

**PROPOSED UPDATE OF CITY OF LEE'S
SUMMIT RIGHT-OF-WAY
MANAGEMENT CODE**

PROPOSED AMENDMENT OF ARTICLE III
CHAPTER 26, STREETS, SIDEWALKS AND
OTHER PUBLIC PLACES

January 18, 2018

WHAT IS THE RIGHT-OF-WAY (ROW)?

- Streets and alleyways
- “Owned” by a city, county or state
- May be easement or fee simple title
- If an easement, held in trust for the public
- Nondelegable duty of government to maintain in a safe manner for its intended purpose
- Purpose is for pedestrian or vehicular traffic and utility use, entitled to unobstructed path of travel
- State has no property interest in a City street

WHY NOW?

- Preserve authority commensurate with responsibilities imposed by state law
- Protect other users of ROW including travelers
- Protect abutting landowners from infringement of rights and harm to property
- Protect restrictions on uses (wetlands)
- Protect contractual rights (City and others)
- Acknowledge changing landscape with new bills introduced attempting to restrict all the above and the City's ability to deal with them

HISTORY FOR COMMON LAW

- Concept of public ROW is thousands of years old
- “Kings Highway” – public roads for use of the King and all his subjects
- Peace Treaty of Paris, 1783 – relinquished title to all roads which passed to colonies
- U.S. Constitution recognized importance, Art I, Section 8 – allows Congress to create postal roads and post office
- States legislated on their own rights-of-way as the sovereign
- Landowner has a common law right to dedicate rights-of-way for public use, but has to be accepted

Pre-2000 legislation

- 1851 – telephone and telegraph could construct on public roads, city can tell how and where to build
- 1866 – must have city’s consent which is a “franchise” or writing as required by the statute of frauds for cities (means can charge rent to use) – *Plattsburg v. Peoples’ Co.*, 88 Mo.App. 306 (1901)
- 1877 – certain classes of cities had to have election on franchises for all utility users
- Pre-1903 Plats may dedicate streets to cities

AFTER 2000 ON STATE LEVEL

- SB 369 2001 EFFECTIVE DATE
 - State wanted to preempt local consent methods (franchise, license, rental payments, required voting)
 - Provided for limited grandfathering and some revenues
 - Defined Public Utility very broadly
 - Limited to those owning or controlling a facility in the ROW

AFTER 2000

- 2007 Video Services Providers Act
 - Statewide cable franchise
 - Set terms to use the City ROW
 - Reduced revenue to 5% net
 - Prohibited in-kind services
 - Left in place PEG channels
 - Give a City 10 days notice going to start providing services
 - No local mandatory buildout requirement

AFTER 2000

- HB 331 IN 2013 (Uniform Wireless Communications Infrastructure Deployment Act)
- 22 new sections on telecommunications
 - Reduced costs could include in fees
 - Shot clock for review of ROW permits (31 days)
 - Grandfather ROW users who were there before August 28, 2001
 - Force through zoning approvals on towers
 - Removed poles from exception to definition of ROW
 - “Encourage” use of public lands for wireless deployment

AFTER 2000

- 2014 SB 649 AND SB 653
 - Reenacted 2013 law as there was a Court challenge pending

CURRENT MISSOURI STATUTORY DEFINITION ON WHAT IS THE ROW FOR PUBLIC UTILITIES

- Current statutory definition:

Section 67.1830 for utility use defines it as:

“Public right-of-way”, the area on, below or above a public roadway, highway, street or alleyway in which the political subdivision has an ownership interest, **but not** including:

- (a)** The airwaves above a public right-of-way with regard to cellular or other nonwire 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; 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 municipally owned or operated utility pursuant to chapter 91 or pursuant to a charter form of government;

PROPOSED STATE CHANGES FOR “SMALL” WIRELESS DEPLOYMENT

- For “small” wireless deployment
 - SB837
 - 67.5111 new statute applicable only to “small” wireless facilities and the utility poles attached to:
 - (19) “Right-of-way”, the area on, below, or above a public roadway, highway, street, sidewalk, alley, utility easement, or similar property, but not including federal interstate highway;
NOTE: Exceptions are out and “similar property” not defined

SB 837

- Limit application fees and total of what charge
- Allow large multi-applications to be combined and shot clock of ten days
- Allow “outside the ROW” in areas not exclusively zoned for single-family residential use
- Allow ROW users to change out City poles
- Allow ROW users to change out poles that are decorative
- Give the right to use City owned property to wireless providers

WHAT WOULD PROPOSED CITY CODE UPDATE DO?

- Amend Chapter 26, Article III
- Assert the City's authority as broadly as possible
- Treat all similarly situated ROW users in a competitively-neutral and nondiscriminatory fashion including "vertical landlords"
- Standardize for all ROW users how they obtain consent
- Create a "license" with enforceable requirements such as bonding, insurance, notice to the City, and information to be submitted

- Update definitions
- Allow the Director of Public Works to adopt reasonable standards for design and installation within the ROW
- Require adequate security for users and define what that is (bond, insurance, lien)
- Give the City the opportunity to protect the rights of abutting landowners, the City's property and restricted use property
- Place requirements on ROW users including compliance with zoning regulations

- Require an attachment agreement if entity is using City poles
- Avoid speculative construction in the ROW which takes up a finite space
- Make sure structures meet engineering standards for our location (weather and fall path)
- Create restrictions for poles that are not a part of a system of poles that are physically connected to each other as a distribution system (new subsection)

Proposed Update

Questions?