit fee shall be imposed based on a per City block, but not to exceed six hundred sixty (660) feet in length, per week basis or per intersection per week basis, whichever is greater.
- G. In the event the scope of the project is revised during the course of the excavation or work, the City Engineer may recalculate the fee based on the actual size of the excavation or work, and may require an additional right-of-way permit fee.
- H. In the event the scope of the project changes such that temporary traffic control is revised, the City Engineer may recalculate the fee based on the actual impact, and may require an additional temporary traffic control permit fee but in no event shall the City grant credits or refunds based on an overpayment of the permit fee.
- I. The City Engineer may establish, with the approval of the City Council, a system providing for payment of right-of-way permit fees by ROW-users in bulk.

Sec. 26-134. - Permit conditions.

- A. Right-of-way permit conditions include the following:
1. The City Engineer may impose reasonable conditions upon the issuance of a right-of-way permit and the performance of the ROW-user in order to protect the public health, safety and welfare, to ensure the structural integrity of the right-of-way, to protect the property and safety of other users of the right-of-way, and to minimize the disruption and inconvenience to the general public. Such permits shall be deemed to be subject to, and anyone obtaining such a permit shall be deemed to have consented to, the following conditions:
    - a. Compliance with MissouriOne Call statutes, regulations and policies;
    - b. Compliance with the City's Code of Ordinances including its Right-of-way Ordinances, and Unified Development Code, zoning and subdivision regulations, and any restrictions contained in any documents relating to the acquisition nor limit of use of the area the permit is being obtained for;
    - c. Agreement to pay just compensation charged in an Attachment agreement or to pay just compensation should the City charge for the use of its rights-of-way in the future;
    - d. Agreement to indemnify and hold the City harmless from the ROW-user's use of the right-of-way which shall include defense and payment of money for attorneys' fees and all costs provided such condition provides that it is not to be deemed a waiver of sovereign or other immunities or defenses available to the City, its officials, employees and agents;
    - e. Compliance with all Design Standards of the City and on file with the City Engineer;
    - f. At all times any structure or facility used to support any ROW-user's equipment shall be structurally sound and not subject to failure for defects in design, maintenance, wear and tear, or weather conditions as identified by the City Engineer; and
    - g. All notices may be provided to the address of record for the facility with the Public Service Commission, the Jackson County Assessor, the registered agent as shown at the Secretary of State of Missouri, or any entity granting the ROW-user permission to operate within the State of Missouri.
  2. When a right-of-way permit is requested for purposes of installing additional facilities and the performance and maintenance bonds for additional facilities is reasonably determined to be insufficient, the posting of an additional or larger performance or maintenance bond for the additional facilities may be required by the City Engineer, except as otherwise provided in Division 10 hereof.
  3. A ROW-user shall perform all excavation or work in full accord with any and all applicable engineering codes and Design Standards adopted or approved by the City and in accordance with applicable statutes of the State of Missouri, 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 excavation or work in conformance with all applicable codes and established rules and regulations and shall be responsible for all excavation or work done in the right-of-way pursuant to its right-of-way permit, regardless of by whom the excavation or work is done.
  4. Except in cases of an emergency or with approval of the City Engineer, no right-of-way excavation or work may be done in violation of a stop work order issued by the City Engineer if in his or her determination conditions are unreasonable for such excavation or work based on standard engineering and construction practices.
  5. A ROW-user shall not disrupt a right-of-way such that the natural free and clear passage of water through the gutters or other waterways is interfered with. No person may park private vehicles within or next to the work or excavation area, except for such areas which may be designated and marked as safe areas for vehicle parking in accordance with an approved temporary traffic control permit.

6. If excavation or work is being done for the ROW-user by another person, a subcontractor or otherwise, the ROW-user shall be responsible for ensuring that the excavation or work of said person is performed consistent with its right-of-way permit and applicable law and shall be responsible for promptly correcting acts or omissions by said person.
7. The City Engineer may establish in the right-of-way permit limitations on the amount of excavation or work which may occur at one (1) time and the amount of right-of-way which may be obstructed during construction.
8. The ROW-user shall, in the performance of any excavation or work required for the installation, repair, maintenance, relocation and/or removal of any of its facilities, limit all excavation or work to that necessary for efficient operation.
9. The ROW-user shall not permit excavation or work to remain open longer than is necessary to complete the repair or installation, and in no event may excavation or work remain open beyond the expiration of the right-of-way permit or any approved extension.
10. The ROW-user shall perform excavation or work on the right-of-way at such times that will allow the least interference with the peace and quiet of the neighborhood, and shall not work between the hours of 10:00 p.m. and 7:00 a.m.
11. The City Engineer may limit the number of conduits that may be installed by each ROW-user based on the reasonable needs to ensure that no one ROW-user may unreasonably consume a disproportionate amount of the available right-of-way to deter competition.

B. Restrictions on poles, facilities, similar structures and certain equipment in the right-of-way in addition to Design Standards on file:

When a pole, other facility or supporting equipment is not a part of a designed or constructed portion of an electrical, natural gas or communication distribution system made up of mostly wires, pipes and poles which serve the community and which are designed to be physically connected to each other, the following restrictions shall apply to pole and facility placement unless a different location is approved by the Director of Public Works upon a showing of the (a) location being necessary to the provision of services, (b) that the ability to use the right-of-way by others including abutting landowners, utility users, the City, pedestrians and vehicles will not be impeded nor thwarted from the original purpose of the right-of-way, and (c) that the public and adjacent property safety may be maintained.

1. To the greatest extent possible a pole shall be located adjacent to what would be a side yard area of a property outside of any driveway or sight triangle or in the area of the front yard of any structure drawing parallel lines from the edges of the structure to the right-of-way line;
2. The placement of a pole or similar facility and supporting equipment may not occupy the entire available right-of-way area between the curb and edge of the sidewalk closest to the curb;
3. The pedestrian and vehicular paths may not be blocked, impeded or rendered out of compliance with any state, federal or local law dealing with pedestrian or vehicular passage or use such as, but not limited to, Americans with Disabilities Act, 42 U.S.C. Section 12101 et seq;
4. A pole may not be placed closer to any structure on abutting property than its natural fall path in the event it structurally fails or is struck by a vehicle, but in no event less than a 1:1 ratio for single material/piece construction such as a wood pole;
5. A pole may not block the view of or from the primary structure on any lot, parcel or tract; an
6. A pole may not be taller than ten (10) feet above (i) the top of the tree canopy in the same city block where the pole is to be installed or (ii) a pole that is part of a distribution system within one block of the proposed placement;

7. To demonstrate at any time reasonably requested by the City Engineer that the structure or facility being used to support any equipment or that is remaining in the right-of-way is structurally sound and does not present a threat to the public, other right-of-way users or abutting or adjoining property and land owner safety or to property that is lawfully in place in the immediate vicinity of the structure or facility; and
8. Security in a form acceptable to the City Attorney's Office shall be deposited with the City Finance Director for the purpose of ensuring that should a pole's placement, existence, code violation or structural failure cause harm or injury of any kind to a user of the right-of-way or abutting property, or property located in the right-of-way or other property not located in the right-of-way, that any damages or costs may be recovered. Such security may include but not be limited to an agreement for indemnification and hold harmless of the City and abutting landowner and a pledge of assets to support such agreement, a pledge of assets, a lien on property owned by the pole provider or user that may be enforced, sufficient assets of at least 25 Million Dollars that are not pledged to another, insurance renewable annually naming the City as an additional insured, and such insurer shall owe the City a duty of defense, a bond or similar document so that this security functions in the same manner as other security for operations and structure issues of similar development in the event of harm, failure or code violations.

A violation of any of the restrictions set out in this subsection in the actual placement, or subsequent to placement, of the equipment, facility or pole may result in the permit for occupancy of or use of the right-of-way being revoked and the facility or pole ordered removed at applicant's sole cost by order of the City Engineer. All costs of the City in enforcing this Article including but not limited to revocation shall be paid by applicant including attorney's fees upon written demand by the City Manager, to the name and address last on file at the City. If the applicant for the placement of, or any transferee of ownership interests in, the pole, equipment or facility does not agree with the decision of the City Engineer, such applicant may seek review or an appeal in the same manner as provided for in Division 9 of this Article.

C. Temporary traffic control permit conditions include the following:

1. The City Engineer may impose reasonable conditions upon the issuance of a temporary traffic control permit and the activities of the ROW-user in order to protect the public health, safety and welfare, to ensure the structural integrity of the right-of-way, to protect the property and safety of other users of the right-of-way, and to minimize the disruption and inconvenience to the traveling public.
2. A ROW-user shall comply with all laws, ordinances, codes, regulations and all applicable engineering codes adopted or approved by the City. A ROW-user shall be responsible for all traffic control in the right-of-way pursuant to its Temporary Traffic Control Permit, regardless of who performs the temporary traffic control.
3. The City Engineer may order the cessation of temporary traffic control approved by such permit if in the opinion of the City Engineer, based on standard engineering and construction practice, conditions are unreasonable for the continuation of such temporary traffic control. Except in cases of an emergency or with the approval of the City Engineer, there shall be no interruption of normal traffic in violation of a stop work order issued by the City Engineer.
4. No person may park private vehicles within or next to the temporary traffic control area, except for such areas which may be designated and marked as safe areas for vehicle parking in accordance with an approved plan and areas where parking is legally permitted under normal conditions.
5. If temporary traffic control is being done for the ROW-user by a third person, such as a subcontractor, the ROW-user shall be responsible for ensuring that the temporary traffic control

of said third person is performed consistent with the temporary traffic control permit and applicable law and the permit holder shall be responsible for promptly correcting any wrongful or erroneous acts or omissions by said third person.

6. The City Engineer may establish in the temporary traffic control permit limitations the extent to which of traffic may be impacted at any one (1) time.
7. The ROW-user shall limit all temporary traffic control to that which is approved through the permit.
8. The ROW-user shall not impact normal traffic flow longer than is necessary to complete the project, and in no event may the impact to traffic exceed the expiration of the temporary traffic control permit or any approved extension.
9. Non-emergency temporary traffic control on arterial and collector streets may not be performed before 9:00 a.m. and after 4:00 p.m. Monday thru Friday, nor anytime on Saturday, Sunday or public holidays observed by the City of Lee's Summit. The City Engineer may grant exception to this condition in the temporary traffic control permit.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-135. - Permit non-transferable.

Issued right-of-way permits and temporary traffic control permits are not transferable without prior written consent of the City Engineer. The City Engineer shall not unreasonably withhold consent for transfer of a right-of-way permit or a temporary traffic control permit.

Sec. 26-136. - Permit validity.

- A. A right-of-way permit and a temporary traffic control permit shall only be valid for the area specified within such permit.
  1. No ROW-user may cause any excavation or work to be done outside the area specified in the right-of-way permit, except as provided herein.
  2. No ROW-user may cause temporary traffic control to be done outside the area specified in the temporary traffic control permit, except as provided herein.
  3. Any ROW-user who determines that an area greater than that which is specified in the right-of-way permit must be excavated must do the following prior to the commencement of excavation or work in that greater area:
    - a. Make application for a right-of-way permit amendment describing the area in which the excavation or work will occur; and
    - b. Pay any additional fees required thereby.
  4. Any ROW-user who determines that temporary traffic control is necessary for an area greater than that which is specified in the temporary traffic control permit must do the following prior to the commencement of temporary traffic control in that greater area:
    - a. Make application for a temporary traffic control permit amendment describing the area in which the temporary traffic control will occur; and
    - b. Pay all additional fees required thereby.
- B. A right-of-way permit and a temporary traffic control permit shall be valid for sixty (60) days.
  1. No ROW-user may commence excavation or work before the right-of-way permit start date or, except as provided herein, may continue excavation or work after the end date. If a ROW-user does not complete the excavation or work by the right-of-way permit end date, the ROW-user



must apply for and receive a new right-of-way permit or a right-of-way permit extension for additional time.

2. No ROW-user may perform temporary traffic control before the temporary traffic control permit start date or, except as provided herein, continue temporary traffic control after the end date specified in the permit. If a ROW-user requires temporary traffic control beyond the temporary traffic control permit end date, the ROW-user must apply for and receive a new temporary traffic control permit or a temporary traffic control permit extension for additional time.
  3. One extension of up to sixty (60) days may be granted for a right-of-way permit or a temporary traffic control permit upon request and may be granted without payment by the ROW-user of additional right-of-way permit or temporary traffic control permit fees. To qualify for an extension, a supplementary application must be submitted to the City prior to the permit end date.
- C. A right-of-way permit and a temporary traffic control permit will only be valid for those persons indicated on the approved permit and may only be transferred with prior written consent of the City Engineer.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-137. - Inspection.

- A. The City Engineer may choose to inspect the ongoing permitted temporary traffic control, excavation, or work in the right-of-way at any time to ensure that all requirements of the approved right-of-way permit or temporary traffic control permit are being met by the ROW-user.
- B. At the time of any inspection, the City Engineer may order the immediate cessation, through a stop work order, of any temporary traffic control, excavation or work which poses a serious threat to the life, health, safety, or wellbeing of the public.
  1. The City Engineer may issue a citation to the ROW-user for any temporary traffic control, excavation or work which does not conform to the applicable standards, conditions, Code or terms of the right-of-way permit or temporary traffic control permit.
  2. An officer of the Police Department may also issue a citation to the ROW-user for any temporary traffic control which does not conform to the applicable standards, conditions, Code or terms of the temporary traffic control permit, as determined by the City Engineer.
  3. The citation shall include notice that failure to correct the violation within the time specified in the citation will be cause for revocation of the applicable right-of-way permit or temporary traffic control permit.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-138. - Permit displayed.

Issued right-of-way permits and temporary traffic control permits shall be available by the ROW-user at all times at the indicated project site and shall be available for inspection by the City Engineer, other City employees and the public.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-139. - Completed work.

The ROW-user shall notify the office of the City Engineer upon completion of the temporary traffic control, excavation or work authorized by the applicable right-of-way permit or temporary traffic control permit.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-140. - Permit denial.

The City Engineer may deny an application for a right-of-way permit or a temporary traffic control permit if:

- A. The ROW-user, or any persons acting on the behalf of the ROW-user, fails to provide all the necessary information requested by the City for managing the public right-of-way.
- B. The ROW-user, or any persons acting on the behalf of the ROW-user, including contractors or subcontractors, has a history of noncompliance or permitting noncompliance within the City. For purposes of this Section, "history of noncompliance, or permitting noncompliance, within the city", shall mean the ROW-user, or any persons acting on the behalf of the ROW-user, including contractors or subcontractors, has failed to return the public right-of-way to its previous condition under a previous right-of-way permit or temporary traffic control permit.
- C. The City has provided the ROW-user with a reasonable, competitively neutral, and nondiscriminatory justification for requiring an alternative method for performing the temporary traffic control, excavation or work identified in the respective right-of-way permit or temporary traffic control permit application or a reasonable alternative route that will result in neither additional installation expense up to ten (10) percent to the ROW-user nor a declination of service quality.
- D. The City determines that the denial is necessary to protect the public health and safety, provided that the authority of the City does not extend to those items under the jurisdiction of the public service commission, such denial shall not interfere with a ROW-user's right of eminent domain of private property, and such denials shall only be imposed on a competitively neutral and nondiscriminatory basis. In determining whether denial of a right-of-way permit or a temporary traffic control permit application is necessary to protect the public health and safety, the City Engineer may consider one (1) or more of the following factors:
  1. The extent to which the right-of-way space where the right-of-way permit or temporary traffic control permit is sought is available, including the consideration of competing demands for the particular space in the right-of-way as well as capacity for planned future uses, or other general conditions of the right-of-way.
  2. The applicability of any ordinance, Code provision, or other regulations that affect the location of facilities and public travel in the right-of-way.
  3. The degree of disruption or impact to surrounding communities and businesses that will result from the multiple excavations and/or use of that part of the right-of-way, including whether the issuance of a right-of-way permit or a temporary traffic control permit for the particular dates and/or times requested would cause a conflict or interfere with an exhibition, celebration, festival, or any other event.
- E. The area is environmentally sensitive as defined by state statute or federal law or is a historic district defined by local ordinance, or contains restrictions on use related to environmental concerns such as, but not limited to, preservation of wetlands, and the applicant has not shown how it will comply with any restrictions or mitigate the presence of the structure, pole, equipment or excavation so as to preserve the environment or historic character of the area, in accordance with local, state and federal law.

- F. An inability of the ROW-user to establish the financial capabilities and guaranteed commitment to provide or have access to the necessary investments or monetary assets to erect, maintain, and operate the proposed facilities.
- G. Compliance of the planned use or facilities with City Codes, ordinances or restrictions, or the applicability of same.
- H. Any other consideration based on the interest of the public safety and welfare or the property rights of itself or others.
- I. The proposed equipment or facility will incommode the public, diminish the rights of use of abutting landowners or impede or interfere with the use of other ROW-users, the travelling public or the City.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-141. - Emergency work.

A right-of-way permit and temporary traffic control permit are required for emergency situations that are not the result of a declared emergency or disaster by the state, federal or local agencies empowered to enter such declarations. If, however, due to an such emergency that is not the result of a declaration of disaster or emergency, and it is necessary for the ROW-user to immediately perform temporary traffic control, excavation or work in the right-of-way, and it is impractical for the ROW-user to first get a right-of-way permit or a temporary traffic control permit, the temporary traffic control, excavation or work may be performed, and the required permit shall be obtained as soon as reasonably possible, but not later than five (5) business days after the temporary traffic control, excavation or work is begun. The ROW-user shall notify the City's Public Works Department if emergency temporary traffic control, excavation or work is necessary.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-142. - Permit exemptions.

- A. ROW-users performing routine maintenance which does not require excavation or work in the right-of-way, which does not disrupt traffic, and which does not require more than two (2) hours to complete, shall be exempt from the requirement of a right-of-way permit provided that at a minimum two (2) hours' notice is proved to the City during normal business hours.
- B. A ROW-user shall not be required to obtain a right-of-way permit or a temporary traffic control permit for temporary traffic control, excavation or work which is necessary because of an emergency, and that emergency is declared by a proper governmental authority with jurisdiction over the emergency to be a "disaster" or "state of emergency" under federal, state or local law until thirty (30) days following the effective date of the emergency declaration. In the event that temporary traffic control, excavation or work is necessary during a disaster or state of emergency, the ROW-user performing temporary traffic control, excavation or work in the right-of-way shall notify the Public Works Department of the nature and scope of the temporary traffic control, excavation or work to be performed in the right-of-way, along with the location of the temporary traffic control, excavation or work, and the estimated time of the temporary traffic control, excavation or work.

(Ord. No. 6869, § 1, 12-17-2009)

Secs. 26-143—26-150. - Reserved.

DIVISION 5. - RIGHT-OF-WAY USE AND FACILITY LOCATIONS

Sec. 26-151. - Use of right-of-way—Generally.

- A. The ROW-user shall coordinate the placement of facilities in a manner that minimizes adverse impact on any public improvement, the use of the ROW by others including abutting landowners and travelers, 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 improvement as defined in the City's Design and Construction Manual.
- B. All facilities shall be located and laid so as not to disrupt or interfere with any pipes, drains, sewers, irrigation systems or other structures or public improvements already installed and in compliance with the Design Standards. In addition, the ROW-user shall, in doing excavation or work in connection with its facilities, avoid disrupting or interfering with the lawful use of the streets, alleys, sidewalks or other public lands of the City except as may be specifically authorized by a temporary traffic control permit.
- C. All facilities of the ROW-user shall be placed so that they do not interfere with the use of right-of-way and public lands. The City, through its City Engineer, shall have the right to consult and review the location, design and nature of the facility prior to installation.
- D. The ROW-user shall not interfere with the facilities and structures of the 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 relocation shall be borne in accordance with this article and the Commission approved applicable tariff governing that ROW-user.
- E. 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 City, the Uniform Development Code, the City's Design and Construction Manual, applicable statutes of the State of Missouri, and rules and regulations of the FCC, the Commission, or any other local, state or federal agency having jurisdiction over the ROW-user. Height, spacing, size or other physical restrictions contained in any other law which are more restrictive than set out herein shall control including the placement of vaults or other facilities or equipment. If such other restriction is believed by the ROW-user to have the effect of prohibiting competition or provision of services, it shall have the right of appeal to the Public Works Committee and the opportunity to establish to the satisfaction of said Committee of its claim of the prohibition of competition or services.
- F. 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 right-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.
- G. Unless otherwise agreed to by the City and the ROW-user by license, agreement or permit, the City shall not be liable for any damage to or loss of any of the ROW-users' facilities within the right-of-way unless the damage is the result of the sole negligence, or willful, intentional, or malicious acts or omissions of the City.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-152. - Sale, transfer, lease or sublease of facilities.

- A. In the event that the ROW-user shall sell, lease, assign, sublet or dispose of its facilities, or any portion thereof, that are located in the right-of-way, or any right, title or interest in the same, or transfer any rights granted by the City to any person either by forced or involuntary sale, or by ordinary sale, consolidation or otherwise, the ROW-user shall notify the City of the same. In such case, the buyer, transferee, lessee or assignee shall be subject to all provisions of this article, including the requirement to register. This provision shall not apply to the sale of property or

equipment in the normal course of business or to the sale or lease of facilities to reseller ROW-users. No notice to the City shall be required for a transfer in trust, mortgage, or other similar instrument, in whole or in part, to secure indebtedness, or for a pro forma transfer to a corporation, partnership, or other entity controlling, controlled by or under common control with the ROW-user.

- B. A ROW-user may permit and has the authority to sell, sublet, or lease any use of excess capacity and sell services for resale to any reseller service provider providing service within the City, including the ROW-user's subsidiary or affiliate. The reseller service provider shall first register 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, the FCC or the Commission. The ROW-user shall also provide the City, on at least a semi-annual basis, the identity of entities with which the ROW-user has entered into an interconnection and/or resale agreement within the City. This notice will not relieve the reseller service provider from its own obligation to register and obtain any necessary franchise with the City. Nothing in this article shall prevent a facility based service provider from providing to any reseller service provider the use of the facility based service provider's facilities in the right-of-way as authorized by federal or state law.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-153. - Facility corridors.

The City Engineer may designate specific utility corridors by assigning specific locations for each type of facility that is currently, or that the City Engineer expects will someday be, located within the right-of-way. All right-of-way permits issued by the City Engineer shall indicate the proper location for the ROW-user's facilities. Specific locations shall be specified in the City's Design and Construction Manual and can include reservation of space for any planned or future anticipated uses of the City, in its sole discretion.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-154. - Conduits.

If, in the preparation and planning of a public improvement, the City Engineer deems it appropriate for a conduit to be constructed by the City along, across or under the right-of-way, the City Engineer 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 right-of-way concurrently, the City Engineer may allow the ROW-user to use such conduit if the ROW-user agrees to contribute to the expense of such conduit.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-155. - Coordination.

- A. Applicants may apply jointly for right-of-way permits to excavate the right-of-way at the same time and place. Applicants who apply jointly for a right-of-way permit may share in the payment of the right-of-way permit fee. Applicants must agree among themselves as to the portion each shall pay.
- B. The ROW-user shall participate in any joint planning, construction and advance notification of excavation or work, including coordination and consolidation of excavation or work as required by the City Engineer. 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 right-of-way.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-156. - Facility relocation.

- A. A ROW-user shall promptly relocate or adjust any facilities located in the right-of-way as directed by the City for a public improvement. The ROW-user shall promptly remove, relocate or adjust any facilities located in the right-of-way as directed by the City which create a threat to public safety. 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. The ROW-user shall proceed with the removal, relocation, or adjustment of facilities with due diligence upon notice by the City to begin removal, relocation, or adjustment.
- B. The ROW-user shall promptly relocate or adjust any facilities located in private easements for the construction of a public improvement at the cost of the row-user if:
  - 1. The City has condemned the private easement or the City has purchased from the ROW-user the portion of the private easement necessary for the public improvement; and
  - 2. The City has compensated the ROW-user, through the condemnation, purchase process, or other means of compensation, for the cost of relocation of the ROW-user's facilities.
- C. As soon as City prepared working drawings are available for public improvements that will require the ROW-user to relocate or adjust its facilities, the City shall provide the ROW-user with written notice of required relocations or adjustments, the anticipated bid letting date of the public improvement, and notice of the deadline for completion of the relocations or adjustments. The ROW-user shall respond with any conflicts and a proposed construction schedule within thirty (30) days, subject to approval by the City Engineer.
- D. Following delivery of final design plans for such public improvements, the ROW-user shall relocate or adjust its facilities and/or equipment in accordance with the schedule set by the City Engineer, provided the project is not delayed by adverse weather conditions and other factors beyond the control of the ROW-user. The ROW-user shall certify to the City, in writing, that its facilities have been relocated or adjusted in accordance with project plans provided by the City so as to allow the City, and its contractors, to proceed with the public improvement.
- E. If any facilities and/or equipment are not relocated in accordance with this section, the City or its contractors may relocate the facilities. The ROW-user and its surety shall be liable to the City for any and all costs incurred by the City in relocating said facilities including attorneys' fees and costs of litigation to collect such costs of relocation. The City shall not be liable to the ROW-user for any damage to its facilities or equipment or for any loss of business caused or experienced as a result of the City or its contractors relocating facilities or equipment.
- F. In the event the ROW-user is required to move its facilities and/or equipment in accordance with this section, any ordinary right-of-way permit fee shall be waived.
- G. 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 or equipment relocation is minimized and, when required and feasible, relocations may be completed prior to receipt of bids by the City for a public improvement.
- H. Failure to comply with the relocation schedule set by the City Engineer will subject the ROW-user to penalties as provided in Division 11 hereof and any other remedy available to the City including ouster.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-157. - Unused and abandoned facilities.

- A. A ROW-user owning abandoned facilities in the right-of-way must notify the City of its intent to abandon the facilities and must either:
  - 1. Remove its facilities and replace or restore any damage or disturbance caused by the removal at its own expense. The City Engineer may allow underground facilities, or portions thereof, to remain in place if the City Engineer 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;

2. Provide information satisfactory to the City that the ROW-user's obligations for its facilities in the right-of-way have been lawfully assumed by another authorized ROW-user; or
  3. Submit to the City a proposal and instruments for transferring ownership of its facilities to the City. If the ROW-user proceeds under this subsection, 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, except as otherwise provided herein.
  4. Permit the City to satisfy the costs of removing such facilities, including any other structure such as a pole or equipment, and restoring the right-of-way to as good a condition as existed at the time of installation or construction of such facilities out of a security posted at the time of abandonment unless security was posted under Section 26-134.B
- B. If the City discovers abandoned facilities in its right-of-way and the owner of the abandoned facilities fails to respond within thirty (30) days to a written notice sent by the City stating that the City considers the facilities abandoned, or the City is unable to locate the owner of the abandoned facilities after reasonable attempts, the City shall deem the facilities to be abandoned, 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,
1. Abating the nuisance;
  2. Taking possession and ownership of the facility and restoring it to a useable function; ~~or~~
  3. Requiring the removal of the facility by the ROW-user; or
  4. Removing the abandoned facilities and recovering its costs in any manner permitted by law including using any security posted at the time of construction or installation or any time thereafter.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-158. - Vacation of right-of-way.

If the City vacates a right-of-way which contains the facilities of a ROW-user,

- A. The City, at its sole discretion, may reserve a utility easement or other easements necessary in the City's name to allow the existing facilities to remain.
- B. If the vacation requires the relocation of facilities, then:
  1. If vacation proceedings are initiated by the ROW-user, then the ROW-user must pay the relocation costs; or
  2. If vacation proceedings are initiated by the City, then the ROW-user must pay the relocation costs unless otherwise agreed to by the City and the ROW-user; or
  3. If vacation proceedings are initiated by a person other than the ROW-user or the City, then such other person must pay the relocation costs, unless otherwise agreed to.
- C. In no event does the obtaining of a right-of-way permit guarantee the privilege of a ROW-user to remain in such location(s) approved past the vacation of the right-of-way or change in needs of the City for the location where facilities or equipment have been installed.

(Ord. No. 6869, § 1, 12-17-2009; Ord. No. 7724, § 1, 10-1-2015)

Secs. 26-159—26-165. - Reserved.

#### DIVISION 6. - TRAFFIC CONTROL AND STREET CLOSURES

Sec. 26-166. - Traffic control.

All traffic control, permanent and temporary, shall be properly installed and maintained at the ROW-user's expense. All traffic control materials and methods shall be in conformance with the latest edition of the manual on Uniform Traffic Control Devices.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-167. - Notice of closure.

The ROW-user shall notify the City no less than ten (10) working days in advance of any temporary traffic control that results in the full closure of any direction of vehicle travel along any street. Any other person doing temporary traffic control that will disrupt vehicular or pedestrian traffic shall notify the City no less than two (2) days in advance of any temporary traffic control. Except in the event of an emergency as reasonably determined by the ROW-user and City Engineer, no such closure shall take place without notice and prior authorization from the City.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-168. - Coordination.

- A. An applicant may apply jointly for a right-of-way permit and temporary traffic control permit to perform temporary traffic control, excavate or work in the right-of-way at the same time and place.
- B. Applicants may apply jointly for temporary traffic control permit for temporary traffic control at the same time and place. Applicants who apply jointly for a temporary traffic control permit may share in the payment of the temporary traffic control permit fee. Applicants must agree among themselves as to the portion each shall pay.
- C. The ROW-user shall participate in any joint planning, construction and advance notification of temporary traffic control, including coordination and consolidation of temporary traffic control as required by the City Engineer. 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 right-of-way.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-169. - Traffic control plan.

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

(Ord. No. 6869, § 1, 12-17-2009)

Secs. 26-170—26-175. - Reserved.

#### DIVISION 7. - EXCAVATION PROCEDURES

Sec. 26-176. - Location of existing facilities.



- A. The ROW-user shall identify and locate any underground facilities in conformance with the "Missouri One Call" system prior to any excavation. Failure to do so may result in future permits being denied or the revocation of current permits and a requirement to remove or relocate existing facilities, equipment, poles or structures.
- B. Prior to the commencement of any placement or expansion of facilities that are greater than fifteen (15) feet in height and/or larger than five (5) cubic feet in volume, the ROW-user shall provide at least twenty (20) days written notice to all property owners within fifty (50) foot or twice the height of the proposed facility or equipment radius of the proposed location to abutting landowners in a form approved by the Director of Public Works of the City and during the time of any excavation or construction of facilities or placement of equipment shall post a telephone number of a person to whom the abutting landowner may speak about complaints or conditions on the ROW adjacent to said landowner's property or interference with the enjoyment of the owner's land. All complaints must be acknowledged by the ROW-user and reported to the City on a form approved by the City Engineer. The form of notice shall include at least the following:
  - a. Vertical and horizontal dimension of the facility or equipment
  - b. Sketch of the general location of the activity and placement of the facility or equipment including adjacent buildings
  - c. The construction schedule
  - d. Any other pertinent information as determined by the Director and approved
- C. All excavations shall be made in accordance with the City's Construction and Design Manual other regulations, policies or Codes of the City.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-177. - Row-user responsibilities.

- A. The ROW-user shall be liable for any damages to facilities due to excavation or work performed prior to obtaining the location of all facilities in the area in which the excavation or work is to be performed, or for any damage to facilities that have been properly identified prior to excavation or work. The ROW-user 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.
- B. Whenever there is excavation or work by the ROW-user, the ROW-user shall be responsible for acquiring all necessary temporary traffic control permits and providing adequate temporary traffic control to the surrounding area as provided in this article. In the event the excavation or work 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 Division 10 hereof.
- C. The ROW-user responsible for the excavation or work who leaves any debris in the right-of-way shall be responsible for providing all necessary temporary traffic control and safety protection in accordance with the temporary traffic control permit and any applicable federal or state requirement. The ROW-user shall also be responsible for removing said debris from the right-of-way. If the ROW-user fails to comply with the temporary traffic control permit or fails to remove debris from the right-of-way, the ROW-user shall be responsible for damages to the City, or its contractors, resulting from said failures and shall indemnify the City and its contractors as provided in Division 10 hereof.
- D. In the event the ROW-user severely disturbs or damages the root structure of any tree in the right-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 City Engineer, in his or her discretion, may require the ROW-user to directionally bore around any tree in the right-of-way.
- E. The ROW-user shall be solely responsible for the costs of moving any facilities or any kind within the right-of-way to accommodate the City or any other governmental entity's project as designed by the

City or such governmental entity, and if the ROW-user does not move or remove such facilities and additional cost or delay results to the City, the City may select its own contractor to move or remove such facilities and may seek full reimbursement, and ROW-user shall reimburse City, any and all costs of such move or removal including increased costs to the City's public works project, attorneys' fees to obtain reimbursement and any and all court costs and expert witness fees. City may exercise such right to obtain its own contractor upon written notice to the ROW-user at the address provided in the permit application form or as updated from time to time by the ROW-user.

- F. The ROW-user shall make certain at all times that sufficient security exists in a form acceptable to the City Attorney and City Engineer to assure that the obligations of the ROW-user shall be met which may include sufficient assets, letter of credit, bond, or a pledge of other property.
- G. The ROW-user shall at all times maintain proper registration with the Missouri Secretary of State and have a registered agent within this State who may accept notices required to be served under this Article and service of process while using, occupying or engaged in construction activities within the City's right-of-way.
- H. The ROW-user shall at all times maintain facilities and any other equipment or structures in compliance with the City's Design Standards.
- I. The ROW-user agrees and acknowledges by acceptance of any permit after adoption of this Article as amended and including this Paragraph, that its use of the ROW is a license only unless it already has in place a franchise agreement with City, and by accepting and using a permit agrees to be bound by the terms and conditions of such license set out in this Article and Chapter and that such license is enforceable by City in the same manner as any license to use property under Missouri and federal law.
- J. The ROW-user will maintain and comply with or promptly apply for and obtain any franchise the City requires at the time of the permit application or, if none is required by the City at such time for the services or structures/equipment being installed, in the future should the City decide to require franchise agreements for ROW-users if none are required for the services being provided by the ROW-user at the time of application and installation or commencing use of any structure, equipment or excavation.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-178. - Standard of work.

All temporary traffic control, excavation or work performed in the right-of-way shall be done in conformance with the City's Design and Construction Manual and Design Standards on file in the Office of the City Engineer. The interpretation of such Manuals and Design Standards, in the sole discretion of the City Engineer or Public Works Director, shall be binding on all ROW-users and such interpretation is a condition of any right to excavate, work or use the right-of-way for any purpose whatsoever.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-179. - Temporary traffic control, excavation or work restoration.

- A. After any temporary traffic control, excavation or work, the ROW-user shall, at its expense, restore all portions of the right-of-way to the same condition or better condition than it was prior to the temporary traffic control, excavation or work.
- B. If excavation or work cannot be back-filled immediately and is left unattended, the ROW-user shall securely and adequately cover and mark the unfilled excavation or work. The ROW-user has sole responsibility for maintaining proper temporary traffic control, barriers, safety fencing, signage, and/or lights as required, from the time of the opening of the excavation or work until the excavation or work is surfaced and opened for travel.

- C. In addition to repairing its own street cuts, the ROW-user must restore any area within five (5) feet of the new street cut that has previously been excavated, including the paving and its aggregate foundations.
- D. All earth, materials, sidewalks, paving, crossing, 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 Engineer. However, a ROW-user 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.
  - 1. The City Engineer has the authority to inspect the repair or replacement of the damage, and if necessary, to require the ROW-user to do additional and necessary excavation or work. Notice of the unsatisfactory restoration and the deficiencies found will be provided to the ROW-user and a reasonable time not to exceed fifteen (15) days will be provided to allow for the deficiencies to be corrected.
  - 2. Any deficiencies not corrected shall be considered a "failure to restore" and the City shall proceed according to this article. Upon determination by the City Engineer that the failure to repair or replace creates a threat to public safety, all such repair or replacement shall be corrected within twenty-four (24) hours of notice from the City, or the City Engineer may direct the City to make such repair or replacement at the ROW-user's expense.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-180. - Failure to restore.

If the ROW-user fails to restore the right-of-way in the manner and to the condition required by the City Engineer, 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 ten (10) days after serving of such notice, a satisfactory arrangement is made for the proper restoration of the right-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 arrange for and complete the restoration excavation or work; provided, however, that if the surety does not commence performance thereof within fourteen (14) days from the date of notice, the City may perform its own restoration excavation or work and prosecute same to completion, by contract or otherwise.

- A. Upon determination by the City Engineer that the failure to repair, replace or restore creates a threat to public safety, all such repair or replacement shall be corrected within twenty-four (24) hours of notice from the City, or the City will perform its own restoration excavation or work and prosecute same to completion, by contract or otherwise.
- B. Upon determination by the City Engineer that the failure to repair, replace or restore creates an immediate threat to public safety, all such repair or replacement shall be corrected within one (1) hour of notice from the City, or the City will perform its own restoration excavation or work and prosecute same to completion, by contract or otherwise.
- C. The ROW-user and its surety shall be liable to the City for its actual costs of such restoration, including the value of any time or overtime incurred through the labor of City employees, the value of the use of City equipment, and the cost of City materials used in the restoration project.

The ROW-user shall also restore any special uses of the adjoining landowner including driveway approaches.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-181. - Guarantee of restoration.

- A. In restoring the right-of-way, the ROW-user shall guarantee its excavation or work and shall maintain it for a period of forty-eight (48) months, or for the maximum period of time allowed by law, whichever is greater, following its completion.
  - 1. During said guarantee period the ROW-user shall, upon notification from the City Engineer, correct all restoration excavation or work to the extent necessary, using any method as required by the City Engineer.
  - 2. Said excavation or work shall be completed within a reasonable time, not to exceed thirty (30) calendar days, of the receipt of notice from the City Engineer.
  - 3. In the event the ROW-user is required to perform new restoration pursuant to the foregoing guarantee, the City Engineer shall have the authority to extend the guarantee period for such new restoration for up to an additional forty-eight (48) months, or other greater period allowed by law, from the date of the new restoration, if the City Engineer determines there was action by the ROW-user not to comply with the conditions of the right-of-way permit and any restoration requirements.
- B. When any required corrective actions have been completed and inspected to the City Engineer's satisfaction, the guarantee period will begin.
- C. The guarantee period shall be applicable to failure of the pavement surface as well as failure below the pavement surface.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-182. - Restoration marker.

All excavation or work shall have a metal or plastic marker, of a color, size, and shape approved by the City Engineer, inserted into the restored pavement which shall identify the ROW-user.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-183. - Notice and inspection.

Upon completion of all right-of-way restoration activities, the ROW-user shall notify the City's Public Works Department, which shall then schedule a closeout inspection.

Secs. 26-184—26-190. - Reserved.

#### DIVISION 8. - MAPPING REQUIREMENTS

Secs. 26-191—26-200. - Reserved.

#### DIVISION 9. - APPEALS OR WAIVERS

Sec. 26-201. - Appeals.

Whenever a person has been denied a right-of-way permit or a temporary traffic control permit, had its right-of-way permit or temporary traffic control permit revoked by the City Engineer, believes that the fees imposed on the person by the City do not conform to the requirements of valid and applicable portions of RSMo 67.1840, asserts any issues related to the use of the right-of-way, or deems themselves otherwise aggrieved by any decision or action taken by the City or the City Engineer under this article, the person may file an appeal to the City Manager or his/her designee by filing written notice of such appeal with the City Clerk's office within ten (10) calendar days of the date of notice of such decision or action.

- A. The City Manager or his/her designee shall schedule an informal meeting with the aggrieved person and shall have the power to overrule such decision or action taken by the City or the City

Engineer, 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 this article.

- B. The City Manager or his/her designee shall issue their decision in writing. After the decision of the City Manager or his/her designee is rendered, the aggrieved person may appeal the decision of the City Manager or his/her designee to the Public Works Committee by filing written notice of such appeal with the City Clerk's office within ten (10) calendar days of the date of notice of such decision or action.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-202. - Actions on appeal to City Council.

- A. Such appeals to the Public Works Committee as provided for in Section 26-201 hereof shall be heard by the Public Works Committee on the record with evidence and testimony as a contested hearing pursuant to RSMo Ch. 536.
  - 1. The Public Works Committee shall deliver a transcript of the written record and exhibits along with its written recommendation for action to the City Council.
  - 2. The City Council may overrule such decision or action taken by the City or the City Engineer, 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 this article.
  - 3. Any decision by the City Council affirming the denial, revocation, fee imposition or dispute resolution shall be in writing and supported by written findings establishing the reasonableness of the decision.
- B. Pending a decision by the City Council, the order of the City Engineer shall be stayed, unless the City Engineer determines that such action will pose a threat to public safety or the integrity of the public infrastructure.
- C. In the event the City Council affirms the prior decision of the City or the City Engineer, in addition to all other remedies and if both parties agree, the aggrieved person shall have the right to have the matter resolved by mediation or binding arbitration.
  - 1. Binding arbitration shall be before an arbitrator agreed to by both the City and the aggrieved person.
  - 2. The costs and fees of a single arbitrator shall be borne equally by the City and the aggrieved person.
  - 3. If the parties cannot agree on an arbitrator, the matter shall be resolved by a three-person arbitration panel consisting of one (1) arbitrator selected by the City, one (1) arbitrator selected by the aggrieved person, and one (1) arbitrator selected by the other two (2) arbitrators. In the event that a three-person arbitrator panel is necessary, each party shall bear the expense of its own arbitrator and shall jointly and equally bear with the other party the expense of the third arbitrator and of the arbitration.
  - 4. Each party to the arbitration shall pay its own costs, disbursements and attorney fees.

(Ord. No. 6869, § 1, 12-17-2009)

Secs. 26-203—26-210. - Reserved.

DIVISION 10. - INSURANCE, BONDING AND LIABILITY

Sec. 26-211. - Insurance.

- A. Unless a ROW-user has twenty-five million dollars (\$25,000,000.00) in net assets and does not have a history of noncompliance, or permitting noncompliance, within the City, then the ROW-user shall file with the City evidence of liability insurance with an insurance company licensed to do business in Missouri.
1. The ROW-user shall provide all information to the City necessary to determine the amount of net assets of the ROW-user.
  2. The amount of insurance shall be in amounts sufficient to protect the City against all liabilities not protected by the State of Missouri's sovereign immunity statute and the City shall be an additional named insured. The City shall not have a deductible for its coverage, the intent being that the City shall not pay any amounts towards its defense or damages arising out the ROW-user's use of the ROW and any condition the ROW-user creates or contributes to create on the ROW or on abutting property. The insurance will protect the City from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death, or property damage arising out of or alleged to have arisen out of the negligent or willful acts or omissions of the ROW-user. The ROW-user agrees it does not have a cause of action or claim against the City for any action that such insurance would provide coverage for.
  3. If the ROW-user 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, but self-insurance shall only be permitted by consent of the City Council and the execution of an agreement separate from any agreement created under this Article which shall be in full force and effect until such time as the ROW-user's facilities, structures and use are removed or cease from or on the ROW.
  4. A copy of the Liability Insurance Certificate must be on file with the City Clerk.
- B. No liability insurance will be required of any residential property owner excavating or working in the right-of-way adjacent to his/her residence who does not utilize a contractor to perform the excavation or work and who does not require a temporary traffic control permit. However, said residential property owner shall be required to demonstrate proof of a homeowner's policy with coverage and limits acceptable to the City Engineer.
- C. For purposes of this section, "history of noncompliance, or permitting noncompliance, within the City", shall mean the ROW-user, or any persons acting on the behalf of the ROW-user, including contractors or subcontractors, has failed to return the public right-of-way to its previous condition under a previous right-of-way permit or temporary traffic control permit.
- D. ROW-users who are installing facilities that are not a part of a distribution system as outlined in Section 26-134.B shall also comply with the security provisions in said Section.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-212. - Bonding.

- A. If a ROW-user has twenty-five million dollars (\$25,000,000.00) in net assets and does not have a history of noncompliance, or permitting noncompliance, as determined by the City Engineer, within the City, then the ROW-user shall not be required to maintain a performance or maintenance bond. The burden of requesting and proving any exemption from bonding requirements under this Article shall be on the ROW-user to the satisfaction of the City, and upon request from time to time by the City Engineer the ROW-user shall establish a continued right to exemption from a bonding requirement whether the exemption exists under r local, state or federal law.

1. The ROW-user shall provide all information to the City necessary to determine the amount of net assets of the ROW-user.
  2. For purposes of this section, "history of noncompliance, or permitting noncompliance, within the City," shall mean the ROW-user, or any persons acting on the behalf of the ROW-user, including contractors or subcontractors, has failed to return the public right-of-way to its previous condition under a previous right-of-way permit or temporary traffic control permit on at least one occasion as determined by the City Engineer.
- B. If it is determined pursuant to subsection A of this section that a ROW-user does not have twenty-five million dollars (\$25,000,000.00) in net assets or does have a history of noncompliance, or permitting noncompliance, or is installing any facility that individually would require more than Ten Thousand Dollars (\$10,000.00) to remove and return the right-of-way to its previous condition within the City, then the ROW-user shall:
1. Maintain a performance bond in a form approved by the City Attorney. The amount of the bond will be five thousand dollars (\$5,000.00) or the value of the restoration, whichever is greater, as determined by the City Engineer, for a term consistent with the term of the applicable right-of-way permit or temporary traffic control permit, conditioned upon the ROW-user's faithful performance of the provisions, terms and conditions conferred by this article.
  2. Maintain a maintenance bond in a form approved by the City Attorney. The amount of the bond will be five thousand dollars (\$5,000.00) or the value of the restoration, whichever is greater, as determined by the City Engineer, for a term consistent with the term of the applicable right-of-way permit or temporary traffic control permit plus four (4) additional years, conditioned upon the ROW-user's faithful performance of the provisions, terms and conditions conferred by this article.
  3. For facilities that extend above and below the ground and are permanent in nature and would require demolition similar in nature to a building or monopole tower to remove, the ROW-user shall provide to the City a bond in the amount of the then cost to demolish such a facility or the right through a recordable document to execute on a piece of real estate in a fashion similar to the manner in which the City may place a lien on property when a structure is removed by the City.
- C. In the event the City shall exercise its right to revoke the right-of-way permit or the temporary traffic control permit as permitted herein, then the City shall be entitled to recover under the terms of said bonds or against any real estate under B.3 of this Section the full amount of any loss occasioned. A copy of the maintenance and performance bonds or recorded instrument must be on file with the City Clerk. No maintenance or performance bond will be required of any residential property owner excavating or working in the right-of-way adjacent to his/her residence, who does not utilize a contractor to perform the excavation or work and who does not require a temporary traffic control permit. Because such work is done by a private property owner against whose property the City may place a lien under the law, no recorded instrument giving the City additional rights to place a lien and foreclose on such lien shall be required.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-213. - Indemnification.

- A. Any person operating under the provisions of this article or performing any temporary traffic control, excavation or work in the right-of-way shall fully indemnify, release, defend and hold harmless the City and agents of the City when acting in their capacity as municipal officials, employees, elected officials, attorneys, 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, to the extent caused by acts or omissions of the person, or its agents, contractors, or subcontractors, in the performance of the permitted temporary traffic control,

excavation or work. Nothing in this Article shall be construed to waive the City's sovereign or any other immunity or defense available to it, its officers, employees and agents.

- B. Nothing herein shall be deemed to prevent the City, or any agent, from participating in the defense of any litigation by its own counsel at their own expense. Such participation shall not under any circumstances relieve the person from its duty to defend against liability or its duty to pay any judgment entered against the City, or its agents.
- C. All ROW-users shall be responsible for promptly correcting acts or omissions by any contractor or subcontractor performing permitted temporary traffic control, excavation or work for such ROW-user hereunder. Failure to do so within the time set by the City Engineer shall be cause to revoke any ROW permit and to eject the ROW-user from the City's rights-of-way by any means available including seeking a declaratory judgment action, injunction or in the event of emergency self-help.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-214. - Indemnification for contractual or economic loss damages.

Any person operating under the provisions of this article or performing any temporary traffic control, excavation or work in the right-of-way shall fully indemnify, release, defend and hold harmless the City and agents of the City when acting in their capacity as municipal officials, employees, elected officials, attorneys, contractors, and agents, from and against any and all claims, demands, suits, proceedings, and actions, liability and judgment by other persons for contractual or economic losses, damages, losses, costs, and expenses, including attorney fees, to the extent caused by failure of a ROW-user, or its agents, contractors, or subcontractors, to relocate or adjust its facilities pursuant to the provisions of this article.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-215. - Indemnification for damage to facilities.

- A. Any person operating under the provisions of this article or performing any excavation or work in the right-of-way shall be liable for any damages to facilities due to excavation or work performed by the person, including damage to underground facilities that have been properly identified prior to commencement of excavation or work.
- B. Any person operating under the provisions of this article or performing any excavation or work in the right-of-way shall fully indemnify, release, defend and hold harmless the City and agents of the City when acting in their capacity as municipal officials, employees, elected officials, attorneys, contractors, 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, associated with damage to the facilities of other ROW-users by a person, or its agents, contractors, or subcontractors.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-216. - Other agreements—Satisfaction of this article.

- A. Any ROW-user may satisfy the insurance, bonding, and indemnification provisions of this article through a valid franchise agreement with the City provided such insurance, bonding and indemnification equals or exceeds those requires under this Article and Chapter. Any requirements thus satisfied shall be indicated on the ROW-user's registration and shall not be required for each right-of-way permit and temporary traffic control permit.
- B. This section shall not apply to an applicant acting on behalf of a ROW-user, unless the applicant is listed as an additional insured on the ROW-user's insurance policy and is covered by the surety. The



applicant must submit evidence of the satisfaction of these requirements prior to issuance of a right-of-way permit or a temporary traffic control permit.

(Ord. No. 6869, § 1, 12-17-2009)

Secs. 26-217—26-220. - Reserved.

#### DIVISION 11. - VIOLATIONS AND PENALTIES

Sec. 26-221. - Violation.

- A. No Person shall perform temporary traffic control, excavate or work in the right-of-way in violation of Section 26-131.A. or Section 26-131.F. of this article. Any violation of Section 26-131.A. or Section 26-131.F. shall result in the immediate issuance of a citation to the person and enforcement action pursuant to Section 26-223 hereof.
- B. Except as provided in subsection A. of this section, if the City Engineer determines that a ROW-user has committed a violation of this article, any law or ordinance, or a condition placed on the right-of-way permit or the temporary traffic control permit, the City Engineer shall make a written demand upon the ROW-user to remedy such violation, which may include the issuance of a stop work order. The demand shall state that the continued violation may be cause for revocation of the right-of-way permit or the temporary traffic control permit as provided for herein, or legal action if applicable.
- C. A violation will allow the City Engineer, at his or her discretion, to place additional or revised conditions on the right-of-way permit or the temporary traffic control permit, specifically related to the manner in which the violation is cured by the ROW-user.
  1. Within fourteen (14) calendar days of receiving notification of the violation, the ROW-user shall contact the City Engineer with a plan, acceptable to the City Engineer, for correction of the violation.
  2. Upon determination by the City Engineer that the violation creates a threat to public safety, the ROW-user shall within twenty-four (24) hours of notice from the City contact the City Engineer with a plan, acceptable to the City Engineer, for correction of the violation.
  3. Upon determination by the City Engineer that the violation creates an immediate threat to public safety, the ROW-user shall within one (1) hour of notice from the City contact the City Engineer with a plan, acceptable to the City Engineer, for correction of the violation.
  4. A ROW-user's failure to contact the City Engineer, ROW-users 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 right-of-way permit or the temporary traffic control permit.
  5. In the event a ROW-user's performance of any of the terms, conditions or obligations required by this Article or Chapter or a Franchise or License is prevented by a cause or event not within a ROW-user's control, such inability to perform shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof. For the purpose of this section, causes or events not within the control of a ROW-user shall include, without limitation, acts of God, strikes, sabotage, riots or civil disturbances, failure or loss of utilities, explosions, acts of public enemies, and natural disasters such as floods, earthquakes, landslides, and fires.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-222. - Revocation of permits.

- A. The City Engineer may, after reasonable notice and an opportunity to cure, revoke a right-of-way permit or a temporary traffic control permit granted to a ROW-user, without a fee refund, if one (1) or more of the following occurs:

1. A material violation of a provision of the right-of-way permit or temporary traffic control permit;
  2. An evasion or attempt to evade any material provision of the right-of-way permit or temporary traffic control permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the political subdivision or its citizens;
  3. A material misrepresentation of fact in the right-of-way permit or temporary traffic control permit application;
  4. A failure to complete temporary traffic control, excavation or work by the date specified in the associated right-of-way permit or temporary traffic control permit, unless a right-of-way permit or temporary traffic control permit extension is obtained or unless the failure to complete the temporary traffic control, excavation or work is due to reasons beyond the ROW-user's control;
  5. A failure to correct, within the time specified by the City, temporary traffic control, excavation or work that does not conform to applicable engineering standards, specifications, national safety codes, industry construction standards, or applicable City Code provisions or safety codes that are no more stringent than national safety codes or provisions, upon inspection and notification by the City of the faulty condition, or allowing a condition to exist which in the City Engineer's opinion creates a danger to the public, abutting landowners or other users of the right-of-way; or
  6. A failure to remove facilities or equipment that have been deemed "abandoned" by the City Engineer.
  7. Permitting a condition to exist regardless of actual notice that causes harm to property of another or the City, or injury to any person.
  8. Failure of insurance company or a surety to pay damages or perform as set out in the insurance policy or surety document upon written demand by the City Manager of thirty (30) days to the last address on file at the City for any notice to be given.
  9. Failure to provide written notice to adjacent property owners as required in Section 26-176.
- B. If a right-of-way permit or temporary traffic control permit is revoked, the ROW-user 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.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-223. - Penalty.

Any person violating any provision of this article is guilty of a public offense, and upon conviction thereof shall be fined in a sum of not less than two hundred dollars (\$200.00) nor more than five hundred dollars (\$500.00). Every day that this article 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 article. In addition to any other remedies, the City Attorney may institute injunction, mandamus or other appropriate actions or proceedings to prevent violations of this article.

Secs. 26-224—26-230. - Reserved.

DIVISION 12. - OTHER RIGHTS AND LAWS

Sec. 26-231. - Federal, State and City Jurisdiction.

- A. This article shall be construed in a manner consistent with all applicable federal, state, and local laws. Notwithstanding any other provisions of this article 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.

- B. In addition, the ROW-user shall meet or exceed the most stringent technical standards set by regulatory bodies, including the City, now or hereafter having jurisdiction.
- C. 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.
- D. ~~Finally, F~~ 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 article.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-232. - City's failure to enforce.

The City's failure to enforce or remedy any noncompliance of the terms and conditions of this article or of any right-of-way permit or temporary traffic control permit granted hereunder shall not constitute a waiver of the City's rights nor a waiver of any person's obligation as herein provided.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-233. - Reservation of rights.

- A. In addition to any rights specifically reserved to the City by this article, 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 article.
- B. The City shall have the right to waive any provision of this article or any registration, permit or other authorization granted thereunder, except those required by federal or state law, if the City Council determines as follows:
  - 1. That it is in the public interest to do so; and,
  - 2. That the enforcement of such provision will impose an undue hardship on the person.
- C. 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.
- D. The City reserves unto itself always the right to charge for the use of the right-of-way as permitted by valid Missouri law and only restricted by valid and applicable law found to be applicable and valid by a Court of last resort.
- D.E. Notwithstanding anything to the contrary set forth herein, the provisions of this article shall not infringe upon the rights of any person pursuant to any valid and applicable state or federal statutes, including, but not limited to the right to occupy the right-of-way.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-234. Conflicts.

In the event of any conflict between a franchise or license entered into following adoption of this Article or any of its amendments, this Article shall control.

26-235. Separability.

If any provision of this Article, or any franchise or license issued hereunder, is held by any federal, state or local court of competent jurisdiction, to be invalid as conflicting with any valid and applicable

federal or state statutes, or is ordered by a court to be modified in any way in order to conform to the requirements of any such law and all appellate remedies with regard to the validity of the Ordinance provisions in question are exhausted, City Council shall determine whether or not said section shall be considered a separate, distinct, and independent part of this Article, franchise or license, and such holding shall determine the validity and enforceability of all other provisions thereof and any rights or privileges granted hereunder. In the event that such law is subsequently repealed, rescinded, amended or otherwise changed, so that the provision which had been held invalid or modified is no longer in conflict with such law the provision in question shall return to full force and effect and shall again be binding on City and any ROW-user without further action of the City Council, provided that the City Engineer shall give the ROW-user sixty (60) days, or a longer period of time as may be reasonably required for an ROW-user to comply with such a rejuvenated provision, written notice of the change before requiring compliance with such provision.

Secs. 26-237—26-299. - Reserved.