

Chapter 19 - STREETS, SIDEWALKS, RIGHTS-OF-WAY AND OTHER PUBLIC PLACES ⁽¹⁾

ARTICLE III. – IN GENERAL

Sec. 19-101. – Definitions.

The following words, terms, and phrases, when used in this Chapter, 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:

1. Declared abandoned by the owner of such equipment or facilities;
2. No longer in active use, physically disconnected from a portion of the operating facility or any other; or
3. Facility that is in use or in service, and no longer capable of being used for the same or similar purpose for which the equipment, apparatuses or facilities were installed.

Adjoining property owner means a person owning or legally occupying any land abutting a public right-of-way.

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.

Charter means the Charter of the City of Belton, Missouri.

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

City Council means the City Council of the City of Belton, Missouri.

City Engineer means the City Engineer of Belton, Missouri, or his or her authorized representative.

Code means the Code of Ordinances of the City of Belton, Missouri.

Commission means the Missouri Public Service Commission.

Construct or construction 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.

Cost-Share Program means the program provided by the City where property owners may request that the sidewalk, curb and/or driveway culvert abutting their property be repaired or replaced under a cost-share agreement between the property owner and the City.

Day means calendar day unless otherwise specified.

Design and Construction Manual means the current design and construction specification standards for public streets, private alleys, parking lots and drives, water facilities, sanitary sewer facilities, stormwater facilities, erosion and sediment control; street lighting; and all related appurtenances adopted by the City Engineer pursuant to the provisions of this Chapter.

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

1. An unexpected or unplanned outage, cut, rupture, leak or any other failure of a ROW-user's facility 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 a ROW-user's 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
3. Any occurrence involving a ROW-user's 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:

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

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, gates, meters, appurtenances, or other equipment used for or related to providing service.

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

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.

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, or by private development 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.

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, with the advice and consent of the City Council, according to the Charter and Code, to advise routine business for the Public Works Department of the City of Belton, 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 work.

Right-of-way 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, but not including:

1. The airwaves above a public right-of-way with regard to cellular or other non-wire telecommunications or broadcast service;

2. Easements obtained by utilities or private easements in platted subdivisions or tracts;
3. Railroad rights-of-way and ground utilized or acquired for railroad facilities; or
4. 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 Chapter 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 work that makes no material change to the facilities and does not disrupt traffic.

ROW-user means a person, its successors and assigns, who 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 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.

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 who 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 Chapter 91, or pursuant to a charter form of government or cooperatively owned or operated utility pursuant to RSMo Chapter 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.

Sign means any object, device, display, or structure, or part thereof, that is used to advertise, identify, display, or attract attention to an object, person, institution, organization, business, product, service, event, or location by any means, including words, letters, figures, design, symbols, fixtures, colors, illumination, or projected images. The term "sign" shall not include the following:

- A. Official signs: Signs placed by, or with the permission of, a governmental body, governmental agency, or public authority, such as traffic signs, signals, or regulatory devices or warnings; official emblems, public notices, or official instruments; signs of historical interest; signs designating areas of architectural or historic significance or gateways; or other similar signs or devices. Such signs are authorized within all public rights-of-way or other properties controlled by such governmental body, agency, or authority.
- B. Property address sign: A sign limited in content to the street name and address number of the property to which it is affixed, provided that the sign consists of lettering no larger than three (3) inches on a mailbox.
- C. Sandwich Boards on Main Street.

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.

Wireless transmission provider means 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.

Work or working means the construction, excavation, installation, repair or maintenance of any type of facility within the right-of-way, unless an exemption as provided in this Chapter applies to the routine maintenance of the facility.

Yard waste means leaves, grass clippings, weeds, pruning, yard and garden vegetation, and trees.

Sec 19-102. – Design criteria, construction specifications, and standard details.

- A. The Design and Construction Manual is hereby incorporated by reference into the City of Belton Municipal Code for the purpose of providing certain design and construction specifications and standards for enforcement and compliance. The Design and Construction Manual is provided online on the City’s website at www.belton.org.
- B. Unless otherwise specified and approved, all public improvements shall be designed, constructed, and inspected in accordance with the Design and Construction Manual.
- C. Private streets shall be constructed to public street standards.

Sec. 19-103. – Cost-share program for sidewalks, curb and gutter and driveway culverts.

The Cost-Share Program was adopted by Resolution 2015-04. The Cost-Share Program details and application are available online at the City’s website at www.belton.org.

Sec. 19-104. – Public right-of-way in general.

- A. No person shall construct, repair, damage, deface or obstruct any street, alley, sidewalk, pavement, gutter, bridge, curb, sewer, drain, culvert, lamppost, or street sign or post without permission of the City Engineer and in conformity with specifications promulgated by him or her and approved by the City Council.
- B. No person shall in any way drive upon any sidewalk, pedestrian trail, or curb and gutter system and shall not jump the curb or place a vehicle upon any surface described herein.
- C. All street closing procedures shall be done in conformance with Article V of this Chapter.

Sec. 19-105. – Requirements for private driveways along certain roads and streets.

- A. Supervision by the Department of Public Works. The Public Works Director, City Engineer, or other employee designated by the City Manager shall inspect the construction of all driveway approaches, including but not limited to the portion of the driveway within the right-of-way, to ensure compliance with the latest revision of the City's Design and Construction Manual. Before improvements are commenced within the public right-of-way, a right-of-way permit must be issued by the City Engineer.
- B. Maintenance. The owner of the property served by a driveway is responsible for the maintenance and safekeeping of the driveway up to the curb and gutter if applicable or up to the public street within the public right-of-way. Any such driveway, driveway culvert or driveway pipe that collapses, clogs or otherwise fails in its purpose shall be repaired or replaced within a reasonable time after such failure by the property owner or other responsible person.

Sec. 19-106. – Construction of sidewalks.

- A. All sidewalks constructed upon right-of-way and public sidewalk easements shall be constructed in accordance with the City’s Design and Construction Manual (sidewalks outside of right-of-way or public sidewalk easements are private).
- B. Any person or entity constructing a new building, a building addition, major renovations to an existing building (major improvements means improvements exceed 50% of fair market value of renovated structure), or significant site improvements shall be required to construct a public sidewalk, where no sidewalk exists, along the public street frontage in conformance with the Design and Construction Manual. The City Engineer may waive this requirement for minor site improvements or residential areas where the area has undeveloped frontage.
- C. Any person or entity proposing to construct a sidewalk adjacent to or upon any right-of-way or easement shall apply to the City Engineer for approval of the location, dimensions, design and construction methods and materials of such sidewalk. The application shall be in the form of a right-of-way permit and shall conform to the requirements of such permit.

Sec. 19-107. – Maintenance of sidewalks.

- A. It shall be the duty of all persons owning or occupying any real property, fronting upon any street to keep the sidewalks in front and alongside of such property and on the same side of the street, in good repair and order and clean the same and remove from any such sidewalk all ice, snow, earth or other substance that in anyway obstructs or renders the same dangerous, inconvenient or unsafe to any person.
- B. Unless approved by the City Engineer, existing sidewalks must be replaced in a timely fashion if removed for any reason.

Sec. 19-108. – Inspections and repair of sidewalks.

It shall be the duty of the Public Works Department to cause all public sidewalks to be inspected by staff, as deemed appropriate. Upon any finding that any such sidewalk is in need of repair or replacement, the Public Works Department shall proceed as follows:

- A. To cause a written notice to be served upon or delivered to the owner(s) of all lots or tracts of land fronting or abutting on the part of said lot of said sidewalk found on inspection to be in need of repair setting forth the following:
 - 1. A description of the location of such portion needing repair including reference to the abutting lots or tracts of land.
 - 2. A description of the nature and extent of the repair needed.
 - 3. Notification of the Cost-Share Program for sidewalks, curb and gutter, and driveway culverts as an option for the property owner.
 - 4. A statement that said portion of said sidewalk is to be repaired at such location to correct the condition described, within thirty (30) days after service or delivery of said notice.
- B. If, at the expiration of thirty (30) days after service or delivery of said notice, said sidewalk shall not be repaired at the location and to the extent required to repair the same as so described, such further proceedings as may be authorized pursuant to Chapter 88, Revised Statutes of the State of Missouri.

Sec. 19-109. – Use of public right-of-way and other public places.

Refer to Article V of this Chapter for right-of-way permitting procedures.

Sec. 19-110. – Prohibition of signs in public right-of-way.

It shall be unlawful for any person to place any sign in any part of the public right-of-way, whether improved or unimproved, or whether or not owned by the City, except by written approval of the Public Works Director and the City Planner or the public agency having jurisdiction. Refer to Chapter 30 of the Unified Development Code of the City of Belton, Missouri for more regulations on signs.

ARTICLE IV. - OBSTRUCTIONS, ENCROACHMENTS, BARRIERS, CLEANING, AND MANAGEMENT

Sec. 19-111. – Obstructions prohibited; exceptions for merchants, etc.

No person shall place or throw, or cause to be placed or thrown, any article, substance, or obstruction of any kind whatsoever upon the street, alley, avenue, public square, pavement, curb and gutter or sidewalk whether declared a public sidewalk or not. Nothing in this section shall be so construed as to prevent any merchant or other person from placing any articles or boxes on the sidewalks while receiving or delivering goods, or forwarding the same, or receiving fuel, not to remain in the street more than one day; or building materials, during the erection of any building, or improvement; provided, that such materials shall not occupy more than one-half (1/2) of the street.

Sec. 19-112. – Obstructing drainage facilities.

- A. It shall be unlawful for any person to alter, change or obstruct any drainage facility, including detention or retention ponds, streams, waterways, culverts, intakes, curbs, etc., without prior approval of the City Engineer.
- B. It shall be unlawful for any owner or occupier of real property abutting any street or roadway to place or allow to be placed or allow to remain within any drainage ditch adjoining said street or roadway any trash, junk, debris or any other material which would impede or restrict the flow of water through and along said drainage ditch adjoining said street or roadway.
- C. It shall be unlawful for any owner or occupier of real property to alter, change or obstruct or permit or allow the continued alteration, changing, or obstruction of any drainage facility, including detention or retention pond, culverts, intakes, curbs, etc., without prior approval of the City Engineer.

Sec. 19-113. – Water over public sidewalks.

No water from any downspout, or from any gutter or drain from any building or premises shall be permitted by the owner of any premises to drain or run onto the surface of any sidewalk, nor across the same, unless it be made to pass through conduits, drains, or pipes placed beneath the surface of the sidewalk.

Sec 19-114. – Playing in the streets.

No person shall throw snowballs or engage in any game, sport, or activity likely to injure, frighten or impede the travel of any person upon any street, alley or right-of-way.

Sec 19-115. – Use of skateboards or other like instruments; limitation penalty for violation.

- A. Prohibited in business districts. No person shall use, operate or permit the use or operation of any skateboard or like instrument on any sidewalk, street, parking lot or other public place in any business district in the city as determined by the city zoning ordinance map, as the same may not exist or as it may be amended to be from time to time.
- B. Permitted, where, exceptions. The use of any skateboard or other like instrument as defined in this Chapter is hereby permitted on all other sidewalks, streets, and other public ways within

the city, except state or federal highways or other streets classified as arterial or collector streets on the city zoning map; provided however, that any person who shall use, operate, or permit to be used or operated, any skateboard or like instrument on any street, sidewalk, parking lot, etc shall do so in a careful and prudent manner so as not to cause or be likely to cause danger to any person or property.

- C. Yielding ROW, etc. The use of any such skateboard or like instrument shall give way to any pedestrian, motor vehicle, bicycle, or any other user of said sidewalk, street, parking lot, etc., and shall not interfere with the proper use of the public way by any other person. Such user shall further obey all traffic laws and ordinances applicable to pedestrians or vehicles at all times.

Sec. 19-116. – Trimming trees and vegetation along streets and sidewalks.

- A. Every owner or occupant of any house, lot or premises in the city, shall keep the trees, bushes, flowers and vegetation (including dead branches, dead trees and dead vegetation), along the street, avenue or sidewalk in front and alongside of such house, building, lot or premises trimmed so that the branches shall not be lower than twelve (12) feet from the surface of such street, avenue or sidewalk nor extend more than one-fourth (1/4) of the distance from the base of such tree over or across such street, avenue or sidewalk.
- B. Refer to Section 28-9. Intersection visibility within the Unified Development Code of the City of Belton, Missouri.

Sec. 19-117. – Right of utility providers to trim trees, shrubs.

The right is hereby granted to all utility providers to trim trees, brush, or hedges upon and overhanging the streets, alleys, sidewalks, and public places of the City so as to prevent such foliage from coming in contact with wires, cables or equipment. All of such trimming shall be done under the supervision and direction of the City Engineer and related permitting processes.

Sec. 19-118. – Yard wastes: leaves, grass clippings, yard and garden vegetation, and trees.

No person shall deposit yard waste within the public right-of-way with the exception of the yard wastes being placed in containers so constructed and maintained as to prevent the dispersal of wastes placed therein upon the premises served, upon adjacent premises, or upon adjacent public rights-of-way and in a timely manner of which the yard waste is to be picked up by the certain service provider.

Sec. 19-119. – Dumping prohibited.

- A. No person shall dump or deposit or cause to be dumped or deposited any dirt, gravel, rubbish, leaves or other debris including, but not limited to, lumber, paper, trash, concrete or metal in any street, right-of-way, gutter, storm sewer, waterway or drainage way. Erosion of soil which flows onto any street, right-of-way, gutter, storm sewer, waterway or drainage way from property before or during construction shall be considered as depositing dirt, gravel or other construction debris.
- B. If upon inspection by City staff, it is determined that dirt, gravel, rubbish, leaves or other debris has been dumped or deposited in any street, right-of-way, gutter, storm sewer, waterway or

drainage way in violation of the provisions of this section, he or she shall then notify City Code Enforcement to remedy and resolve the situation.

Sec. 19-120. – Lawn sprinkler system.

Lawn sprinkler systems may be placed in the City’s right-of-way with a proper right-of-way permit. However, the granting of a permit pursuant to this Chapter shall create no easement, license or other right in the landowner, other than the limited permissive use of the City's right-of-way. It shall be a condition of every permit that the landowner shall expressly release, indemnify and hold harmless the City of Belton, and its employees, agents, contractors, lessees, licensees and permittees on City's right-of-way, from any and all liability, claims, suits or demand, whatsoever, which they or others may now have or which may hereafter have arising out of the placement of sprinkler heads or related components in City right-of-way, including but not limited to any damage done to the landowner's sprinkler system as a result of any activities of the City or its employees, agents, contractors, lessees, licensees and permittees, and any damage which the landowner may do to any existing facilities on the City's right-of-way in the course of installing landowner's lawn sprinkler system.

Sec. 19-121. – Reference to other related chapters.

Refer to Chapter 32 and Chapter 36 in the Unified Development Code for additional code pertaining to drainage facilities and stream buffers. Refer to Chapter 10, Article IV – Maintenance of Property in the Code of Ordinances for additional code pertaining to property maintenance.

ARTICLE V. – RIGHT-OF-WAY MANAGEMENT, USE, CONSTRUCTION, RECONSTRUCTION, IMPROVEMENTS AND REPAIRS; PERMIT/INPSECTION REQUIREMENTS

DIVISION 1. – RIGHT-OF-WAY GENERALLY

Sec. 19-122. – 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 valuable public resource that has required and will continue to require substantial investment by the City. In particular, this article is enacted to:

- A. Manage the right-of-way to allow efficient location of facilities and maximize services to the citizens of the city.
- 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 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 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 impact to vehicular or pedestrian traffic within the right-of-way.
- I. Protect the health, safety and welfare of the citizens of the city.

DIVISION 2. – RIGHT-OF-WAY ADMINISTRATION AND AUTHORITY

Sec. 19-123. – City Engineer.

The City Engineer is the principal city official responsible for administration of the right-of-way registration and permitting processes. The Director of Public Works or City Engineer may delegate any and all duties under this Chapter.

Sec. 19-124. – Public Works Committee.

The Public Works Committee may advise staff under this Chapter and make recommendations to the City Council.

DIVISION 3. – RIGHT-OF-WAY SERVICE PROVIDER REGISTRATION

Sec. 19-125. – Persons who must register.

All Service Providers must register in accordance with this code.

Sec. 19-126. – Service provider registration.

All existing Service Providers must register within thirty (30) days of the effective date of this Chapter.

- A. Any person who is not a Service Provider prior to the effective date of this Chapter and who wishes to become a Service Provider must first register with the City.
- B. No Service Provider 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.
- C. The Service Provider shall be responsible for all costs incurred by the City due to the failure to provide any information to the City required for registration.

Sec. 19-127. – Registration requirements.

- A. Requirements and Processing
 1. Registration shall be accomplished in the form of a letter to the City filed with the City Engineer.
 2. To be valid, the registration letter must be signed by an authorized representative of the registering Service Provider, contain all required information and be accompanied by a filing fee established in the City's pertinent Schedule of Fees and Charges.
 3. At any time the City Engineer determines a registration letter does not comply with this code, the City Engineer 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. A list of authorized agents, contractors or subcontractors eligible to obtain permits on behalf of the Service Provider. 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 Service Provider.
 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 City Engineer 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 City Engineer shall give 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 City Engineer, the City Engineer 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 of Public Works 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 of Public Works may determine whether to terminate the registration based on the information presented at the hearing and other information of record. If the Director of

Public Works determines to terminate a registration, the decision shall be in writing setting forth the reasons therefor. The Director of Public Works 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 City Engineer or Director of Public Works, the person may not register again except upon express written approval by the City Manager, 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. 19-128. – Transferability.

Except as provided in this Chapter, 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 Service Provider, must register in accordance with this Chapter 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.

DIVISION 4. – RIGHT-OF-WAY PERMITS

Sec. 19-129. – Permits required.

- A. Except as otherwise provided in Sec. 19-140. – Permit exemptions, no person or ROW-user shall perform work 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 in the right-of-way.
- D. If the City Engineer determines that the applicant has satisfied the requirements of this Chapter, the City Engineer shall issue a right-of-way permit.
- E. Any person who is found to be working in the public right-of-way without a right-of-way permit will be directed to stop the work until a right-of-way permit is acquired and available at the work site, the permit fee shall double and may result in a violation pursuant to this Chapter.
- F. Except as otherwise provided herein, no person 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 Chapter, 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, the permit fee shall double and may result in a violation pursuant to this Chapter.

Sec. 19-130. – Permit form.

- A. The right-of-way permit application shall be on the current 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 Chapter, 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 work in the permit request; or
 - b. If the applicant is not performing 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 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 and the location of all existing and proposed facilities at such location; 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. A 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 Chapter;
 - 6. Payment of all money due to the City for right-of-way permit fees, for prior work costs, for any loss, damage or expense suffered by the City because of the applicant's prior 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. Certificates of insurance and performance and maintenance bonds as provided in this Chapter.
- 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 Chapter, 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 Chapter;
- 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.

Sec. 19-131. – Permit fees.

- A. The right-of-way permit fee, temporary traffic control permit fee, street cut fee, and re-inspection 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. Fees associated with managing the right-of-way 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.
- 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's 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, work inadequately performed after providing notice and the opportunity to correct the temporary traffic control, 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 the following, as determined to be appropriate and fitting by the City Engineer:

1. A base permit fee. The base permit fee includes costs to recover the time spent on each permit for administrative services, permit and plan review, permit coordination, inspection of the work, and locating City utilities.
 2. Additional work fees. Additional work fees include costs to recover work on linear facilities and street cuts.
 - (1) Linear facility recovery costs include the time spent inspecting the work and locating City utilities on a per foot basis.
 - (2) Street cut recovery costs include time spent inspecting the work.
 3. A re-inspection fee. A re-inspection fee will be charged if the ROW-user requests an inspection and is either not prepared for the inspection or work is not compliant, as determined by the inspector, therefore requiring an additional inspection(s).
 4. For ROW-users performing work under special or unique circumstances, which may include:
 - a) abnormal site plan;
 - b) accelerated time frame;
 - c) expansive or large scale work; and/or
 - d) atypical or unique facility;

additional fees covering actual, substantiated costs reasonably incurred by the City to manage said work shall be applied, in addition to Sub-Sections 1-3 above. These additional fees shall be determined by the City Engineer with the approval of the City Manager prior to administering the permits or as special or unique circumstances arise.
 5. Payment of all permit fees shall be received prior to permit issuance and/or commencement of work.
- F. The temporary traffic control permit fee shall be imposed based on a per daily basis and dependent upon the Schedule of Fees and Charges and factors including but not limited to the roadway functional classification and reason for permit. If the temporary traffic control permit requires additional City resources, such as Police or Public Works assistance, the permit fee shall be imposed based on the actual costs reasonably incurred by the City in managing the temporary traffic control.
- G. In the event the scope of the project is revised during the course of the work, the City Engineer may recalculate the fee based on the actual size of the work, and may require an additional right-of-way permit and 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 and traffic control permit fee.

Sec. 19-132. - 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.

2. Permits will be evaluated promptly. All completed applications will be reviewed with response provided to applicant no later than 31 days after receipt.
3. 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 this Chapter.
4. 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.
5. City engineering staff is not responsible for engineering design or redesign for work being done in accordance with the right-of-way
6. 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.
7. Any ROW-user performing work within the right-of-way must be properly licensed under laws of the State and all applicable local ordinances and shall be held to the responsibilities of this code. Any person performing work in the ROW:
 - a) Must ensure that contractors, subcontractors and all employees performing ROW work are trained and have pertinent experience related to the work performed;
 - 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.
8. 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. Refer to Division 7 of Article V of this Chapter for requirements on restoration.
9. Except in cases of an emergency or with approval of the City Engineer, no right-of-way 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 work based on standard engineering and construction practices.
10. Any 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.

11. If 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 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.
 12. The City Engineer may establish in the right-of-way permit limitations on the amount of work which may occur at one (1) time and the amount of right-of-way which may be obstructed during construction.
 13. The ROW-user shall, in the performance of any work required for the installation, repair, maintenance, relocation and/or removal of any of its facilities, limit all work to that necessary for efficient operation.
 14. The ROW-user shall not permit work to remain open longer than is necessary to complete the repair or installation, and in no event may work remain open beyond the expiration of the right-of-way permit or any approved extension.
 15. The ROW-user shall perform work on the right-of-way at such times that will allow the least interference with the peace and quiet of the neighborhood as described below, unless exceptions are approved in writing by the City Engineer:
 - a) Work is allowed to take place on weekdays between the hours of 7:00 a.m. and 5:00 p.m. standard central time; an additional hour at the end of the day may be used to clean up the work site;
 - b) Only restoration work shall be performed on Saturdays between the hours of 9:00 a.m. and 5:00 p.m.; and
 - c) No work of any kind shall be performed on Sundays or City Holidays.
 16. 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.
 17. All facilities shall be of good and durable quality.
 18. Street crossings will be bored under the direction of the City Engineer.
 19. 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 landscape plan identifying the size and species of landscaping materials shall be approved by the City Engineer 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 City Engineer to the extent it meets or exceeds the purposes of these requirements.
 20. 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.
- B. 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 Belton. The City Engineer may grant exception to this condition in the temporary traffic control permit.
- C. Wireless Transmission Provider. 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 City Engineer shall ensure compliance with the following provisions in relation to the impacts of the right-of-way:
1. The design, location and nature of all facilities shall be subject to the review and approval of the City Engineer as provided herein. Such review shall be non-discriminatory and competitively neutral and approvals shall not be unreasonably withheld.
 2. The City Engineer may designate certain locations or facilities in the right-of-way to be excluded from use by the applicant for its facilities including, but not limited to:
 - a. Ornamental or similar specially designed street lights;

- b. 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;
 - c. 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
 - d. 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.
3. 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 City Engineer 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 this Chapter and the City shall not be required to incur any financial cost or to acquire new locations for the application.
 4. The grant of a right-of-way 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.
 5. 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.
 6. For additional information, refer to Chapter 10 – Buildings and Structures of the Code of Ordinances of the City of Belton, Missouri.

Sec. 19-133. – 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. 19-134. – 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 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 work in that greater area:

- a. Make application for a right-of-way permit amendment describing the area in which the 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 work before the right-of-way permit issue date or, except as provided herein, may continue work after the end date. If a ROW-user does not complete the 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.

Sec. 19-135. – 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.

Sec. 19-136. – Completed work.

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

Sec. 19-137. – Inspection.

- A. Inspections are required for the following circumstances at the times described:
 - a. For driveways and sidewalks; after the base rock is compacted and concrete forms are set, but prior to pouring concrete.
 - b. For utility work; after completing the work associated with the utility and prior to backfilling.
 - c. For traffic control; after setting up the traffic control per the approved traffic control plan.
 - d. For street cuts; prior to backfilling per the City’s Design and Construction Manual.

- e. For all permits; after completion of all restoration activities.

The ROW-user shall notify the City Engineer to schedule the necessary inspections.

- B. The City Engineer and his or her designee may choose to inspect the ongoing permitted temporary traffic control 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.
- C. At the time of any inspection, the City Engineer and his or her designee may order the immediate cessation, through a stop work order, of any temporary traffic control, work which poses a serious threat to the life, health, safety, or wellbeing of the public.
 - 1. The City Engineer and his or her designee may issue a citation to the ROW-user for any temporary traffic control 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 may be cause for revocation of the applicable right-of-way permit or temporary traffic control permit.
- D. Once the City Engineer is notified that the work and restoration for the permit is complete, a member of the Engineering Division will complete an inspection of the permitted work site to ensure that all requirements of the approved right-of-way permit or temporary traffic control permit have been met.
 - 1. If the inspection is completed and it is determined that all requirements of the approved permit have been met, the permit is closed out.
 - 2. If the inspection is completed and it is determined that all requirements of the approved permit have not been met, 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.
 - 3. Any deficiencies not corrected shall be considered a "failure to restore" and the City shall proceed according to this Chapter. 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 use City resources to make such repair or replacement at the ROW-users expense.
- E. In relation to Sec. 19-163 – Bonding and as applicable, the two (2) year maintenance period of the performance and maintenance bond shall start upon the permit close out date.

Sec. 19-138. – Permit denial.

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

1. 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.
2. 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.
3. 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 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.
4. 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-users 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:
 - a) 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, or other general conditions of the right-of-way.
 - b) The applicability of any ordinance, Code provision, or other regulations that affect the location of facilities and public travel in the right-of-way.
 - c) The degree of disruption to surrounding communities and businesses that will result from the 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.
 - d) The area is environmentally sensitive as defined by state statute or federal law or is a historic district defined by local ordinance.

Sec. 19-139. – Emergency work.

A right-of-way permit and temporary traffic control permit are required for emergency situations. If, however, due to an emergency it is necessary for the ROW-user to immediately perform temporary traffic control 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 or work may be performed, and the required permit shall be obtained as soon as reasonably possible, but not later than

three (3) business days after the temporary traffic control or work is begun. The ROW-user shall notify the City's Public Works Department if emergency temporary traffic control or work is necessary as soon as possible.

Sec. 19-140. – Permit exemptions.

- A. ROW-users performing routine maintenance which does not require 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.
- 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 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. In the event that temporary traffic control or work is necessary during a disaster or state of emergency, the ROW-user performing temporary traffic control or work in the right-of-way shall notify the Public Works Department of the nature and scope of the temporary traffic control or work to be performed in the right-of-way, along with the location of the temporary traffic control or work, and the estimated time of the temporary traffic control or work.
- C. Mailbox installation and mailbox maintenance is exempt from right-of-way permitting.

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

Sec. 19-141. – 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, 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. In addition, the ROW-user shall, in doing 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 Chapter 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 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.

- 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.

Sec. 19-142. – 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, 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 Chapter, 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-user. 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 an 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-users 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 Chapter 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.

Sec. 19-143. – 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.

Sec. 19-144. – 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.

Sec. 19-145. – 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 work, including coordination and consolidation of 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.

Sec. 19-146. – 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-users 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 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 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.
- F. In the event the ROW-user is required to move its facilities 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 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 this Chapter.

Sec. 19-147. – 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-users 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.
- 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.

Sec. 19-148. – Facilities and 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.

DIVISION 6. – RIGHT-OF-WAY TRAFFIC CONTROL AND STREET CLOSURES

Sec. 19-149. – Traffic control.

All traffic control, permanent and temporary, shall be properly installed and maintained at the ROW-users expense. All traffic control materials and methods shall be in conformance with the latest edition of the Manual on Uniform Traffic Control Devices. When able, all traffic control devices shall be set up 24-hours in advance of a closure to notify nearby stakeholders.

Sec. 19-150. – 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.

Sec. 19-151. – 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.

Sec. 19-152. – Traffic control plan.

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

DIVISION 7. – RIGHT-OF-WAY EXCAVATION PROCEDURES

Sec. 19-153. – Location of existing facilities.

The ROW-user shall identify and locate any underground facilities in conformance with the "Missouri One Call" system.

Sec. 19-154. – ROW-user responsibilities.

- A. The ROW-user shall be liable for any damages to facilities due to work performed prior to obtaining the location of all facilities in the area in which the work is to be performed, or for any damage to facilities that have been properly identified prior to 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. The need for a right-of-way permit from the owner of the damaged or disturbed facilities to complete the repair, relocation or replacement of the facility is at the discretion of the City Engineer.
- B. Whenever there is work by the ROW-user, the ROW-user shall be responsible for acquiring all necessary right-of-way and temporary traffic control permits and providing adequate materials, equipment, labor, and temporary traffic control to the surrounding area as provided in this Chapter. In the event the 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 this Chapter.
- C. The ROW-user responsible for the 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 this Chapter.
- 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-users cost. Further, in review of the ROW-users 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.

Sec. 19-155. – Standard of work.

All temporary traffic control or work performed in the right-of-way shall be done in conformance with the latest versions of the City's Design and Construction Manual and the Manual on Uniform Traffic Control Devices.

Sec. 19-156. – Restoration.

- A. After any temporary traffic control 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 or work.
- B. If work cannot be back-filled immediately and is left unattended, the ROW-user shall securely and adequately cover and mark the unfilled 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 work until the 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 and his or her designee 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 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 Chapter. 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 utilize City resources to make such repair or replacement at the ROW-users expense.

Sec. 19-157. – 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 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 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 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 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.

Sec. 19-158. – Guarantee of restoration.

- A. In restoring the right-of-way, the ROW-user shall guarantee its 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 work to the extent necessary, using any method as required by the City Engineer.
 - 2. Said 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.

Sec. 19-159. – Notice and inspection.

Upon completion of all right-of-way restoration activities, the ROW-user shall notify the City Engineer, which shall then schedule a closeout inspection.

DIVISION 8. – RIGHT-OF-WAY APPEALS OR WAIVERS

Sec. 19-160. – 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, believes that the fees imposed on the person by the City Engineer do not conform to the requirements 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 Engineer under this Chapter, 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 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 Chapter.
- 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 City Council 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.

Sec. 19-161. – Actions on appeal to City Council.

- A. Such appeals to the City Council as provided for in Division 8 of Article V of this Chapter shall be heard by the City Council on the record with evidence and testimony as a contested hearing pursuant to RSMo Chapter 536.
 - 1. The City Manager and his/her designee 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 Manager 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 Chapter.
 - 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 Manager or the City Engineer shall be stayed, unless the City Manager 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 Manager 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.
- D. Each party to the arbitration shall pay its own costs, disbursements and attorney fees.

DIVISION 9. – RIGHT-OF-WAY INSURANCE, BONDING AND LIABILITY

Sec. 19-162. – 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. 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.

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.
 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 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 Attorney.
- 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.

Sec. 19-163. – 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, within the City, then the ROW-user shall not be required to maintain a performance or maintenance bond.
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.
- 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, within the City, then the ROW-user shall:
1. Maintain a permit specific performance and 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 two (2) additional years, conditioned upon the ROW-user's faithful performance of the provisions, terms and conditions conferred by this Chapter.
 2. Unless otherwise established by the permit or special conditions, maintain an annual performance and maintenance bond in a form approved by the City Attorney. The amount of the bond will be fifty thousand dollars (\$50,000.00) or the value of the restoration, whichever is greater, as determined by the City Engineer, for an annual term of the applicable right-of-way permits or temporary traffic control permits, plus two (2) additional years, conditioned upon the ROW-user's faithful performance of the provisions, terms and conditions conferred by this Chapter.
- 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 the full amount of any loss occasioned. A copy of the maintenance and performance bonds must be on file with the City Engineer. 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 work and who does not require a temporary traffic control permit.

Sec. 19-164. – Indemnification.

- A. Any person operating under the provisions of this Chapter or performing any temporary traffic control 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 or work.
- B. Nothing herein shall be deemed to prevent the City, or any agent, from participating in the defense of any litigation by their own counsel at their own expense. Such participation shall not under any circumstances relieve the person from 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 or work for such ROW-user hereunder.

Sec. 19-165. – Indemnification for contractual or economic loss damages.

Any person operating under the provisions of this Chapter or performing any temporary traffic control 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 Chapter.

Sec. 19-166. – Indemnification for damage to facilities.

- A. Any person operating under the provisions of this Chapter or performing any work in the right-of-way shall be liable for any damages to facilities due to work performed by the person, including damage to underground facilities that have been properly identified prior to commencement of work.
- B. Any person operating under the provisions of this Chapter or performing any 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.

Sec. 19-167. – 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. 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.

Article VI. – RIGHT-OF-WAY VIOLATIONS AND PENALTIES

Sec. 19-168. – Violation.

- A. No Person shall perform temporary traffic control, excavate or work in the right-of-way in violation of the provisions of this Chapter. Any violation of this Chapter may result in the immediate issuance of a citation to the person and enforcement action pursuant to Article VI of this Chapter.
- 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 Chapter, any law or ordinance, or a condition placed on the right-of-way permit or the temporary traffic control permit, the City Engineer may 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, failure to submit an acceptable plan, or 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.

Sec. 19-169. – Revocation of permits.

- A. The City 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 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 or work is due to reasons beyond the ROW-users control;
 5. A failure to correct, within the time specified by the City, temporary traffic control 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.
- 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.

Sec. 19-170. – Penalty.

Any person violating any provision of this Chapter is guilty of a public offense, and upon conviction thereof shall be fined in a sum of not less than two hundred dollars (\$200.00) nor more than five hundred dollars (\$500.00). Every day that this Chapter is violated shall constitute a separate offense. The City shall have the authority to maintain civil suits or actions in any court of competent jurisdiction for the purpose of enforcing the provisions of this Chapter. In addition to any other remedies, the City Attorney may institute injunction, mandamus or other appropriate actions or proceedings to prevent violations of this Chapter.

Article VII. – RIGHT-OF-WAY OTHER RIGHTS AND LAWS

Sec. 19-171. – Federal, State and City Jurisdiction.

- A. This Chapter shall be construed in a manner consistent with all applicable federal, state, and local laws. Notwithstanding any other provisions of this Chapter to the contrary, the construction, operation and maintenance of the ROW-user's facilities shall be in accordance with all laws and regulations of the United States, the state and any political subdivision thereof, or any administrative agency thereof, having jurisdiction.

- 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, failure of the ROW-user to comply with any applicable law or regulation may result in a forfeiture of any permit, registration or authorization granted in accordance with this Chapter.

Sec. 19-172. – City's failure to enforce.

The City's failure to enforce or remedy any noncompliance of the terms and conditions of this Chapter or of any 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.

Sec. 19-173. – Reservation of rights.

- A. In addition to any rights specifically reserved to the City by this Chapter, the City reserves unto itself every right and power which is required to be reserved by a provision of any ordinance under any registration, permit or other authorization granted under this Chapter.
- B. The City Council shall have the right to waive any provision of this Chapter or any registration, permit or other authorization granted thereunder, except those required by federal or state law, if the City 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. Notwithstanding anything to the contrary set forth herein, the provisions of this Chapter shall not infringe upon the rights of any person pursuant to any applicable state or federal statutes, including, but not limited to the right to occupy the right-of-way.