



14811 Manchester Road, Ballwin, MO 63011

BILL NO. _____

ORDINANCE NO. _____

INTRODUCED BY

ALDERMEN TERBROCK, FINLEY, STALLMANN, ROACH, FLEMING, LEAHY, KERLAGON, BULLINGTON

~~AN ORDINANCE REGARDING REPEALING CHAPTER 7.5, ARTICLE I OF THE CODE OF ORDINANCES WITH RESPECT TO RIGHTS-OF-WAY USAGE AND ENACTING NEW CODE SECTIONS IN LIEU THEROF.~~

WHEREAS, the City of Ballwin desires to update the Code of Ordinances with regard to usage of the public rights-of-way in order to create regulations that are consistent with recent changes in State law.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF BALLWIN, ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:

Section 1. ~~Sections 7.5-72 through 7.5-81 and Sections 24-71 through 24-74 are repealed.~~

Comment [CL1]: Cable franchises now covered by 7.5-71 as revised in 2007 and state law
Comment [CL2]: These provisions from 1995 were replaced in 2001 by 7.5 article II

Section 2. ~~Section 24-47 is amended to read as follows:~~

~~Any person owning or operating in the city facilities that are subject to the provisions of Sections 24-75 et seq shall comply therewith in lieu of this Article II.~~

Section 3. ~~Sections 7.5-101 through 7.5-116 are recodified as Article IV of Chapter 24 and amended to read as follows:~~

Comment [CL3]: Recommend maintaining continuity in this manner

~~Chapter 7.5, Article I of the Code of Ordinances of the City of Ballwin shall be repealed in its entirety and replaced with the following:~~

Sec. ~~24-757.5-1~~.-Title-Definitions and Word Usage.

A. Title. This Article shall be known and may be cited as the "Rights-of-Way Usage Code".

B. Definitions And Word Usage — General. For the purposes of this Code, the following terms, phrases, words and abbreviations shall have the meanings given herein, unless otherwise expressly stated. When not inconsistent with the context, words used in the present tense include the future tense and vice versa, words in the plural number include the singular number and vice versa and the masculine gender includes the feminine gender and vice versa. The words "shall" and "will" are mandatory and "may" is permissive. For convenience, the first (1st) letter of terms, phrases, words and abbreviations defined in this Code have been capitalized, but an inadvertent failure to capitalize such letter shall not affect meaning.

C. Definitions. As used in this Article, the following terms shall have these prescribed meanings:

ANTENNA

Facilities consisting of any device, array or antenna of any kind, including, but not limited to, a whip antenna, panel antenna or satellite antenna, that transmits or receives electromagnetic signals to deliver microwave, cellular, broadcast or other non-wire voice, data or video communications service through the airwaves above the rights-of-way and which attach to either pre-existing or subsequently approved facilities.

ANTENNA FEE

A compensation fee approved by the Board of Aldermen established in Section 7.5-39 as the City's pertinent schedule of fees from amended from time to time for the rent of a portion of the rights-of-way by a person having facilities within the rights-of-way. The antenna fee shall be calculated on the number of antennas located within the ROW and shall not include any linear foot fee, but a ROW user may be subject to both an antenna fee and a linear foot fee.

Comment [CL4]: Does city want to change them? Are fees still same as 7.5-39?

APPLICANT

The person applying for and receiving a ROW permit for ROW work.

APPLICATION

That form which an applicant must use to obtain a ROW permit to conduct ROW work.

CITY

The City of Ballwin, Missouri, and its agencies, departments, agents and employees acting within their respective areas of authority.

CITY ADMINISTRATOR

The City Administrator of the City of Ballwin, Missouri.

BOARD OF ALDERMEN OR COUNCIL

The Governing Body of the City.

CITY FACILITIES

Any facilities, street light poles, lighting fixtures or other structures or equipment located within the rights-of-way and owned by the City.

DIRECTOR

The City's Public Works Director or such other person designated by the City Administrator to administer and enforce this Code.

EMERGENCY RIGHTS-OF-WAY (OR "ROW") WORK

Includes, but is not limited to, ROW work made necessary by exigent circumstances to repair, control, stabilize, rectify or correct the following:

1. An unexpected or unplanned outage, cut, rupture, leak or any other failure of facilities that prevents or significantly jeopardizes the ability of a ROW user to provide service to customers;
2. An unexpected or unplanned outage, cut, rupture, leak or any other failure of facilities 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 other such failure is not immediately repaired, controlled, stabilized, rectified or corrected; or
3. Any occurrence involving facilities that a reasonable person would conclude under the circumstances that immediate action was necessary and warranted.

FACILITIES

A network or system or any part thereof used for providing or delivering a service and consisting of one (1) or more lines, pipes, irrigation systems, wires, cables, fibers, conduit facilities, poles, vaults, pedestals, boxes, appliances, antennas, transmitters, towers, gates, meters, appurtenances or other equipment.

GOVERNMENTAL ENTITY

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 any other State, any agency or instrumentality of the State of Missouri or any other State or the United States and any cooperative district allowed by law acting in a governmental rather than a proprietary capacity.

LINEAR FOOT FEE

A compensation fee approved by the Board of Aldermen and established in [Section 7.5-39 as the City's pertinent schedule of fees from amended from](#) time to time for the rent of a portion of the rights-of-way by a person having facilities within the rights-of-way. The linear foot fee shall be calculated on the length, in linear feet, of the rights-of-way in or on which facilities are located and shall not include any antenna fee, but a ROW user may be subject to both a linear foot fee and an antenna fee.

Comment [CL5]: See above

PERSON

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

PERSON(S) HAVING FACILITIES WITHIN THE RIGHTS-OF-WAY

Any person having ownership or control of facilities located within the rights-of-way.

RIGHTS-OF-WAY OR ROW

Unless otherwise restricted herein, the surface, the air space above the surface and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, parkway, waterway, public easement or sidewalk in which the City now or hereafter holds any property interest which, consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining facilities. "Rights-of-way" shall not include:

1. The City's proprietary property, such as City-owned or -operated buildings, parks, street lights or other similar property,
2. Airwaves used for cellular, non-wire telecommunications or broadcast services,
3. Easements obtained by ROW users,
4. Railroad rights-of-way or ground used or acquired for railroads, or
5. Facilities owned and used by the City for the transmission of one (1) or more services.

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

RIGHTS-OF-WAY (OR "ROW") PERMIT

A permit granted by the City to a ROW user for ROW work.

RIGHTS-OF-WAY (OR "ROW") USER

A person having facilities within the ROW. A ROW user shall not include ordinary vehicular or pedestrian use.

RIGHTS-OF-WAY (OR "ROW") WORK

Action by a ROW user to (i) install, change, replace, relocate, remove, maintain or repair facilities within the rights-of-way, or (ii) to conduct work of any kind within or adjacent to the rights-of-way that results in an excavation, obstruction, disruption, damage or physical invasion or impact of any kind to the rights-of-way or the use thereof. The routine inspection of facilities

shall not be considered ROW work unless the inspection requires the conduct of any of the activities or actions noted herein.

SERVICE

Providing or delivering an economic good or an article of commerce, including, but not limited to, gas, telephone, cable television, Internet, open video systems, video services, alarm systems, steam, electricity, water, telegraph, data transmission, petroleum pipelines, sanitary or stormwater sewerage or any similar or related service, to one (1) or more persons located within or outside of the City by use of facilities located within the rights-of-way.

WIRELESS TRANSMISSION PROVIDER

A person having facilities within the rights-of-way, which such facilities consist primarily of antennas, transmitters, towers or other appliances or equipment used to deliver a cellular, broadcast, data transmission or other non-wire communications service through the airwaves above the rights-of-way and which attach to either pre-existing or subsequently approved facilities.

WITHIN

In, along, under, over or across rights-of-way.

Sec. ~~24-767-5-2~~ Registration of Person(s) Having Facilities Within the Right-of-Way

A. Registration Required.

1. Any person desiring to become a person having facilities within the ROW and any person having facilities within the ROW must register with the City.

2. Any person having or applying for a cable franchise from the City ~~under Chapter 7.5, Article III ("Cable Services Code")~~ or a Video Service Provider Authorization from the Missouri Public Service Commission must register hereunder. To the extent that any term of such person's cable franchise or video service authority conflicts with the Rights-of-Way Usage Code, the terms of the cable franchise or video service authority shall prevail. To the extent that the Cable Services Code conflicts with the Rights-of-Way Usage Code, the more stringent shall prevail.

3. Any person that provides or intends to provide video programming by means of an open video system pursuant to certification approved by the Federal Communications Commission must register hereunder but shall also remain subject to the applicable provisions of the Cable Services Code. To the extent that the Cable Services Code conflicts with the Rights-of-Way Usage Code, the more stringent shall prevail.

4. As of the effective date of this Code, any person having facilities within the ROW pursuant to a duly-issued, lawful and applicable license or franchise shall register hereunder. Such person maintains all rights, privileges and obligations established by its license or franchise. To the extent that any terms of such person's license or franchise conflicts with the Rights-of-Way Usage Code, the terms of the license or franchise shall prevail.

B. Effectiveness Of Registration. Registration hereunder by an eligible person shall remain effective for so long as that person remains eligible, unless terminated by the person or the City hereunder. Any registration of an ineligible person shall be void from the date of ineligibility.

C. Registration Characteristics.

1. A valid registration hereunder authorizes the issuance of ROW permits to the registered person in accordance with this Code. It does not expressly or implicitly authorize ROW work without an ROW permit or work on private property without owner consent through

eminent domain or otherwise (except for use of compatible easements pursuant to Federal law) or to use publicly or privately owned facilities without a separate agreement with the owners.

2. A valid registration hereunder shall not eliminate the need to obtain any franchise, license or permit for the privilege of transacting and carrying on a business within the City as may be generally required by the ordinances and laws of the City other than this code or for attaching devices to poles or other structures, whether owned by the City or other person.

3. A valid registration grants no exclusive or vested rights to occupancy within the rights-of-way other than those granted by this code or the administration thereof.

4. The right to obtain ROW permits shall be subordinate to any prior lawful occupancy of the rights-of-way and the City reserves the right to designate where facilities are to be placed within the rights-of-way as provided herein to the extent allowed by law.

D. Registered Person Subject To Other Laws.

1. A person required to register shall at all times be subject to and shall comply with all applicable Federal, State and local laws and shall at all times be subject to all lawful exercise of the Police power of the City including, but not limited to, all powers regarding planning, zoning, supervision of construction, assurance of equal employment opportunities, control of rights-of-way and consumer protection.

2. Registration hereunder shall not deprive any person of any rights or obligations imposed by any previously existing franchise, license or contract, nor shall it impose any obligations on any such person in addition to those included in any previously existing franchise, license or contract, except to the extent allowed by law.

3. Nothing in this code shall be construed to prohibit the grant or renewal of any franchise by the City as may be allowed or required by State or Federal law.

4. Nothing in this code shall be construed or deemed to supersede any applicable State or Federal law or any applicable regulation issued by a State or Federal agency including, but not limited to, the Missouri Public Service Commission and the Federal Communications Commission. In the event of any conflict between such laws or regulations and this code, the applicable State or Federal law or regulation shall apply.

E. Failure To Register. Any person who has not registered within ninety (90) days of the effective date of this code shall nonetheless be subject to all requirements of this code including, but not limited to, its provisions regarding ROW permits, construction and technical standards and fees, except as otherwise provided herein. In its discretion and to the extent allowed by law, the City at any time may:

1. Require such person to register within thirty (30) days of receipt of a written notice to such person from the City that registration is required;

2. Require such person to remove its facilities from the rights-of-way and restore the affected area to a condition satisfactory to the City within a specific time period;

3. Direct municipal personnel to remove the facilities from the rights-of-way and restore the affected area to a condition satisfactory to the City and charge the person the costs thereof, including by placing a lien on the person's property as provided in connection with abating nuisances; or

4. Take any other action it is entitled to take under applicable law.

Additionally, such person may also be subject to the imposition of penalties as provided herein.

F. Registration Exemption. Governmental entities having facilities within the ROW need not register hereunder, but such entities shall be subject to Sections ~~24-78 and 24-797.5-~~

~~4 and 7.5.5~~ of this code and such other Sections or provisions as may be appropriate to their presence in the ROW.

Sec. ~~24-777.5-3~~ Registration Procedures

A. Requirements And Processing.

1. Registration shall be accomplished in the form of a letter to the City filed with the Director.

2. To be valid, the registration letter must be signed by an authorized representative of the registering person, contain all required information and be accompanied by a filing fee established in the City's pertinent schedule of fees.

3. At any time the Director determines a registration letter does not comply with this code, the Director may return it to a point of contact identified therein with a written explanation of the reason(s) for such return. Filing fees shall not be refunded. Failure to return a registration letter shall not validate an incomplete or otherwise invalid or void registration letter.

B. Contents Of Registration Letter. A registration letter shall contain or be accompanied by the information required herein. All such information received by the City shall be public, unless confidentiality is requested and permitted by the Missouri Open Meetings Law and other applicable State and Federal law. The information required shall include:

1. Name, address and legal status of the registering person;

2. Name, title, address, telephone number, e-mail address and fax number of individual(s) authorized to serve as the point of contact between the City and the registering person so as to make contact possible at any time (i.e., twenty-four (24) hours per day, seven (7) days per week);

3. Description of the general uses made or to be made of the facilities located within the rights-of-way by the registering person, e.g., provision of service(s), transfer or lease of facilities (or portion thereof, including bandwidth) to another person, use of the facilities to transverse the City, construction of facilities to be used at a later date, etc.;

4. Description of all services provided or to be provided by the registering person to any person located in the City through facilities located within the rights-of-way and an explanation of the registering person's legal qualifications to provide such services, including copies of supporting documentation such as relevant certificates or orders from the Federal Communications Commission, Missouri Secretary of State and/or Missouri Public Service Commission or pertinent rules or Statutes;

5. Name and address of any and all other persons providing service(s) to any person located in the City through the registering person's facilities located within the rights-of-way and a general description of such service(s); and

6. Current certificates of insurance in accordance with this code.

C. Notice Of Change. Within thirty (30) days of any changes in the information set forth in or accompanying its registration letter, a registered person shall notify the City of any such change. Such notices shall be submitted and processed in the same manner as an initial registration, except the filing fee shall not be required.

D. Registration Index. The Director shall maintain an index of all registered persons and their point(s) of contact.

E. Termination Of Registration.

1. The City shall have the right to terminate a registration for a substantial and ongoing failure to comply with this Code or other applicable law or for defrauding or attempting to defraud the City. To invoke the provisions of this Section, the Director shall give

Comment [CL6]: Where is this set?

the person written notice of such intent. If within thirty (30) calendar days following such written notice from the City, the person has not completed corrective action or corrective action is not being actively and expeditiously pursued to the satisfaction of the Director, the Director may commence a proceeding to consider terminating the person's registration, giving written notice of the reasons therefor.

2. Prior to terminating a registration, the Director shall hold a hearing, after giving at least ten (10) calendar days' notice to the person, at which time the person shall be given an opportunity to be heard. Following the hearing, the Director may determine whether to terminate the registration based on the information presented at the hearing and other information of record. If the Director determines to terminate a registration, the decision shall be in writing setting forth the reasons therefor. The Director may make such decision conditional on a person's failure to resolve outstanding problems or take appropriate steps to resolve such problems within a specific period of time. A copy of such decision shall be provided to the person.

3. Once a registration has been terminated by the Director, the person may not register again except upon express written approval by the City Administrator, which approval shall be withheld absent clear and convincing evidence that the person has remedied all previous violations and is in full compliance with all laws and will not in the future violate this code or defraud the City.

4. Registration of a public utility that has been legally granted access to the right-of-way shall not be terminated.

| Sec. ~~24-787.5~~ 4-Rights-of-Way ("ROW") Permits.

A. ROW Permit Requirements.

1. Any person desiring to perform ROW work must first apply for and obtain a ROW permit, in addition to any other building permit, license, easement, franchise or authorization required by law. In the event of a need for emergency ROW work, the person conducting the work shall as soon as practicable notify the City of the location of the work and shall apply for the required ROW permit as soon as practicable following the commencement of the work, not to exceed the third (3rd) business day thereafter. The Director may design and issue general permits for emergency ROW work for several different locations or throughout the City.

2. No person having facilities within the ROW who has failed to register with the City shall be granted a ROW permit, except as otherwise provided or allowed by ordinance, franchise, license or written contract with the City.

3. All applications for ROW permits shall be submitted to the Director. The Director may design and make available standard forms for such applications, requiring such information as allowed by law and as the Director determines in his or her discretion to be necessary and consistent with the provisions of this code and to accomplish the purposes of this code. Each application shall at minimum contain the following information for the proposed ROW work, unless otherwise waived by the Director:

a. The name, address and telephone number of a representative whom the City may notify or contact at any time (i.e., twenty-four (24) hours per day, seven (7) days per week) concerning the work;

b. If different from the applicant, the name of the person on whose behalf the proposed work is to be performed;

c. A description of the proposed work including a conceptual master plan and, when applicable, an engineering site plan or other technical drawing showing the

nature, dimensions and location of the applicant's proposed work or facilities, their proximity to other facilities that may be affected by the proposed work and the number of street crossings and their locations and dimensions;

d. Projected commencement and termination dates and anticipated duration of the work or, if such dates are unknown, a representation that the applicant shall provide the Director with reasonable advance notice of such dates once they are determined;

e. If the applicant is, or is acting on behalf of, a person having facilities within the ROW or a person desiring to become a person having facilities within the ROW, verification that the applicant or such person has registered with the City and that the information included in that registration is accurate as of the date of the application; and

f. Copies of any required certificates of insurance or performance and maintenance bonds.

4. The information required by the application may be submitted in the form maintained by the applicant, provided it is responsive to these requirements and the applicant shall be allowed a reasonable amount of time to complete the application based on the amount of data or information requested or required.

5. Each such application shall be accompanied by the following payments:

a. An application fee, as approved by the Board of Aldermen and established in the City's pertinent schedule of fees, to cover the cost of processing the application;

b. Any other amounts otherwise due to the City from the applicant including, but not limited to, prior delinquent permit fees and costs, delinquent rental fees and any loss, damage or expense suffered by the City because of the applicant's prior excavations of the rights-of-way or for any emergency actions taken by the City, but the Director may modify this requirement to the extent the Director determines any such fees to be in good-faith dispute.

B. ROW Permit Application Review And Determination.

1. The Director shall promptly review each completed application for a ROW permit and shall grant or deny all such applications as provided herein within thirty-one (31) days of receipt of a completed application. If the Director fails to act on an application for a ROW permit within thirty-one (31) days, the application shall be deemed approved. Unless the application is denied pursuant to Subsection (B)(7) hereof, the Director shall issue a ROW permit upon determining that the applicant:

a. Has submitted all necessary information;

b. Has paid the appropriate fees; and

c. Is in full compliance with this code and all other City ordinances.

In order to avoid excessive processing and accounting costs to either the City or the applicant, the Director shall have authority to establish procedures for bulk processing of applications and periodic payment of fees.

2. It is the intention of the City that interference with, damage to, excavation or disruption of or the placement of facilities within the City's rights-of-way should be minimized and limited in scope to the extent allowed by law to achieve the purposes of this code. When reasonable and necessary to accomplish such purposes, the Director may require as alternatives to the proposed ROW work either less-disruptive methods or different locations for facilities, provided that any required alternative:

a. Shall not increase expenses by more than ten percent (10%) of the applicant's costs for the work as proposed,

b. Shall not result in a decline of service quality, and

Comment [CL7]: See above

c. Shall be competitively neutral and non-discriminatory.

The Director shall justify to the applicant that the required alternative is reasonable and necessary.

3. Upon receipt of an application, the Director shall determine whether any portion of the rights-of-way will be affected by the proposed work and whether the interference disruption or placement of facilities will be more than minor in nature. In determining whether the proposed work is more than minor in nature, the Director shall consider the nature and scope of the work, its location and duration and its effect on the rights-of-way, the use thereof and neighboring properties.

a. If the applicant can show to the Director's reasonable satisfaction that the work involves no interference, disruption, excavation or damage to or only minor interference with the rights-of-way or that the work does not involve the placement of facilities or involves time-sensitive maintenance, then the Director shall promptly grant the ROW permit.

b. If the Director determines that the effect on the rights-of-way will be more than minor in nature and no exemption under the above Section ~~7-5-4~~(B)(3)(a) or any other provision of this code applies, the Director shall schedule and coordinate the work and grant the ROW permit accordingly. When reasonable and necessary to accomplish the purposes of this code, the Director may postpone issuance of a ROW permit and may give public notice of the application in an attempt to identify whether other person(s) intend to do work in the same area within a reasonable period of time, so that all ROW work in the area can be coordinated. Due regard shall be accorded applicants that are required by any law, rule, regulation, license or franchise to provide service to the area defined in the application. The Director shall not impose any coordination or scheduling requirements that prevent or unreasonably delay an applicant's access to the ROW or that create a barrier to entry.

c. Applicants shall participate in any joint planning, construction and advance notification of such work, including coordination and consolidation of any excavation or disturbance to the rights-of-way as directed by the Director. When deemed necessary to accomplish the goals of this Section and to the extent permitted by law, the City reserves the right, when feasible and reasonable, to require the sharing of facilities by ROW users. Applicants shall cooperate with each other and ROW users and the City for the best, most efficient, ~~least~~ ~~best~~ intrusive, most aesthetic and least obtrusive use of the rights-of-way.

d. The Director shall establish procedures allowing applicants to ascertain whether existing capacity may be available from other persons utilizing the rights-of-way along the intended path of any proposed work. The Director shall also maintain indexes of all ROW permits issued, both by the ROW user and by the affected rights-of-way.

4. In addition to the foregoing and in addition to any other standards or requirements imposed by this code with regard to an application filed by a wireless transmission provider, the Director shall ensure compliance with the following provisions:

a. The design, location and nature of all facilities shall be subject to the review and approval of the Director as provided herein. Such review shall be non-discriminatory and competitively neutral and approvals shall not be unreasonably withheld.

b. The Director may designate certain locations or facilities in the ROW to be excluded from use by the applicant for its facilities including, but not limited to:

(1) Ornamental or similar specially designed street lights,

(2) Facilities, equipment, structures or locations that do not

have electrical service adequate or appropriate for the proposed facilities or cannot safely bear the weight or wind loading thereof,

(3) Facilities, equipment, structures or locations that in the reasonable judgment of the Director are incompatible with the proposed facilities or would be rendered unsafe or unstable by the installation, and

(4) Facilities, equipment, structure or location that have been designated or planned for other use or are not otherwise available for use by the applicant due to engineering, technological, proprietary, legal or other limitations or restrictions.

c. If the application of this Subsection excludes locations for facilities to the extent that the exclusion conflicts with the reasonable requirements of the applicant, the Director shall cooperate in good faith with the application to attempt to find suitable alternatives, but such alternatives may exceed the cost increase limitation established by Subsection (B)(2) and the City shall not be required to incur any financial cost or to acquire new locations for the application.

d. The grant of a ROW permit shall not eliminate the need of a wireless transmission provider to have obtained a license, permit or other agreement for attaching facilities to other facilities, poles or other structures, whether owned by the City or other person.

e. Nothing in this code shall be construed to require that the City grant wireless transmission providers access to any City facilities or the City's proprietary property, but the City may enter into separate agreements with wireless transmission providers to allow such access. Such agreements may include the payment of reasonable attachment fees for use of City facilities or other City property. All such agreements shall be non-discriminatory and competitively neutral among wireless transmission providers.

5. Each ROW permit shall include:

a. Projected commencement and termination dates or, if such dates are unknown at the time the ROW permit is issued, a provision requiring the ROW user to provide the Director with reasonable advance notice of such dates once they are determined;

b. Length of affected rights-of-way, number of road crossings and identification and description of any pavement or curb cuts included in the work;

c. Information regarding scheduling and coordination of work, if necessary;

d. The location of any of the applicant's facilities, both those proposed and existing, and the location of any known facilities owned by another person that may be affected by the proposed work;

e. An acknowledgment and representation by the applicant to comply with the terms and conditions of the ROW permit and this code; and

f. Such conditions and requirements as are deemed reasonably necessary by the Director:

(1) To protect structures and other facilities in the rights-of-way from damage,

(2) For the proper restoration of such rights-of-way, structures and facilities,

(3) For the protection of the public and the continuity of pedestrian and vehicular traffic, and

(4) For the protection of the public health, safety and welfare.

6. An applicant receiving a ROW permit shall promptly notify the Director of any material changes in the information submitted in the application. The Director may issue a revised ROW permit or require that the ROW user reapply for a ROW permit in accordance with all requirements of this code.

7. ROW permits inure to the benefit of the applicant and the rights granted there under may not be assigned or transferred to any other person without the written consent of the Director.

8. The Director may deny an application, if denial is deemed to be in the public interest, for the following reasons:

- a. Delinquent fees, costs or expenses owed by the applicant;
- b. Failure to provide information required by the application or this code;
- c. The applicant being in violation of the provisions of this code or other pertinent and applicable City ordinances;
- d. Failure to return the ROW to its previous condition under previously issued ROW permits or after prior excavations by the applicant;
- e. The area is environmentally sensitive as defined by State Statute or Federal law or is a historic district as defined by local ordinance;
- f. For an applicant's refusal to comply with alternative ROW work methods or locations required by the Director pursuant to this code; and
- g. For any other reason to protect the public health, safety and welfare, provided that:

- (1) Such denial does not fall within the exclusive authority of the Missouri Public Service Commission,
- (2) Such denial does not interfere with a ROW user's right of eminent domain of private property, and
- (3) Such denial is imposed on a competitively neutral and non-discriminatory basis.

9.

For the purposes of Subsection (B)(7), the term "applicant" shall also include, when applicable, the person on whose behalf the applicant is to perform the ROW work. The Director may consider good-faith disputes with, or circumstances beyond the control of, the applicant or such person in determining whether to grant or deny the application.

C. ROW Permit Revocation And Code Violation Prosecution.

1. The Director may revoke a ROW permit without fee refund after notice and an opportunity to cure, but only in the event of a substantial breach of the terms and conditions of the ROW permit. Prior to revocation the Director shall provide written notice to the ROW user identifying any substantial breach and allowing a reasonable period of time not longer than thirty (30) days to cure the problem, which cure period may be immediate if certain activities must be stopped to protect the public safety. The cure period shall be extended by the Director on good cause shown by the ROW user. A substantial breach includes, but is not limited to, the following:

- a. A material violation of a provision of the ROW permit;
- b. An evasion or attempt to evade any material provision of the ROW permit or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its residents;
- c. A material misrepresentation of fact in the ROW permit application;
- d. A failure to complete ROW work by the date specified in the ROW permit, unless an extension is obtained or unless the failure to complete the work is due to reasons beyond the ROW user's control; and

e. A failure to correct, upon reasonable notice and opportunity to cure as specified by the Director, work that does not conform to applicable national safety codes, industry construction standards or the City's pertinent and applicable ordinances, including, but not limited to, this code, provided that City standards are no more stringent than those of a national safety code.

2. Any breach of the terms and conditions of a ROW permit shall also be deemed a violation of this code and in lieu of revocation the Director may initiate prosecution of the ROW user for such violation as provided in Section 24-827.5-8(H) hereof.

Sec. 24-797.5-5-Work in the Rights-of-Way

A. Jurisdiction, Inspection And Stop Work Orders.

1. All facilities and ROW work shall be subject to inspection by the City and the supervision of all Federal, State and local authorities having jurisdiction in such matters to ensure compliance with all applicable laws, ordinances, departmental rules and regulations.

2. The Director shall have full access to all portions of the ROW work and may issue stop work orders and corrective orders to prevent unauthorized work, including work not meeting the standards established in Subsection (F). Such orders:

a. May be delivered personally or by certified mail to the address listed on the application for the ROW permit, the person in charge of the construction site at the time of delivery or the registered person's point of contact;

b. Shall state that work not authorized by the ROW permit is being carried out, summarize the unauthorized work and provide a period of not longer than thirty (30) days to cure the problem, which cure period may be immediate if certain activities must be stopped to protect the public safety; and

c. May be enforced by equitable action in the Circuit Court of St. Louis County, Missouri, and in such case the person involved in the work shall be liable for all costs and expenses incurred by the City in enforcing such orders, including reasonable attorney's fees in addition to any and all penalties established in this code.

B. Installation Of Facilities.

1. In conjunction with the City's long-standing policy favoring underground construction, no person may erect, construct or install new poles or other facilities above the surface of the rights-of-way without the written permission of the City, unless the City's authority has been pre-empted. Such permission may be granted through a ROW permit when other similar facilities exist above ground or when physical conditions are such that underground construction is impossible, impractical or economically unfeasible, as determined by the City, and when in the City's judgment the above ground construction has minimal aesthetic impact on the area where the construction is proposed.

2. During installation of facilities and to the extent authorized by law, existing underground conduits shall be used whenever feasible and permitted by the owner thereof.

3. In the case of new construction or property development, the developer or property owner shall give to all persons registered hereunder reasonable written advance notice of the particular date on which open trenching will be available for installation of facilities. Costs of trenching and easements required to bring facilities within the development shall be borne by the developer or property owner; except that if the facilities are not installed within five (5)

working days of the date the trenches are available as designated in the notice given by the developer or property owner, then once the trenches are thereafter closed, the cost of new trenching shall be borne by the person installing the facilities.

C. Relocation Of Equipment And Facilities.

1. In the event of an emergency or where construction equipment or facilities create or are contributing to an imminent danger to health, safety or property, the City may, to the extent allowed by law, remove, relay or relocate such construction equipment or the pertinent parts of such facilities without charge to the City for such action or for restoration or repair. The City shall attempt to notify the owner of the construction equipment or facilities prior to taking such action, but the inability to do so shall not prevent same. Thereafter, the City shall notify the owner of the construction equipment or facilities as soon as practicable.

2. Should the grades or boundaries of the rights-of-way be changed at any time, a ROW user shall, if necessary, at its own cost and expense, relocate or change its facilities so as to conform to the new grades or boundaries. This requirement shall not apply when the ROW user holds a valid easement that existed prior to the date when the area in question became rights-of-way. The ROW user shall bear the burden of establishing to the City's satisfaction the fact of the pre-existing easement.

3. At the City's direction, all facilities shall be moved underground and the cost shall be solely the obligation of the owners (or as otherwise allowed or required by law).

4. Any ROW user shall, on the request of the City or any person authorized by the City, temporarily relocate facilities to permit the moving of buildings or oversized vehicles.

5. Any ROW user shall, within a reasonable time specified by the City, protect, support, disconnect, relocate or remove, at its own expense, construction equipment or discrete portions of its facilities when required by the City by reason of traffic conditions; public safety; rights-of-way construction, maintenance or repair (including resurfacing or widening); change of rights-of-way grade; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks or any type of government-owned communications system, public work or improvement or any government-owned utility; rights-of-way vacation; or for any other purpose where the convenience of the City would be reasonably served thereby.

6. If any action under Subsections (C)(4) or (5) is reasonably required of a ROW user to accommodate a person or another ROW user, the ROW user shall, after reasonable advance written notice, take action to effect the necessary actions requested and the actual cost, reasonably incurred, of such actions shall be paid by the person or ROW user upon whose behalf the action is requested. The ROW user taking such action shall have the authority to require such payment in advance.

7. Rather than relocate facilities as requested or directed, a ROW user may abandon the facilities if approved by the City as provided in Subsection (E) hereof.

8. No action hereunder shall be deemed a taking of property and no person shall be entitled to any compensation therefor. No location of any facilities within the rights-of-way shall be a vested interest.

D. Property Repair And Alterations.

1. During any ROW work, the person doing the work shall protect from damage any and all existing structures and property belonging to the City and any other person. Any and all rights-of-way, public property or private property disturbed or damaged during the work shall be repaired or replaced by the person doing the work or the person on whose behalf the work is being done and such person shall immediately notify the owner of the fact of the

damaged property. Such repair or replacement shall be completed within a reasonable time specified by the Director and to the Director's satisfaction.

2. Any alteration to the existing water mains, sewerage or drainage system or to any City, State or other public structures or facilities in the rights-of-way required on account of the construction, installation, repair or maintenance of facilities within the rights-of-way shall be made at the sole cost and expense of the owner of such facilities.

E. Removal, Abandonment And Transfer Of Facilities.

1. If a registration is terminated, the City may require that the person having facilities within the ROW remove its facilities from the rights-of-way at the person's expense. In removing its facilities the person shall obtain a ROW permit and restore any excavation that shall be made by it as required by this code. The liability, indemnity, insurance and bonding requirements as provided herein shall continue in full force and effect during and after the period of removal and restoration and until full compliance by the person with the terms and conditions of this paragraph and the requirements of this code.

2. If the person having facilities within the ROW fails to remove the facilities and restore the ROW within a reasonable period of time, the City may, to the extent permitted by law, have the removal done at the person's expense.

a. Alternatively, the City may permit the abandonment, without removal, of any facilities if the Director determines that abandonment will not result in interference with the use or maintenance of the rights-of-way or if ownership of the facilities is transferred as provided herein.

b. The City may decide that the ownership of the facilities shall revert to the City or to such person as directed by the City. In either case the owner of the facilities, if required by the City and permitted by law, shall submit a written instrument, satisfactory in form to City, transferring to the City, or to such person as directed by the City, ownership of the facilities. The City may sell, assign or transfer all or part of the facilities reverting to the City.

3. If a person having facilities within the ROW:

a. Has installed the facilities without complying with the requirements of this code, or

b. Abandons such facilities under applicable law, the City may deem the facilities abandoned. If such abandonment occurs, the City may require the removal of the facilities, remove the facilities at the expense of the person having facilities within the ROW, allow the abandonment of the facilities without removal or require the transfer of the facilities, all as provided in this Subsection.

4. The City shall not remove any facilities unless the existence of such facilities prevents or significantly impairs the use, repair, excavation or construction of the ROW. The City shall not remove or seek to possess or transfer the facilities until thirty (30) days have passed following written notice to the person having facilities within the ROW of the City's intent to so act. The City may choose not to act on good cause shown by the person having facilities within the ROW.

F. Standards For ROW Work.

1. Except for emergency ROW work as provided in Section ~~24-787.5-4~~, ROW work shall be performed only upon issuance and in accordance with the requirements of a ROW permit. At all times during the work, ROW permits shall be conspicuously displayed at the work site and shall be available for inspection by the Director.

2. If at any time it appears that the duration or scope of the ROW work shall differ from that allowed by the ROW permit, the ROW user shall inform the Director. The

Director may issue a waiver, an extension or a revised ROW permit or require that the ROW user reapply for an ROW permit in accordance with all requirements of this code.

3. ROW users shall not open or encumber more of the rights-of-way than is reasonably necessary to complete the ROW work in the most expeditious manner or allow excavations to remain open longer than is necessary to complete the work.

4. All ROW work that affects vehicular or pedestrian traffic shall be properly signed, barricaded and otherwise protected at the ROW user's expense. The ROW user shall be responsible for providing adequate traffic control to the area surrounding the work as determined by the Director.

5. The ROW user shall perform the ROW work at such times that will allow the least interference with the normal flow of traffic and the peace and quiet of the neighborhood as permitted by the Director. Unless otherwise provided by the Director in the permit, non-emergency ROW work on arterial and collector streets may not be accomplished during the hours of 7:00 A.M. to 8:30 A.M. and 4:00 P.M. to 6:00 P.M. in order to minimize disruption of traffic flow.

6. The ROW user shall notify the City no less than three (3) working days in advance of any ROW work that would require any street closure or would reduce traffic flow to less than two (2) lanes of moving traffic for more than four (4) hours. Except in the event of emergency ROW work, no such closure shall take place without notice and prior authorization from the City.

7. All ROW work shall be in accordance with all applicable Sections of the Occupational Safety and Health Act of 1970, the National Electrical Safety Code and other Federal, State or local laws and regulations that may apply including, without limitation, local health, safety, construction and zoning codes and laws and accepted industry practices, all as hereafter may be amended or adopted. In the event of a conflict among codes and standards, the most stringent code or standard shall apply (except insofar as that code or standard, if followed, would result in facilities that could not meet requirements of Federal, State or local law).

8. All facilities shall be installed and located to cause minimum interference with the rights and convenience of property owners, other ROW users and the City. Facilities shall not be placed where they will disrupt or interfere with other facilities or public improvements or obstruct or hinder in any manner the various utilities serving the residents and businesses in the City or public improvements.

9. All facilities shall be of good and durable quality.

10. All ROW work shall be conducted in accordance with good engineering practices, performed by experienced and properly trained personnel so as not to endanger any person or property or to unreasonably interfere in any manner with the rights-of-ways or legal rights of any property owner, including the City, or unnecessarily hinder or obstruct pedestrian or vehicular traffic.

11. All safety practices required by law shall be used during ROW work, including commonly accepted methods and devices to prevent failures and accidents that are likely to cause damage, injury or nuisance to the public.

12. Any contractor or subcontractor of a ROW user must be properly licensed under laws of the State and all applicable local ordinances and each contractor or subcontractor shall have the same obligations with respect to its work as a ROW user would have pursuant to this code. A ROW user:

a. Must ensure that contractors, subcontractors and all employees performing ROW work are trained and experienced,

- b. Shall be responsible for ensuring that all work is performed consistent with the ROW permit and applicable law,
- c. Shall be fully responsible for all acts or omissions of contractors or subcontractors,
- d. Shall be responsible for promptly correcting acts or omissions by any contractor or subcontractor, and
- e. Shall implement a quality control program to ensure that the work is properly performed.

13. It shall be the duty of any person making an excavation in the ROW to properly backfill such excavations and properly restore the surface to its proper condition. In the event the excavations are made in the improved portion of the ROW, twelve (12) inches of granular backfill will be placed over an exposed utility and controlled low strength material (CLSM) will fill the hole within eight (8) inches of the finished surface for concrete pavements. There will be a plastic membrane placed between the rock base and the CLSM to prevent the material from bleeding into the rock base. The remaining eight (8) inches will be restored by placing a twenty-eight (28) day minimum strength, four thousand five hundred (4,500) psi concrete mix.

In the event the excavations in the ROW are made in the improved portion of an asphalt or combination street, twelve (12) inches of granular backfill will be placed over an exposed utility and controlled low strength material (CLSM) will fill the hole within nine (9) inches of the finished surface. There will be a plastic membrane placed between the rock base and the CLSM to prevent the material from bleeding into the rock base. The remaining nine (9) inches will be restored by placing a six (6) inch thick, twenty-eight (28) day minimum strength, four thousand five hundred (4,500) psi concrete mix under a three (3) inch asphalt concrete lift of Type C mix to meet existing grades.

Construction of asphalt driveway entrances in residential ROW will be constructed of six (6) inches of compacted rock base and three (3) inches of Type C asphalt concrete mix. Construction of asphalt driveway entrances in commercial ROW will be constructed of four (4) inches of compacted rock base, seven and one-half (7.5) inches of Type X and three (3) inches of Type C asphalt concrete mix. Concrete driveway approaches will consist of a four (4) inch compacted rock base and be a minimum of six (6) inches thick in residential ROW and eight (8) inches thick in commercial ROW.

Street crossings will be bored at the direction of the Director.

14. Above ground facilities shall be a neutral color and shall not be bright, reflective or metallic. Black, gray and tan shall be considered neutral colors, as shall any color that blends with the surrounding dominant color and helps to camouflage the facilities. Facilities shall be located in such a manner as to reduce or eliminate their visibility. A sight-proof landscape screen may be required for any authorized above ground facilities taller than three (3) feet in height or covering in excess of four (4) square feet in size. Such screening shall be sufficient to reasonably conceal the facility. A landscape plan identifying the size and species of landscaping materials shall be approved by the Director prior to installation of any facility requiring landscape screening. The person having facilities within the ROW shall be responsible for the installation, repair or replacement of screening materials. Alternative screening or concealment may be approved by the Director to the extent it meets or exceeds the purposes of these requirements.

15. Above ground facilities shall be constructed and maintained in such a manner so as not to emit any unnecessary or intrusive noise and shall comply with all other applicable regulations and standards established by the City or State or Federal law.

16. If the application of this Subsection excludes locations for above ground facilities to the extent that the exclusion conflicts with the reasonable requirements of the applicant, the Director shall cooperate in good faith with the applicant to attempt to find suitable alternatives, but such alternatives may exceed the cost increase limitation established by Section ~~24-787.5-4~~ and the City shall not be required to incur any financial cost or to acquire new locations for the applicant.

G. Restoring And Maintaining The Rights-Of-Way.

1. To complete any ROW work the ROW user shall restore the ROW and surrounding areas, including, but not limited to, any pavement, foundation, concrete slabs or curbs, in accordance with the standards of Subsection (F) and the reasonable conditions of the Director. Restoration of the ROW shall be completed within the dates specified in the ROW permit unless the Director issues a waiver, extension or a new or revised ROW permit.

2. If an ROW user fails to restore the ROW within the date specified either by the ROW permit or any extension thereof as granted by the Director, the City may perform its own restoration. The City may also opt to perform its own restoration regardless of any failure by the ROW user, in which case the ROW permit or any amendment or revision thereto shall note such option. In either event, if the City performs the restoration, the ROW user shall be responsible for reimbursing the City's reasonable actual restoration costs within thirty (30) days of invoice.

3. Every ROW user to whom a ROW permit has been granted shall guarantee for a period of four (4) years the restoration of the ROW in the area where the ROW user conducted excavation and performed the restoration. During this period the ROW user shall, upon notification from the Director, correct all restoration work to the extent necessary as required by the Director. Said work shall be completed within a reasonable time, not to exceed thirty (30) calendar days from receipt of the Director's notice unless otherwise permitted by the Director. If a ROW user fails to restore the ROW within the time specified, the City may perform the work and the ROW user shall be responsible for reimbursing the City's reasonable actual restoration costs within thirty (30) days of invoice. The Director may extend the cure period on good cause shown.

4. A ROW user shall not be relieved of the obligation to complete the necessary right-of-way restoration and maintenance because of the existence of a performance bond pursuant to Subsection (I).

H. Mapping Requirements. After the completion of ROW work the ROW user shall provide to the City as-built drawings, maps or other comparable records as determined by the Director, drawn to scale and certified to the City as reasonably depicting the location of all facilities constructed pursuant to the ROW permit. Such records may be provided to the Director in the form maintained by the ROW user, but when available to the ROW user, shall be submitted in automated formats compatible with City systems, as determined by the Director, or in hard copy otherwise.

I. Performance And Maintenance Bonds.

1. Prior to any ROW work a ROW user shall establish in the City's favor a performance and maintenance bond in an amount to be determined by the Director to ensure the restoration of the rights-of-way. The bond shall continue in full force and effect for a period of

twenty-four (24) months following completion of the work. The Director shall have the authority to extend the maintenance bond period for up to an additional twenty-four (24) months in the same manner as provided in Subsection (G)(2). The Director may waive this requirement when the work involves no disruption or damage or only minor disruption or damage to the rights-of-way. The Director shall waive this requirement when the ROW user has twenty-five million dollars (\$25,000,000.00) in net assets and does not have a history of non-compliance with the ordinances of the City.

2. In the event a ROW user fails to complete the ROW work in a safe, timely and competent manner or if the completed restorative work fails within the time period for the bond (as determined by the Director), then after notice and a reasonable opportunity to cure there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the ROW user and the cost of completing work within or restoring the rights-of-way, plus a reasonable allowance for attorneys' fees, up to the full amount of the bond. The City may also recover against the bond any amount recoverable against a security fund or letter of credit where such amount exceeds that available under a security fund or letter of credit.

3. Upon completion of ROW work to the satisfaction of the Director and upon lapse of the bond period, including any extension by the Director, the City shall release the bond.

4. The bond shall be issued by a surety with an "A" or better rating of insurance in Best's Key Rating Guide, Property/Casualty Edition, shall be subject to the approval of the City Attorney and shall contain the following endorsement:
"This bond may not be canceled or allowed to lapse until sixty (60) days after receipt by the City, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."

5. In lieu of the bond required herein, the ROW user may establish in the City's favor such other security as the Director may determine to be commensurate with the noted bonding requirements including, but not limited to, an annual bond to be maintained in the minimum amount of twenty-five thousand dollars (\$25,000.00).

J. Miscellaneous.

1. Upon failure of a ROW user to commence, pursue or complete any ROW work required by law or by the provisions of this code to be done in any street within the time prescribed and to the reasonable satisfaction of the City, the City may, at its option, after thirty (30) days' notice, cause such work to be done and the ROW user shall pay to the City the cost thereof in the itemized amounts reported by the City to the ROW user within thirty (30) days after receipt of such itemized report.

2. Upon ten (10) days' written notice and with the supervision of the City or as otherwise provided by law, a ROW user shall have the authority to trim trees that overhang rights-of-way of the City so as to prevent the branches of such trees from coming in contact with its facilities, at its own expense subject to the supervision and direction of the City. Nothing in this Subsection shall authorize the trimming of trees on private property without permission of the property owner. All cut materials shall be properly disposed.

3. During ROW work by a ROW user the City shall have the right to install and to thereafter maintain at its own cost in any excavation to or other applicable disturbance of the ROW any parallel facilities of its own that do not unreasonably interfere with the operations of other facilities.

4. Nothing in this code shall be in preference or hindrance to the right of the City and any board, authority, commission or public service corporation of the City to use or occupy the rights-of-way or to perform or carry on any public works or public improvements of any description.

Sec. ~~24-807.5-6~~ Open Books and Records.

A. Persons subject to rental fees as provided herein shall maintain sufficient records to document accurate payment of such rental fees including, but not limited to, such plans, records or maps showing the approximate location and length of all facilities located within the rights-of-way.

B. The City shall have the right to inspect at a location in the metropolitan St. Louis area all records that are reasonably necessary to monitor compliance with the terms of this code. A person having facilities within the ROW shall be responsible for collecting and producing such information and by registering affirms that it will do so.

C. The Director may require provision or retention of additional information, records and documents from time to time as may be reasonably necessary or appropriate to the performance of any of the rights, functions or duties of the City in connection with this code.

D. All records and information referenced herein shall be subject to inspection and copying by the City, at no cost to the City, to ensure code compliance. All records and information received by the City shall be public except to the extent confidentiality is requested and permitted by the Missouri Open Meetings Law and other applicable State and Federal laws. If any records cannot be copied for security or other reasons, the person having facilities within the ROW shall nonetheless make such records available for City inspection and shall reimburse the City for all reasonable costs incurred by the City in inspecting those records.

E. If any records are voluminous, then the person may request that the inspection take place at some other location outside the metropolitan St. Louis area, provided that such person must pay all reasonable travel expenses incurred by the City in inspecting those records.

Sec. ~~24-817.5-7~~ Rental Fee.

A. Finding And Intent. The City finds that rights-of-way are valuable public property acquired and maintained at great expense to taxpayers. The City further finds that the grant of permission to locate facilities within the rights-of-way is a valuable property right and eliminates the need to invest substantial capital in the private location of such facilities. Any person that places facilities within the rights-of-way after the effective date of this code and any person that leaves existing facilities within the rights-of-way more than ninety (90) days after the effective date of this code shall be deemed to have agreed to pay compensation for such use of the rights-of-way as established herein. It is the intent of this Section that the rental fees provided for herein be applied to and be paid by only those persons having facilities within the rights-of-way. This Section codifies the City's long-established policy of imposing fees on right-of-way users.

B. Payment To City. Any person having facilities within the ROW shall pay to the City annual rent consisting of, depending on the facility, linear foot fees and antenna fees as set forth in Section 7.5-39 as amended from time to time for the use of the affected rights-of-way for the applicable facilities.

C. Not A Tax Or In Lieu Of Any Other Tax Or Fee — Credit For Business License Taxes Or Gross Receipts Taxes.

Comment [CL8]: See above

1. The rental fees are not a tax, license or fee subject to any requirement of voter approval, but rather constitute a charge for special and individualized use of public property.

2. Rental fees are in addition to all other fees and all taxes and payments that a person may be required to pay under any Federal, State or local law, including any applicable property and amusement taxes.

3. To promote economic development, any person obligated to pay rental fees shall be granted a credit for all sums paid to the City by such person for applicable business license fees or gross receipts taxes or franchise fees, up to the amount of the rental fees. In no event shall such a credit result in a refund from the City.

D. Payments.

1. The rental fees shall be paid quarterly to the City and shall commence as of the later of the effective date of this code or the first (1st) day on which a person having facilities within the ROW places facilities within the rights-of-way. The City shall be furnished at the time of each payment with a statement certified by the payer's chief financial officer or comparable officer or by an independent certified public accountant reflecting the calculation of the total amount of rental compensation for the payment period. Payments shall be made to the City no later than forty-five (45) days following the end of each calendar quarter.

2. In the event any rental fee or other payment due hereunder is not made on or before the date specified herein, interest charges shall also be due, computed from such due date, at an annual rate equal to the commercial prime interest rate of the City's primary depository bank during the period such unpaid amount is owed plus a penalty of two percent (2%) of the amount.

E. No Accord Or Satisfaction. No acceptance of any payment by the City shall be construed as a release or an accord and satisfaction of any claim the City may have for further or additional sums payable as rental fees under this code or for the performance of any other obligation.

F. Audit. The City shall have the right to inspect all reasonably necessary records and the right to audit and to recalculate any amounts determined to be payable under this code. Persons subject to rental fees hereunder shall be responsible for providing the records to the City at an office located within the metropolitan St. Louis area except as provided in Section ~~24-807-5-6~~(E). Such records shall be maintained for at least five (5) years. The City's audit expenses shall be borne by the person audited if the rental fees paid during the audit period are less than ninety-five percent (95%) of the amount owed according to the audit. Any additional amounts due to the City as a result of the audit shall be paid within thirty (30) days following written notice to the person by the City of the underpayment, which notice shall include a copy of the audit report. If recalculation results in an additional amount to be paid to the City, such amount shall be subject to interest and penalties as specified in Subsection (D)(2) above.

G. Exemption From Rental Fees.

1. Persons having facilities within the ROW pursuant to a duly-issued, lawful and applicable license or franchise shall be exempt from this Section for the duration of such license or franchise, provided they continue to pay on a timely basis all fees due under such license and franchise.

2. Governmental entities having facilities within the ROW shall not be liable for rental fees.

| Sec. ~~24-827-5-8~~ Insurance-Surety-Indemnification-Penalties.

A. Insurance Required. All ROW users shall maintain, for the duration of any ROW work and, when applicable, for as long as the ROW user has facilities within the rights-of-way, at least the following liability insurance coverage: Workers' Compensation and employer liability insurance to meet all requirements of Missouri law and commercial general liability insurance with respect to the construction, operation and maintenance of the facilities and the conduct of the ROW user's business in the City in the minimum amounts of:

1. Two million dollars (\$2,000,000.00) for property damage resulting from any one (1) accident;
2. Five million dollars (\$5,000,000.00) for personal bodily injury or death resulting from any one (1) accident; and
3. Two million dollars (\$2,000,000.00) for all other types of liability.

These insurance requirements shall not be construed to limit the liability of any person or to impose any liability on the City.

B. Qualifications Of Sureties. All insurance policies shall be with sureties qualified to do business in the State with an "A" or better rating of insurance by Best's Key Rating Guide, Property/Casualty Edition and in a form approved by the City.

C. Policies Available For Review. All insurance policies shall be available for review by the City and a ROW user having facilities within the rights-of-way shall keep on file with the City current certificates of insurance.

D. Additional Insureds — Prior Notice Of Policy Cancellation. All general liability insurance policies shall name the City, its officers, boards, board members, commissions, commissioners, agents and employees as additional insureds and shall further provide that any cancellation or reduction in coverage shall not be effective unless thirty (30) days' prior written notice thereof has been given to the City Clerk. A ROW user shall not cancel any required insurance policy without submission of proof that it has obtained alternative insurance that complies with this code.

E. Exemption From Insurance Requirements. The Director may exempt in writing from the requirements of Subsections (A) through (D) any self-insured ROW user, provided that the ROW user demonstrates to the Director's satisfaction that the ROW user's self-insurance plan is commensurate with said requirements and that the ROW user has sufficient resources to meet all potential risks, liabilities and obligations contemplated by the requirements of this code. The Director may require a security fund or letter of credit as a condition to a self-insured's exemption. The Director shall waive this requirement when the ROW user has twenty-five million dollars (\$25,000,000.00) in net assets and does not have a history of non-compliance with the ordinances of the City.

F. Indemnification.

1. Any ROW user granted a ROW permit and any person having facilities within the rights-of-way, as partial consideration for the privilege granted, shall, at its sole cost and expense, indemnify, hold harmless and defend the City, its officials, boards, board members, commissions, commissioners, agents and employees against any and all claims, suits, causes of action, proceedings and judgments for damages or equitable relief arising out of:

- a. Any ROW work including, but not limited to, the construction, maintenance, repair or operation of facilities,
- b. Failure to secure consents from landowners, or
- c. Any actions taken or omissions made by the person pursuant to the authority of this code.

2. The foregoing indemnity provisions include, but are not limited to, the City's reasonable attorneys' fees incurred in defending against any such claim, suit or proceeding prior to the person assuming such defense. The City shall notify a person of claims or suits within seven (7) business days of its actual knowledge of the existence of such claim, suit or proceeding. Once a person assumes such defense, the City may at its option continue to participate in the defense at its own expense.

3. Notwithstanding anything to the contrary contained in this code, the City shall not be so indemnified or reimbursed in relation to any amounts:

a. Attributable to the City's own negligence, willful misconduct, intentional or criminal acts, or

b. Attributable to the City acting in a proprietary capacity to deliver service(s) within the City.

G. Relation To Insurance And Indemnity Requirements. Recovery by the City of any amounts under insurance, a performance bond or otherwise does not limit a person's duty to indemnify the City in any way; nor shall such recovery relieve a person of amounts owed to the City or in any respect prevent the City from exercising any other right or remedy it may have.

H. Penalties. Any person violating any provision of this code shall, upon conviction by the City's Municipal Court, be punished by a fine not to exceed one thousand dollars (\$1,000.00) or by imprisonment not to exceed ninety (90) days, or by both such fine and imprisonment. Each day the violation continues may be charged as a separate offense. In addition, where any excavation for which a ROW permit is required by this Chapter is started prior to obtaining said permit, the total permit fee shall be doubled by the Director. Payment of the doubled fee shall not relieve any persons from fully complying with the requirements of this Chapter, nor from the penalties prescribed herein.

| Sec. ~~24-837.5-9~~-Dispute Resolution and Appeals.

A. Dispute Resolution By The Director. The Director shall make a final determination as to any matter concerning the grant, denial or revocation of a ROW permit as provided in this Code. On the request of an applicant or a ROW user and within a reasonable period of time, the Director also shall make a final determination as to any other issue relating to the use of the ROW, the imposition of any fee or the application of any provision of this Code; provided however, that this review shall not apply to matters being prosecuted in court pursuant to Section ~~24-797.5-5~~(A)(2)(c) or Section ~~24-827.5-8~~(H)~~hereof~~ hereof. Any final determination of the Director shall be subject to review as provided herein.

B. Chapter 536 Review. Any person aggrieved by the final determination of the Director may file a petition for review pursuant to Chapter 536, RSMo., as amended, in the Circuit Court of the County of St. Louis. Such petition shall be filed within thirty (30) days after the Director's final determination.

| Sec. ~~24-847.5-10~~-Miscellaneous Provisions.

A. Captions. Captions throughout this code are intended solely to facilitate reading and reference to the Sections and provisions. Such captions shall not affect the meaning or interpretation of this code.

B. Interpretation Of Code. The provisions of this code shall be liberally construed to promote the public interest. This Article shall be interpreted in accordance with Sections 67.1830, RSMo., et seq., and 47 U.S.C. Section 332.

C. Expense. Any act that a person is required to perform by this code or other law shall be done at the person's expense, without City reimbursement, unless expressly provided to the contrary by law.

D. Eminent Domain. Nothing herein shall be deemed or construed to impair or affect in any way or to any extent the power of eminent domain held by the City or any other person.

E. Exclusive Contracts And Anticompetitive Acts Prohibited.

1. Unless otherwise allowed by law, no person shall enter into or enforce an exclusive contract for the provision of services with any other person or demand the exclusive right to serve another person or location as a condition of extending service to that person or location or any other person or location.

2. No person shall engage in acts that have the purpose or effect of limiting competition for the provision of services in the City, except for such actions as are expressly authorized by law.

F. No Recourse Against The City. Without limiting such immunities as the City or other persons may have under applicable law, no person shall have any recourse whatsoever against the City or its officials, members, boards, commissions, agents or employees for any loss, costs, expense, liability or damage arising out of any action undertaken or not undertaken pursuant to any provision or requirement of this code or because of the enforcement of this code or the City's exercise of its authority pursuant to this code or other applicable law, unless such recourse is expressly authorized by law.

G. Rights And Remedies.

1. The rights and remedies reserved to the City by this code are cumulative and shall be in addition to and not in derogation of any other rights and remedies which the City may have with respect to the subject matter of this code.

2. The City hereby reserves to itself the right to intervene in any suit, action or proceeding involving any provision of this code.

3. Specific mention of the materiality of any of the provisions herein is not intended to be exclusive of any others for the purpose of determining whether any failure of compliance hereunder is material and substantial.

4. No course of dealing between any person and the City or any delay on the part of the City in exercising any rights hereunder shall operate as a waiver of any such rights of the City or acquiescence in the actions of such person in contravention of such rights except to the extent expressly waived in writing. No person shall be relieved of its obligation to comply with any of the provisions of this code by reason of any failure of the City to enforce prompt compliance nor shall any inaction by the City be deemed to waive a provision or render void any provision of this code.

H. Force Majeure. A person shall not be deemed in violation of this code where performance was hindered by war or riots, civil disturbances, floods or other natural catastrophes beyond the person's control and a registration shall not be terminated or a person penalized for such non-compliance, provided that the person takes prompt and diligent steps to bring itself back into compliance and to comply as soon as reasonably possible under the circumstances without unduly endangering the health, safety and integrity of employees or property or the health, safety and integrity of the public, rights-of-way, public property or private property.

I. Public Emergency. In the event of a public emergency or disaster as determined by the City, a ROW user immediately shall make facilities, employees and property, as may be reasonably necessary, available for use by the City or other civil defense or governmental agency designated by the City for the term of such emergency or disaster for emergency purposes. In the event of such use, the ROW user shall waive any claim that such use by the City constitutes a use of eminent domain, provided that the City shall return use of the facilities, employees and property to the ROW user promptly after the emergency or disaster has ended.

J. Calculation Of Time. Unless otherwise indicated, when the performance or doing of any act, duty, matter or payment is required under this code and a period of time is prescribed and is fixed herein, the time shall be computed so as to exclude the day of the act, event or default after which the designated period of time begins to run and include the last day of the prescribed or fixed period of time, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the next day which is neither a Saturday, Sunday or legal holiday. If the period is less than seven (7) days, intermediate Saturday, Sunday and legal holidays shall be excluded in the computation. This Subsection shall not apply in the context of obligations that continue on a daily basis.

K. Severability. If any term, condition, clause, sentence or provision of this code shall to any extent be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by the City and shall thereafter be binding.

Sections 24-85 through 24-90. Reserved.

Section 42. All ordinances or parts of ordinances in conflict herewith are to the extent of such conflict repealed.

Section 53. This ordinance shall take effect and be in full force from and after its passage and approval.

PASSED THIS _____ DAY OF _____, 2016.

TIM POGUE, Mayor

APPROVED THIS _____ DAY OF _____, 2016.

TIM POGUE, Mayor

ATTEST:

Eric Hanson, City Administrator