

**AN ORDINANCE REPEALING SECTION 500.120 AND  
ENACTING A NEW CHAPTER 532 OF THE MUNICIPAL  
CODE OF THE CITY OF WARSON WOODS RELATED TO  
REGULATIONS FOR RIGHT-OF-WAY MANAGEMENT**

**WHEREAS**, the City of Warson Woods, Missouri (“City”) has specifically been granted authority including Chapter 67 RSMo. to establish permitting requirements for structures or facilities in the public right-of-way (“ROW”); and

**WHEREAS**, the Board of Aldermen’s legislative findings include that: (a) the ROW is a unique and physically limited resource; (b) the ROW is critical to the travel and transportation of persons and property in the City; (c) the ROW is intended for public uses and must be managed and controlled consistent with that intent and can be partially occupied by Facilities and public service entities to the enhancement of the health, welfare, and general economic well-being of the City and its citizens; and (d) such findings require adoption of regulations to ensure coordination of users, maximize available space, reduce maintenance and costs to the public, and facilitate entry of a maximum most efficient number of ROW users that will serve the public interest; and

**WHEREAS**, the City has been granted the authority to enact legislation to regulate the construction, placement, and operation of telecommunications towers and antennas pursuant to its zoning powers established in Chapter 89 RSMo. and additionally, pursuant to its general and specific police powers established by statute (including Chapters 67, and 392 RSMo.); and

**WHEREAS**, the Missouri General Assembly enacted the “Uniform Small Wireless Facility Deployment Act” §§ 67.5110 to 67.5121 RSMo., which governs certain installations of wireless equipment in the City’s Rights-of-Way, which has an effective date of January 1, 2019; and

**WHEREAS**, consistent with state and federal law and the Board of Aldermen’s legislative findings, the Board of Aldermen desires to enact new regulations for managing placement of facilities in the ROW.

**BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF WARSON WOODS, ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:**

**Section 1:** The Municipal Code of the Warson Woods, Missouri is hereby amended by enacting a new Chapter 532 in the form of Exhibit A, attached hereto and incorporated herein by reference.

**Section 2:** The Municipal Code of the Warson Woods, Missouri is hereby amended by repealing Section 500.120 in its entirety.

**Section 3:** The portions of this Ordinance shall be severable. In the event that any portion of this Ordinance is found by a court of competent jurisdiction to be invalid, the remaining portions of this Ordinance are valid, unless the court finds the valid portions of this Ordinance are so essential and inseparably connected with and dependent upon the void portion that it cannot be presumed that the Board of Aldermen would have enacted the valid portions without the invalid ones, or unless the court finds that the valid portions standing alone are incomplete and are incapable of

being executed in accordance with the legislative intent.

**Section 4:** This Ordinance shall be in full force and effect from and after its passage by the Board of Aldermen and approval by the Mayor.

THIS BILL PASSED AFTER HAVING BEEN READ IN FULL TWO TIMES PRIOR TO PASSAGE BY THE BOARD OF ALDERMEN OF THE CITY OF WARSON WOODS, MISSOURI, THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2019.

\_\_\_\_\_  
Laurance M. Howe, Mayor

ATTEST:

\_\_\_\_\_  
Kathy Mahany, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Paul V. Rost, City Attorney

**EXHIBIT A**

**CHAPTER 532**

**EXCAVATIONS AND PUBLIC RIGHTS-OF-WAY MANAGEMENT**

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**Section 532.010. – Applicability; Preemption.**

1. *Applicability.* Except as provided for herein and where limited by applicable law, this Chapter shall apply to all Excavations and use, construction, operation, and Maintenance of Facilities or structures, in the ROW of the City. No Person shall commence or continue with the operation of any Facilities or structures in the ROW except as provided and in compliance with this Chapter. Because numerous types of users and uses of the ROW may be subject to various or changing regulatory schemes under federal or state law, any such limitation or qualification that may be applicable to less than all users and uses of the ROW are not duplicated herein, but are nevertheless incorporated herein, whenever application is so required by law, including but not limited to applicable provisions of Chapter 67 RSMo. and other applicable state and federal law.
2. *Preemption.* No provision of this Chapter shall apply to any circumstance in which such application shall be unlawful under superseding federal or state law and furthermore, if any Section, Subsection, sentence, clause, phrase, or portion of this Chapter is now or in the future superseded or preempted by state or federal law or found by a court of competent jurisdiction to be unauthorized, such provision shall be automatically interpreted and applied as required by law.

**Section 532.020. – Definitions.**

For purposes of this Chapter, the following terms, phrases, words, and their derivatives shall have the meanings set forth in this Section, unless the context clearly indicates that another meaning is intended.

**ABANDONED FACILITIES**

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 for a period of six months or more, and the owner of such equipment or Facilities fails to respond within thirty (30) days to a written notice sent by the City, 3) the owner allows a Franchise, ROW Use Agreement or License to expire and fails to cure within thirty (30) days after notice to the extent not preempted by applicable law, or 4) as otherwise may be defined by applicable law.

**ANTENNA**

Any device that transmits and/or receives electromagnetic wireless radio waves or signals for voice, data or video communications purposes including, but not limited to, television, text, AM/FM radio, microwave, cellular telephone, Communications Service, or otherwise.

**APPLICANT**

Any Person who has applied for a ROW Use Agreement, Franchise, License, Permit, or any permit or other authorization to install, maintain, repair, or otherwise physically access Facilities in the ROW.

**CITY FACILITIES**

Any Facilities located in the ROW and owned by the City.

## **COMMUNICATIONS SERVICE**

The transmission via Facilities, in whole or in part, of any writings, signs, signals, pictures, sounds, or other forms of intelligence through wire, wireless, or other means, including, but not limited to, any telecommunications service, enhanced service, information service, or internet service, as such terms are now, or may in the future be, defined under applicable law, and including all instrumentalities, Facilities, apparatus (Communications Facilities), and services (among other things, the receipt, forwarding, and delivery of Telecommunications) incidental to such transmission or designed to directly or indirectly facilitate or accept such transmission and shall also include “video services” as defined in § 67.2677 RSMo. The term Communications Service does not include the rental of conduit or physical Facilities.

## **DIRECTOR**

The City Engineer or his/her designee.

## **EXCAVATION, EXCAVATING, OR EXCAVATE**

Any act by which earth, asphalt, concrete, sand, gravel, rock, or any other material in or on the ground is cut into, dug, uncovered, removed, or otherwise displaced, by means of any tools, equipment, or explosives, except as excluded by applicable law.

## **EXCAVATION PERMIT**

A permit authorizing Excavation for the construction or installation of Facilities in the City's Rights-of-Way.

## **FACILITIES OR FACILITY**

Any equipment, installation, or structure located in the Rights-of-Way, including without limitation, cables, wires, lines, poles, towers, Antenna, conduit facilities, vaults, pedestals, transmitters, meters, fiber, foundations, and any other equipment, infrastructure, structures, or obstruction. Facilities shall **not** include mailboxes, lawful vehicular parking or use or lawful minor incidental uses such as driveway aprons, private utility connections or other incidental Facilities which may be permitted by License issued by the Director as provided herein.

## **FACILITIES MAINTENANCE OR MAINTENANCE**

The construction, installation, repair, upgrade, or other physical access to the Facility in the ROW that does not involve Excavation.

## **FACILITIES MAINTENANCE PERMIT**

A permit issued by the City for the ROW User to provide Maintenance to its Facilities or otherwise perform work in the ROW that does not involve Excavation but requires physical access to the Facilities in the ROW.

## **FRANCHISE**

A binding and accepted ordinance for certain ROW Users to occupy the Rights-of-Way for the purpose of providing, transporting, or distributing electricity, gas, water, steam, lighting, energy, or sewer service to any Person or area in the City's limits and boundaries.

**LICENSE**

The executed agreement between the City and a Person to use and occupy the Rights-of-Way for the purpose of installing incidental temporary Facilities within the Rights-of-Way or incidental uses such as ingress and egress Facilities, lateral utility lines, or driveway aprons.

**PERSON**

Any corporation, partnership, proprietorship, individual, organization, governmental entity, or any natural person.

**PERMIT**

An Excavation Permit or a Facilities Maintenance Permit.

**RIGHTS-OF-WAY OR ROW**

The area on, below, or above a public roadway, highway, street, or alleyway in which the City has an ownership interest or right of management and including such adjacent areas within such public ways within such City control, except as may be limited by law.

**RIGHTS-OF-WAY USE AGREEMENT OR ROW USE AGREEMENT**

A document granting consent by the City to use the ROW for the purpose of providing Communications Service or for such other use for which a Franchise or License is not applicable and obtained as provided for herein.

**ROW USER**

All Persons and entities, whether a PSC registered utility or otherwise, owning, controlling, leasing, maintaining, using, or installing Facilities in the Rights-of-Way of the City, not otherwise expressly exempted. To the extent permitted by law, ROW User shall not include the City.

**Section 532.030. – Rights-of-Way Use Agreement, License, or Franchise Required; Requirements.**

1. *ROW Use Agreement, License, or Franchise Required.* Except where otherwise authorized or required by applicable law, no Person may own, control, lease, use, or install Facilities or other structures in the Rights-of-Way without a Franchise, License, or ROW Use Agreement all subject to the requirements of this Chapter and issued by the City as provided herein and as follows:
  - A. *Franchise.* A Franchise shall be obtained in conformance with all applicable Franchise procedures for any ROW User seeking to use the Rights-of-Way for the purpose of providing, transporting, or distributing electricity, gas, water, steam, lighting, energy, or sewer service to any Person or area in the City's limits and boundaries.
  - B. *ROW Use Agreement.* A ROW Use Agreement shall be required for all other ROW Users, except as provided herein or otherwise required by law. A ROW Use Agreement shall conform to all applicable laws and requirements, including as provided herein, but shall not be subject to procedures applicable to Franchises.

- C. *License for Incidental Uses.* Persons desiring to install an incidental use, which includes installation of temporary structures or minor incidental uses in the Rights-of-Way, such as driveway aprons, ingress or egress facilities, and similar incidental uses, that utilize a small area of the Rights-of-Way, may be permitted without a Franchise or Rights-of-Way Use Agreement pursuant to a License issued by the Director. The Director shall have discretion to establish such application, requirements, and conditions applicable to such uses consistent with the purposes of this Chapter or as otherwise established by law. The Applicant shall be required to pay an application fee and an inspection fee as established by the City. Any Person granted a License hereunder shall be subject to the applicable requirements of this Chapter. Unless otherwise stated in the License, a License shall be for an indefinite term and shall be revocable at any time on written notice in the public interest by the City.
2. *Exempt Entity Registration.* Prior to providing service within the City, transmitting communications through Facilities in the City, or constructing in the Rights-of-Way, entities not required to obtain a Franchise, License, or Rights-of-Way Use Agreement due to superseding federal or state law, shall nevertheless be required to register with the City by providing the City the information required by the Rights-of-Way application in Section 532-040. It shall be the duty of such exempt entity to report any changes to such registration information within thirty (30) days of such change.
  3. *Grant and Nature of Approval; Terms and Compensation.* The authority granted by the City in any ROW Use Agreement, License, or Franchise shall be for non-exclusive use of the Rights-of-Way. Such grant does not in any way limit the continuing authority of the City through the proper exercise of its statutory powers to adopt and enforce ordinances necessary to provide for the health, safety, and welfare of the public. The City specifically reserves the right to grant, at any time, such additional agreements or other rights to use the Rights-of-Way for any purpose and to any other Person, including itself, as it deems appropriate, subject to all applicable laws. The granting of any ROW Use Agreement, License, or Franchise by the City shall not be deemed to create any property interest of any kind in favor of the ROW User nor shall it create any relationship of agency, partnership, joint venture, or employment between the parties. Licenses may be approved by the Director on a non-discriminatory basis provided that the Person is in compliance with all applicable requirements. Each Franchise, License, and ROW Use Agreement shall include terms of use and be deemed to incorporate the terms of this Chapter and other applicable laws of the City, except as may be expressly stated in such Use Agreement, License, or Franchise. The City may require compensation for use of the ROW or other public property as may be reasonably required by the Board of Aldermen, subject to applicable law.
  4. *Condition Precedent to Permit.* Unless otherwise required by applicable law, no Permit may be issued unless or until such Person has a valid Franchise, License, or Rights-of-Way Use Agreement with the City that authorizes that Person's use of the Rights-of-Way. Unless prohibited by applicable law, in addition to any other reason provided herein, the Director may deny a Permit to any person that does not have a valid Franchise, ROW Use Agreement, or License with the City.

5. *Transferability.* Except as provided in this Chapter or as otherwise required by law, no Franchise, ROW Use Agreement, or Permit may be transferred or assigned without the written application to and consent of the City based on the requirements and policies of this Chapter. The City shall not unreasonably withhold its consent as provided herein, but any costs incurred shall be paid by the ROW User to the extent not prohibited by applicable law. In the case of the City granting consent to transfer, the transferee shall be subject to the terms and conditions of this Chapter.
6. *Use of City or Third-Party Facilities.* No ROW Use Agreement, Franchise, or License shall grant the right to use Facilities owned or controlled by the City or a third party, and no such use shall occur, nor shall any Franchise, ROW Use Agreement, or License excuse such Person from first obtaining a pole attachment agreement or other express consent for such right or use before locating on the Facilities controlled or owned by the City or a third party.
7. *Lease Required for Public Lands.* Unless otherwise provided, use or installation of any Facilities in non-Rights-of-Way public property of the City shall be permitted only if a lease agreement or other separate written approval has been negotiated and approved by the City with such reasonable terms as the City may require.
8. *No Warranties.* The City makes no express or implied representation or warranty regarding its rights to authorize the installation or construction of Facilities on any particular segment of Rights-of-Way and shall not be liable for any damages therefrom. The burden and responsibility for making all such determinations in advance of construction or installation shall be entirely upon the ROW User. The ROW User shall be solely liable for any damages to Facilities or other property due to Excavation, Facilities Maintenance, or other work performed prior to obtaining the location of all Facilities that have been properly identified prior to such 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.
9. *Forfeiture of Agreement and Privilege.* In case of failure on the part of the ROW User, including its successors and assigns, to comply with any of the provisions of this Chapter or a ROW Use Agreement or Franchise, or if the ROW User, its successors and assigns should do or cause to be done any act or thing prohibited by or in violation of this Chapter or the terms of the authorization of such use, or otherwise loses authority to provide its service in the City, the ROW User, its successors and assigns, shall forfeit all rights and privileges permitted by any ROW Use Agreement or Franchise, and all rights hereunder shall cease, terminate, and become null and void, provided that said forfeiture shall not take effect until the City shall carry out the following proceedings: Before the City declares the forfeiture or revocation of a Rights-of-Way Use Agreement or Franchise, it shall first serve a written notice upon the Person setting forth in detail the neglect or failure complained of, and the Person shall have thirty (30) days thereafter, or such other reasonable period established by the Director, in which to cure the default by complying with the conditions of such ROW Use Agreement or Franchise and fully remedying any default or violation. If at the end of such period the City determines that the conditions have not been complied with and that the Person did not reasonably and in the



public interest require more than the establish time to cure the default, the City may take action by an affirmative vote of the Board of Aldermen present at the meeting and voting to terminate the ROW Use Agreement or Franchise, setting out the grounds upon which said authorization is to be forfeited or revoked. Nothing herein shall prevent the City from invoking any other remedy or from declaring immediate forfeiture where the default is incapable of being cured by the ROW User, including where such defaults or violations have repeatedly occurred.

10. *No Waiver.* No action or omission of the City shall operate as a future waiver of any rights of the City under this Chapter. Except where rights are expressly granted or waived by a Permit, ROW Use Agreement, Franchise, or License they are reserved, whether or not expressly enumerated.

**Section 532.040. – Application for Franchise or Rights-of-Way Use Agreement Required.**

1. *Application Form.* An application for a Franchise or ROW Use Agreement shall be provided to the City on City forms and shall include all such information as is required by this Chapter and as determined necessary by the Director. The ROW User shall be responsible for accurately maintaining the information in the application during the term of any Franchise or ROW Use Agreement and shall be responsible for all costs incurred by the City due to the failure to provide or maintain as accurate any application information required herein.
2. *Application Deposit Fee.* An application deposit of \$500.00, or such other amount determined to be required, shall be submitted with the application, which shall be utilized to at least partly offset the City's costs in reviewing and issuing an agreement, consistent with applicable law provided that no costs shall be included if such inclusion is prohibited by applicable law as to that Person; any amount not used by the City for its actual lawfully reimbursable costs will be refunded upon request after execution of a ROW Use Agreement or Franchise. If applicable, the applicant shall be obligated to reimburse the City for its reasonable expenses associated with the review, negotiation, and adoption of an appropriate ROW Use Agreement or Franchise that may exceed the application deposit.
3. *Standard for Approval or Renewal.* In reviewing an application for a new or renewal ROW Use Agreement or Franchise, the City may consider prior conduct of the Person in performance of its obligations or compliance with the City's ordinances in the past, or the existence of any outstanding violations or deficiencies. The City may deny or condition any ROW Use Agreement or Franchise where the proposed use would interfere with the public use of the Rights-of-Way or otherwise conflict with the legitimate public interests of the City to fulfill the requirements and objectives of this Chapter or as otherwise provided by law. All ROW Use Agreements or Franchises shall be approved by ordinance or resolution of the Board of Aldermen and applications shall be decided on a non-discriminatory basis and shall be approved, conditioned, or denied based on compliance with all applicable requirements herein, and conformance with applicable law and the public interest.
4. *Approval Process.* After submission by the Applicant of a duly executed and completed application, deposit fee, and executed Franchise or Rights-of-Way Use Agreement as may be provided by the Director or as modified by the Director in review of the specific circumstances

of the application, all in conformity with the requirements of this Chapter and all applicable laws, the Director shall submit such Agreement to the Board of Aldermen for approval. Upon determining compliance with this Chapter, the Board of Aldermen may authorize execution of the Franchise or ROW Use Agreement (or a modified Agreement otherwise acceptable to the City consistent with the purposes of this Chapter) and such executed Franchise or ROW Use Agreement shall constitute consent to use the Rights-of-Way; provided that nothing herein shall preclude the rejection or modification of any executed Franchise or ROW Use Agreement submitted to the City to the extent applicable law does not prohibit such rejection or modification, including where necessary to reasonably and in a uniform or non-discriminatory manner reflect the distinct engineering, construction, operation, Maintenance, public work, or safety requirements applicable to the Person or use.

**Section 532.050. – Permit Required; Requirements.**

1. *Excavation Permit Required.* Except as otherwise provided herein, no ROW User or other Person shall perform Excavation work in the ROW without an Excavation Permit. Any Person desiring to Excavate in the ROW shall first apply for an Excavation Permit, on an application form provided by the City, and submit the application fee and pay all applicable fees to obtain an Excavation Permit, in addition to any other building permit, license, easement, or other authorization required by law, unless such Excavation must be performed on an emergency basis as provided herein. The cost of said Permit shall be set out by the Director. The Director is authorized to draft an application form consistent with the requirements of this Chapter. An Excavation Permit should be obtained for each project unless otherwise provided for in this Chapter. All Excavation Permits shall expire after sixty (60) days from the date of issuance, unless otherwise specified in the Excavation Permit. An Applicant whose Excavation Permit application has been withdrawn, abandoned, or denied for failure to comply with this Chapter shall not be refunded the application fee.
2. *Local Representative Designation.* Each ROW User shall designate a local person familiar with the Facilities that shall act as a local agent for the ROW User and shall be responsible for satisfying information requirements of this Chapter. The ROW User shall present to the City the agent's name, address, telephone number, and email address. The agent shall be the person to whom relocation notices and other such notices shall be sent, and with whom rests the responsibility to facilitate all necessary communications. The ROW User shall be responsible for all costs incurred by the City due to the failure to provide, and maintain, such information to the City.
3. *Facilities Maintenance Permit; Exemptions.* No Person shall perform Facilities Maintenance at a specified location in the Rights-of-Way without first obtaining a Facilities Maintenance Permit from the Director, except where such Facilities Maintenance is expressly authorized by an existing valid Excavation Permit for the applicable Facilities Maintenance location or is exempt herein. In addition to the applicable conditions and obligations set forth in this Chapter, conditions of a Facilities Maintenance Permit shall be as established in such Permit and shall include requirements of notice to and approval by the City whenever traffic lanes are to be obstructed, manhole covers or safety barriers removed or altered, temporary or other barricades installed, and other events set forth in the Facilities Maintenance Permit. All Facilities

Maintenance Permits shall expire after sixty (60) days from the date of issuance, unless otherwise specified in such Permit. A Facilities Maintenance Permit shall not be required for:

- A. ROW Users performing routine Maintenance which does not require Excavation, does not disrupt traffic or pedestrians, and requires no more than four (4) hours to complete, provided that at minimum two (2) hours' notice is provided to the City during normal business hours;
  - B. Emergency situations as more fully described in Subsection 5 below;
  - C. Contractors working on the construction or reconstruction of public improvements and which are operating pursuant to a contract with the City for such construction; or
  - D. Routine maintenance on previously approved Small Wireless Facilities, as defined by Section 67.5111 RSMo., replacement of such Small Wireless Facilities that are the same or smaller in size, weight, and height, or installation placement, maintenance, operation, or replacement of Micro Wireless Facilities, as defined by Section 67.5111 RSMo., that are strung on cables between utility poles in compliance with applicable safety and building codes, when such work will not involve Excavation, affect traffic patterns, obstruct traffic in the ROW, or materially impede the use of a sidewalk, and provided the ROW User submits as-builts of such new Small Wireless Facilities or Micro Wireless Facilities so the City may maintain an accurate inventory of Facilities installed in the ROW.
4. *Bulk Permits.* The Director shall have the authority to establish procedures for bulk processing of applications and periodic payment of fees.
5. *Emergencies.* In the event of an emergency requiring immediate attention to remedy defects, and in order to avoid loss of damage to Person or property, it shall be sufficient that the Person conducting the work shall as soon as practicable notify the City of the location of the work and shall apply for the required Permit as soon as practicable following the commencement of the work, not to exceed the third (3rd) business day thereafter, or as otherwise directed by the City. In the event the City becomes aware of an emergency requiring Facilities work the City shall attempt to contact a representative of each ROW User affected, or potentially affected, by the emergency work. If no response is received by a particular ROW User to whom contact is attempted, the Director may take whatever action he/she deems necessary to respond to the emergency, the cost of which shall be borne by the Person whose action or inaction occasioned the emergency or by the ROW User if the emergency was occasioned by an act of nature.
6. *Permit Specific Conditions.* The Director may also impose reasonable conditions upon the issuance of a Permit and the performance of work in order to protect the public health, safety, and welfare, to ensure the structural integrity of the Rights-of-Way, to protect the property and safety of other users of the Rights-of-Way, and to minimize the disruption and inconvenience to the traveling public. Such reasonable conditions may include, but are not limited to:
- A. The amount of Excavation or Facilities Maintenance which may occur at one (1) time and the amount of Rights-of-Way which may be obstructed during construction;

- B. The number or size of conduits or other Facilities that may be installed by each ROW User based on the reasonable needs to ensure that no one (1) ROW User may unreasonably consume a disproportionate amount of the available Rights-of-Way to deter competition or deprive the public or others of the reasonable use of the Rights-of-Way;
  - C. Posting of an additional or larger performance and maintenance bond for additional Facilities, except as otherwise provided in Section 532.100 hereof, when the established amount is reasonably determined to be insufficient;
  - D. The design, location, and nature of all Facilities, based on a nondiscriminatory basis in ensuring the safe, efficient, and appropriate use of the ROW consistent with this Chapter and applicable law; and
  - E. Other reasonable conditions regarding the timing, safety precautions, space, or specific implementation of the specific work proposed.
7. *Codes Incorporated.* Every Permit issued hereunder shall incorporate the requirements and terms of this Chapter, agreements, and all applicable ordinances, to the extent permitted by law. The ROW User shall perform such work in accordance with the issued Permit and applicable provisions of this Chapter and any subsequent ordinances or regulations that may be adopted by the City regarding Excavation or Facilities Maintenance work. In addition, all ROW Users shall be subject to all technical specifications, design criteria, policies, resolutions, and ordinances now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power relating to Permits and fees, sidewalk and pavement cuts, Facility location, construction coordination, surface restoration, and other requirements on the use of the Rights-of-Way. A ROW User shall perform all Excavations or Facilities Maintenance in full compliance with all applicable engineering codes adopted or approved by the City, and in accordance with applicable statutes of the State of Missouri, and the rules and regulations of the Public Service Commission, Federal Communications Commission, and any other local, state or federal agency having jurisdiction over the parties. The ROW User shall comply with the Excavation requirements of Missouri One Call established by §§ 319.010 *et. seq.* RSMo., as amended.
8. *Tree and Landscape Protection.* Upon ten (10) days' written notice and with the supervision of the City or as otherwise provided by law or agreement, the City may permit a ROW User to trim trees that overhang Rights-of-Way of the City so as to prevent the branches of such trees from coming in contact with Facilities in the ROW, at its own expense, subject to the supervision and direction of the City. Nothing in this Section shall authorize the trimming of trees on private property without permission of the property owner. All cut materials shall be properly disposed. Unless otherwise approved in writing by the City, a ROW User shall not remove, cut, or damage any trees or their roots in the Rights-of-Way. In reviewing any Permit application, the City may require the Applicant to directionally bore around or otherwise avoid disturbance to any tree or landscaping, existing Facility, or other protected area in the Rights-of-Way.

9. *Permit Displayed.* At all times during the work, Permits shall be conspicuously displayed at the work site and shall be available for inspection by the Director.
10. *Modification Requiring New Permit.* If at any time it appears that the duration or scope of the work is or will become materially different from that allowed by the Permit, the ROW User shall inform the Director. The Director may issue a waiver, an extension or revised Permit, or require that the ROW User reapply for a Permit in accordance with all requirements of this Chapter.

**Section 532.060. – Permit Denial.**

1. The Director may deny an application for a Permit if:
  - A. To the extent permitted by law, the Person does not have a current Franchise, License, or Rights-of-Way Use Agreement, or other authorization with the City.
  - B. 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 Rights-of-Way.
  - C. 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 include where the ROW User, or any Persons acting on the behalf of the ROW User, including contractors or subcontractors, has failed to return the Rights-of-Way to its previous condition under a previous Permit, or has violated terms, or is in violation of terms of this Chapter or the ROW Users' Franchise, Rights-of-Way Use Agreement, License, or other authorization with the City.
  - D. The City has provided the ROW User with a reasonable, competitively neutral, and nondiscriminatory justification for requiring an alternative method for performing the Excavation or Facilities Maintenance identified in the Permit application, or a reasonable alternative route that will not result in additional installation expense of more than ten (10) percent to the ROW User or a declination of service quality.
  - E. Any other violations or noncompliance caused by or through the ROW User of any applicable City, state, or federal law or regulation, except where such violation is prohibited by applicable law for being a basis for denial.

**Section 532.070. – Permit Revocation.**

The Director may, after reasonable notice and an opportunity to cure, revoke a Permit without fee refund, but only in the event of a substantial breach of the terms and material conditions of the Permit. A substantial breach by a ROW User includes but is not limited to:

1. A material violation of a provision of the Permit;

2. An evasion or attempt to evade any material provision of the Permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens;
3. A material misrepresentation of fact in the Permit application;
4. A failure to complete work by the date specified in the Permit, unless a Permit extension is obtained, or unless the failure to complete the work is due to reasons beyond the ROW User's control;
5. A failure to correct, within the time specified by the City, work that does not conform to applicable national safety codes, industry construction standards, or local safety codes, upon inspection and notification by the City of the faulty condition; or
6. Such other lawful reasons.

**Section 532.080. – Location, Design, and Mapping of Facilities.**

1. *Exclusion of Certain Locations/Facilities.* To the extent permitted by applicable law, the Director may designate certain locations or Facilities in the Rights-of-Way to be excluded from use by the ROW User. In the event such exclusions conflict with the reasonable requirements of the ROW User, the City will cooperate in good faith with the ROW User to attempt to find suitable alternatives, if available, provided that the City shall not be required to incur financial cost nor require the City to acquire new locations for the ROW User.
2. *Location, Type, and Design of Facilities Subject to Approval.*
  - A. *Underground and Collocation of Facilities Required; Exceptions.* Except as provided herein or where prohibited by applicable law, no Person may erect, construct, or install Facilities above the surface of the Rights-of-Way without the written permission of the City based on good cause established by Applicant and found by the City. In addition, all new fiber optics, coaxial, and similar cable Facilities shall be located within existing conduit, trenches, or other Facilities to minimize unnecessary use of Rights-of-Way space, reduce potential existing or future interference and obstructions, and to reduce the cost to the public or others therefrom, and to maximize the public's ability to use and license appropriate private or public uses of the Rights-of-Way in the public interest except where preempted by law or where good cause is established and written permission granted by the City. Such permission may be granted by the Board of Aldermen when other similar Facilities exist above-ground and conditions are such that underground construction is impossible, impractical or unfeasible, as determined by the City, and when in the City's judgment the above-ground construction has minimal aesthetic impact on the area where the construction is proposed. Where reasonable and appropriate and where adequate Rights-of-Way exists, the ROW User shall place above-ground Facilities underground in conjunction with City capital improvement projects and/or at specific locations requested by the City provided that such placement is practical, efficient, and economically feasible. New utility poles and related ground mounted equipment shall be permitted to be installed above ground; provided, however, that to ensure unobstructed pedestrian use and City

maintenance of the ROW and minimize visual obstructions for vehicular traffic, a new utility pole and any ground mounted equipment related to that utility pole or the equipment thereon shall not be installed within two hundred feet (200') of another utility pole or other ground mounted equipment on the same side of the ROW. A replacement utility pole that is installed in lieu of an existing utility pole and is installed within ten feet (10') of the existing utility pole, shall not be considered a new utility pole subject to the spacing requirements herein. Such spacing regulations as applied to that specific site may be altered by the Director upon good cause shown by the Applicant including: (1) when and where nearby utility poles exist that are spaced closer than two hundred feet (200') apart; (2) when conditions are such that no Existing Structure is available for placement of Facilities; and (3) the utility pole can be placed to be minimally visually intrusive.

(1) *Wireless Antennas and Facilities.* Pursuant to City authority, including by Section 67.1830(f) RSMo. and the Uniform Small Wireless Facility Deployment Act (§§ 67.5110 *et seq.* RSMo.), and due to the limited space in the City's Rights-of-Way and in order to minimize obstructions and interference with the use of the Rights-of-Way and to ensure traffic safety, while also seeking to facilitate delivery of broadband technologies to City residents and businesses, wireless Facilities shall be permitted in the Rights-of-Way in compliance with the requirements applicable to other Facilities and users in the Rights-of-Way, and the additional requirements set forth in this Section for wireless antennas and Facilities.

(2) *General Conditions.* Any wireless Facility in the ROW shall be subject to conditions relating to the location (including prohibited or limited locations), design, height, appearance, safety, radio-frequency, and other interference issues as may be lawfully imposed by the City where necessary or appropriate to protect the public, and to conform to policies and interests of the public as may be set forth in special district plans, historic areas, or other policies as may be reasonably adopted by the Director or Board of Aldermen to address changing infrastructure, technology, and uses of the Rights-of-Way and/or City Facilities. A wireless Facility shall not be located or installed in a manner that results in interference with or impairs the operation of existing Facilities or City or third-party attachments. Wireless Antennas or Facilities shall further comply with (1) all applicable requirements for installation of any Facilities in the ROW as set forth in this Chapter including a Permit, (2) the requirements of this Section, and (3) requirements for installation of wireless Antennas and Facilities set forth in the Uniform Wireless Communications Infrastructure Deployment Act (§§ 67.5090 *et seq.* RSMo.), Uniform Small Wireless Facility Deployment Act (§§ 67.5110 *et seq.* RSMo.), applicable zoning, building, and other regulations and approvals, specifically including Chapter 417.

(3) *Specific Conditions.*

(a) *Small Wireless Facilities.* Any Small Wireless Facility meeting the requirements for Small Wireless Facility as defined by Section 471.020 and as provided in Section 417.050 of the Zoning Code shall be authorized to be located in the Rights-of-Way with approval of the Director subject to the following additional

requirements:

- i. If proposing to install a new utility pole, compliance with the spacing requirements herein;
- ii. Compliance with § 67.5113.3(9) RSMo. to the satisfaction of the City;
- iii. For collocations on City utility poles, all make-ready estimates for the utility pole, including replacement costs where necessary for the safety and reliability of the utility pole, as determined by the City;
- iv. Attestation that the proposed Small Wireless Facility meets the volumetric requirements to meet the definition of a Small Wireless Facility in Section 417.020 of the Zoning Code; and
- v. Any other requirements which may be applicable to the proposed Small Wireless Facility pursuant to the Uniform Small Wireless Facility Deployment Act (§§ 67.5110 *et seq.* RSMo.).

(b) *“Fast-Track” Small Wireless Collocation.* Any wireless Facility meeting the requirements of a “Fast-Track” Small Wireless Facility” as defined by Section 417.020, and as provided in Section 417.060 of the Zoning Code, may be authorized to be located in the Rights-of-Way with approval of the Director subject to the following additional requirements:

1. Attestation that the proposed facilities meet the volumetric requirements to meet the definition of “Fast Track” in Section 417.020 of the Zoning Code;
2. No ground equipment shall be authorized;
3. If the proposed structure the Applicant proposes to locate its “Fast-Track” Small Wireless Facility is not structurally sound, but the Director finds such to be a desired location, the Director can require the Applicant to install a new substantially similar structure at its cost; and
4. Compliance with the spacing requirements in herein if granted a waiver under the “Fast-Track” zoning procedure to install a new structure.

(c) *All other Wireless in ROW.* Any wireless Facility located on a utility pole or Existing Structure, as defined by Section 417.020, but not meeting the requirements of (a) *Small Wireless Facilities* or (b) *“Fast-Track” Small Wireless Collocation* above, may be approved, subject to conditions as may be imposed consistent with the purposes of this Section, only upon approval by the Board upon a determination by the Board that such wireless Facility is: (1) in the public interest to provide a needed service to persons within the City, (2) cannot feasibly meet all of the requirements of a “Small Wireless Facility,” “Fast-Track,” or otherwise, but varies from such requirements to the minimum extent necessary, (3) does not negatively impact appearance or property values in light of the location, design, and circumstances to be approved, (4) does not create any reasonable safety risk, and (5) complies with all zoning, ROW, and other applicable requirements.



- (3) *Application Requirements.* Any application including one or more wireless antennas or facilities shall include all applicable and lawful requirements for: (1) installation of any Facilities in the ROW as set forth in this Chapter; (2) the requirements of this Subsection; and (3) requirements for installation of wireless Antennas and Facilities set forth in the Uniform Wireless Communications Infrastructure Deployment Act (Section 67.5090 et. seq., RSMo.), Chapter 417, and other applicable law, including written proof of consent of the landowner and of the structure owner.
- (4) *Wireless Facility Compensation.* If the Small Wireless Facility or Fast-Track is to be located on a City owned structure or utility pole, an annual payment of \$150.00 per attachment shall be required.
3. *Mapping of Facilities.* Upon completion of the ROW work involving installation of new Facilities, the ROW User shall supply the City copies of as-built and detailed maps showing the exact location of Facilities installed in the ROW. As a condition of continued ROW use, all ROW Users shall, on an annual basis, provide the City with as-builts or other detailed maps of the ROW User's current facilities. Such annual requirement may be waived by the Director upon written request.
4. *No Interference.* All ROW Users shall construct and maintain its Facilities so as not to interfere with other users of the Rights-of-Way. The ROW User shall not interfere with or alter the Facilities of the City or other ROW User without their consent and shall be solely responsible for such. Except as may otherwise be provided or as determined by the Director, the ROW User shall, prior to commencement of work, execute a City-approved resident-notification plan to notify residents affected by the proposed work. All construction and Maintenance by the ROW User or its subcontractors shall be performed in accordance with industry standards. The ROW User shall, in the performance of any Excavation, Facilities Maintenance, or other ROW work, limit such work to that necessary for efficient operation and so as not to interfere with other users of the Rights-of-Way. All Facilities and other structures shall be installed and located to cause minimum interference with the rights and convenience of property owners, ROW Users, and the City. Facilities and other structures shall not be placed where they will disrupt or interfere with other Facilities, structures, or public improvements or obstruct or hinder in any manner the various utilities serving the residents and businesses in the City or public improvements. Above-ground Facilities shall be constructed and maintained in such a manner so as not to emit any unnecessary or intrusive noise. When reasonable and necessary to accomplish such purposes, the Director may require as alternatives to the proposed work either less disruptive methods or different locations for Facilities consistent with applicable law.
5. *Subordinate Uses.* ROW User's use shall be in all situations subordinate and subject to public municipal use.
6. *Sight Triangle Maintained.* ROW Users shall comply with the requirements of sight triangles and nothing shall be erected, placed, planted, or allowed to grow in such a manner as to materially impede vision within the triangular area formed by the Rights-of-Way lines and a line connecting them at points thirty (30) feet from their point of intersection or at equivalent

points on private street.

**Section 532.090. – Relocation of Facilities.**

1. *City Required Relocation.* The ROW User shall promptly remove, relocate, or adjust any Facilities located in the Rights-of-Way as directed by the City when such is required by public necessity, or public convenience and security require it, or such other findings in the public interest that may require relocation, adjustment, or removal at the cost of the ROW User. Such removal, relocation, or adjustment shall be performed by the ROW User within the time frames established by the City and at the ROW User's sole expense without any expense to the City, its employees, agents, or authorized contractors and shall be specifically subject to rules, regulations, and schedules of the City pertaining to such.
2. *Emergency Exception.* In the event of an emergency or where construction equipment or Facilities create or are contributing to an imminent danger to health, safety, or property, the City may, to the extent allowed by law, remove, re-lay, or relocate such construction equipment or the pertinent parts of such Facilities without charge to the City for such action or for restoration or repair. The City shall attempt to notify the Person having Facilities in the Rights-of-Way prior to taking such action, but the inability to do so shall not prevent same. Thereafter, the City shall notify the Person having Facilities in the Rights-of-Way as soon as practicable.
3. *Third-Party Relocation.* A Person having Facilities in the Rights-of-Way shall, on the reasonable request of any Person, other than the City, holding a validly issued Permit, after reasonable advance written notice, protect, support, or temporarily disconnect or relocate Facilities to accommodate such Person and the actual cost, reasonably incurred, of such actions shall be paid by the Person requesting such action. The Person having Facilities in the Rights-of-Way taking such action may require such payment in advance.
4. *Abandonment Exception.* Rather than relocate Facilities as requested or directed, a ROW User may abandon the Facilities if approved by the City as provided in Subsection 7 of this Section.
5. *ROW User Responsible for Damage.* Any damages suffered by the City, its agents or its contractors to the extent caused by the ROW User's failure to timely relocate, remove, or adjust its Facilities, or failure to properly relocate, remove, or adjust such Facilities, shall be borne by the ROW User. Where the ROW User shall fail to relocate Facilities as required by the City, the City may, but shall not be required to, upon notice to the ROW User remove the obstructing Facilities with or without further delay and the ROW User shall bear all responsibility and liability for the consequences therefrom, and the City shall bear no responsibility to the ROW User or others for damage resulting from such removal.
6. *No Vested Rights.* No action hereunder shall be deemed a taking of property and no Person shall be entitled to any compensation therefor. No location of any Facilities in the Rights-of-Way shall be a vested interest or property right.

7. *Abandoned Facilities; Removal.* A Person owning Abandoned Facilities in the Rights-of-Way must not later than thirty (30) days of notice or of abandonment remove its Facilities and replace or restore any damage or disturbance caused by the removal at its own expense. The Director may upon written application and written approval allow underground Facilities or portions thereof to remain in place if the Director determines that it is in the best interest of public health, safety, and general welfare to do so. The City shall be entitled to all costs of removal and enforcement for any violation of this provision.
8. *Nuisance.* Facilities Abandoned or otherwise left unused in violation of this Chapter are deemed to be a nuisance. The City may exercise any remedies or rights it has at law or in equity, including, but not limited to, (a) abating the nuisance, (b) taking possession and ownership of the Facility and restoring it to a useable function, or (c) requiring the removal of the Facility by the ROW User.

**Section 532.100. – ROW User Responsibilities and Requirements.**

1. *Compliance with Laws.* Each ROW User shall comply with all applicable federal and state laws and regulations and rules as well as all City ordinances, resolutions, rules, and regulations heretofore and hereafter adopted or established.
2. *Zoning, Safety, and Building Code Compliance.* ROW Users shall at all times be subject to the lawful exercise of the police powers of the City, including but not limited to all police powers regarding zoning, supervision of the restoration of the Rights-of-Way, building and safety regulations, and control of the Rights-of-Way currently in effect or as may be amended. Installation of all Facilities in the Rights-of-Way are subject to and must be in compliance with all zoning and safety and building code requirements. For applications for installation of any Facility in the Rights-of-Way, (1) the most restrictive adjacent underlying zoning district classification shall apply unless otherwise specifically zoned and designated on the official Zoning District Map, and (2) no application shall be submitted for approval without attaching the City's consent to use the Rights-of-Way for the specific construction application in accordance with Chapter 67 RSMo. and compliance with this Chapter.
3. *No Cause of Action Against the City.* As a condition for use of the Rights-of-Way, a ROW User shall have no damages, remedy, or monetary recourse whatsoever against the City for any loss, cost, expense, or damage arising from any of the provisions or requirements of any ROW Use Agreement, Franchise, or License, or because of the enforcement thereof by said City, or from the use of the Rights-of-Way. Nothing herein shall preclude the ROW User from seeking injunctive or declaratory judgment relief against the City where such relief is otherwise available, and the requirements therefor are otherwise satisfied.
4. *Maintenance of Facilities.* Each ROW User shall maintain its Facilities in good and safe condition and in a manner that complies with all applicable federal, state, and local requirements.
5. *Responsible for Subcontractors.* If Excavation or Facilities Maintenance is being done for the ROW User by another Person, a subcontractor or otherwise, the ROW User shall be

responsible for ensuring that the Excavation or Facilities Maintenance of said Person is performed consistent with its Permit and applicable law (including that the contractor shall be properly licensed under the State of Missouri and local ordinances) and shall be responsible for promptly correcting acts or omissions by said Person.

6. *Insurance; Exceptions.* Except as provided in this Section, each ROW User shall provide, at its sole expense, and maintain during the term of any ROW Use Agreement or Franchise or anytime the ROW User has Facilities in the ROW, commercial general liability insurance with a reputable, qualified, and financially sound company licensed to do business in the State of Missouri, and unless otherwise approved by the City, with a rating by Best of not less than "A", that shall protect the ROW User, the City, and the City's officials, officers, and employees, from claims which may arise from such use of the ROW, whether such operations are by the ROW User, its officers, directors, employees, and agents, or any contractors or subcontractors of the ROW User. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from all ROW User's operations, products, services, or use of automobiles or construction equipment. The amount of insurance for single limit coverage applying to bodily and personal injury and property damage shall be in no event less than the individual and combined sovereign immunity limits established by § 537.610 RSMo. for political subdivisions; provided that nothing herein shall be deemed to waive the City's sovereign immunity. An endorsement which states that the City is an additional insured with full and equivalent coverage as the insured under the insured's policy and stating that the policy shall not be cancelled or materially modified so as to be out of compliance with the requirements of this Section, or not renewed without thirty (30) days' advance written notice of such event being given to the Director, along with copies of the policy and other documentation, shall be provided. If the Person 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. The City's additional insured coverage shall have no deductible. The insurance requirements in this Section or otherwise shall not apply to a ROW User to the extent and for such period as the ROW User is exempted from such requirements pursuant to § 67.1830(6)(a) RSMo. and has on file with the City Clerk an affidavit certifying that ROW User has twenty-five million dollars (\$25,000,000.00) in net assets and is otherwise therefore so exempted unless otherwise provided by a ROW Use Agreement or Franchise or the City determines such exemption has not been adequately shown. Additionally, in accordance with § 67.5121(3) RSMo., a self-insured ROW User shall not be required to obtain insurance naming the City as an additional insured solely to the extent such ROW User is utilizing "Small Wireless Facilities," as defined in the Uniform Small Wireless Facility Deployment Act, within the ROW. This exception to the City's insurance requirements shall only apply as related to "Small Wireless Facilities" and shall not otherwise alter the obligations of a ROW User to provide appropriate insurance to the City for any other activities or operations. The City may waive any and all requirements under this Subsection when deemed to be lawful and in the public interest.

7. *Performance and Maintenance Bonds.*

- A. *Bond Required.* Prior to any work, a ROW User shall establish in the City's favor a performance and maintenance bond in an amount to be determined by the Director to

guarantee the restoration of the Rights-of-Way as more fully provided in Section 532.120. The bond shall continue in full force and effect for a period of forty-eight (48) months following completion of the work. The Director may waive this requirement when the work involves, as determined in the sole discretion of the Director, no or only minor disruption or damage to the Rights-of-Way. The City may waive any and all requirements under this subsection when deemed to be lawful and in the public interest.

- B. *Failure to Satisfactorily Complete Restoration.* If a ROW User fails to complete the work in a safe, timely, and competent manner or if the completed restorative work fails without remediation within the time period for the bond (as determined by the Director), then after notice and a reasonable opportunity to cure, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification, or cost of removal or Abandonment of any property of the ROW User and the cost of completing work in or restoring the Rights-of-Way, up to the full amount of the bond. The City may also recover against the bond any amount recoverable against a security fund or letter of credit where such amount exceeds that available under a security fund or letter of credit.
  - C. *Bond Terms.* The bond shall be issued by a surety with an "A" or better rating of insurance in Best's Key Rating Guide, Property/Casualty Edition, shall be subject to the approval of the City's Attorney and shall contain the following endorsement: "This bond may not be cancelled or allowed to lapse until sixty (60) days after receipt by the City, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."
  - D. *Exceptions.* In lieu of the bond required herein, the ROW User may establish in the City's favor such other security as the Director may determine to be commensurate with the noted bonding requirements including, but not limited to, an annual bond to be maintained in the minimum amount of twenty-five thousand dollars (\$25,000.00). The bond requirements in this Section or otherwise shall not apply to a ROW User to the extent and for such period as the ROW User is exempted from such requirements pursuant to § 67.1830(6)(a) RSMo. and has on file with the City Clerk an affidavit certifying that ROW User has twenty-five million dollars (\$25,000,000.00) in net assets and is otherwise therefore so exempted, unless otherwise provided by a ROW Use Agreement or Franchise or the City determines such exemption has not been adequately shown. Additionally, in accordance with § 67.5121(4), the bonds required for "Small Wireless Facilities" as defined in the Uniform Small Wireless Facility Deployment Act shall not exceed one thousand five hundred dollars (\$1,500.00) per "Small Wireless Facility" or more seventy-five thousand dollars (\$75,000.00) for all "Small Wireless Facilities" within the ROW of a ROW User. This exception to the City's bonding requirements shall only apply as related to such "Small Wireless Facilities" and shall not otherwise alter the obligations of a ROW User to provide appropriate bonds to the City for any other activities or operations.
9. *Indemnification.* Any Person performing Excavation or a ROW User as a condition of use of the Rights-of-Way shall at its sole cost and expense fully indemnify, protect, defend (with counsel acceptable to the City), and hold harmless the City, its municipal officials, officers,

employees, 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, arising, directly or indirectly, in whole or in part, from the action or inaction of the Person performing Excavation or ROW User, its agents, representatives, employees, contractors, subcontractors, or any other Person for whose acts the Person performing Excavation or ROW User may be liable, in constructing, operating, maintaining, repairing, restoring, or removing Facilities or other structures, or use of the Rights-or-Way or the activities performed, or failed to be performed, by the Person performing Excavation or ROW User under this Chapter or applicable law, or otherwise, except to the extent arising from or caused by the sole or gross negligence or willful misconduct of the City, its elected officials, officers, employees, agents, or contractors. 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 the duty to defend against liability or its duty to pay any judgment entered against the City, or its agents. This indemnification shall survive the expiration or termination of any ROW Use Agreement, License, or Permit. Provided however, that in accordance with § 67.5121(2), a ROW User solely to the extent a ROW User is operating “Small Wireless Facility” as defined in the Uniform Small Wireless Facility Deployment Act within the ROW shall only indemnify and hold the City, its officers and employees, harmless against any damage or personal injury caused by the negligence of the ROW User, its employees, agents, or contractors. This exception shall only apply to the ROW User’s “Small Wireless Facilities” and shall not otherwise alter the obligations of a ROW User to provide indemnification to the City for any other activities or operations.

10. *ROW User Responsible for Costs.* The ROW User shall be responsible for all reasonable costs borne by the City that are directly associated with ROW User's installation, Maintenance, repair, operation, use, and replacement of its Facilities in the Rights-of-Way that are not otherwise accounted for as part of the Permit fee established pursuant to this Chapter, to the extent permitted by law. All such costs shall be itemized and the City's books and records related to these costs shall be made available upon request of the ROW User.

**Section 532.110. – Excavation Details; Manner of Work Generally.**

1. *Specifications.* The Director is hereby authorized to promulgate technical specifications and rules regarding Excavation details and work within the ROW generally to carry out the requirements of this Chapter and ensure the general health and welfare is protected.
2. *Open Excavations; Street-Plate Bridging.* The ROW User shall not permit an Excavation to remain open or Facilities Maintenance actions to continue in the Rights-of-Way longer than is necessary to complete the repair, installation or action, and in no event, may an Excavation or Facilities Maintenance remain open or continue beyond the expiration of the Excavation Permit or any approved extension. Unless otherwise approved by the Director in writing, all Excavations shall be filled in or covered at the end of each working day. Street plate bridging (SPB) to cover open Excavations shall be authorized subject to requirements contained in the standard specifications.

3. *Interference Control.* The ROW User Excavating in the Rights-of-Way shall cause the Excavation to be done with the least possible injury to the pavement, sidewalk, curbing, parkway, or other surface and shall place the materials from the Excavation where they will cause the least possible inconvenience to the public and permit the uninterrupted passage of water along the gutters. The width of the Excavation shall be no greater than is necessary for doing the work.
4. *Erosion Control.* Before new Excavation or construction is commenced and until sodding, planting, concreting, paving, or other final surfacing is in place, which will avoid washing or spreading of dirt and mud onto other property, sidewalks, curbs, gutters, streets, and the Rights-of-Way, the ROW User shall erect and maintain approved temporary erosion control measures to prevent such washing or spreading of materials. At the end of each day and as required throughout the day during the course of Excavating or construction, dirt and mud on the sidewalks, curbs, gutters, streets, and the Rights-of-Way resulting from work must be removed.
5. *Cleaning up; Removing Mud from Vehicles.* The Person doing the Excavating or other ROW work under the requirements of this Chapter shall immediately, after the work is completed and the refill is made, clean up and haul away all surplus earth, rock, debris, or other rubbish. The ROW User shall remove dirt from the wheels of all vehicles leaving any site where mud has accumulated on the wheels before such vehicles enter any public street of the City. It shall be unlawful for any ROW User to permit any vehicles to leave such place with mud on the wheels which is liable to be dispersed over any public street of the City and it shall be unlawful for any driver of a vehicle to enter upon the public streets of the City without having removed or had mud removed from the wheels prior to such entry. Each occurrence shall be a separate offense. The ROW User shall be responsible for damages to the City, or its contractors, resulting from such failure and shall indemnify the City and its contractors as provided herein and pay the costs for remedying such failure.
6. *Spilling Materials onto Rights-of-Ways.* The ROW User shall load materials on any vehicle so no portion thereof shall be spilled or be liable to be spilled on the streets of the City. It shall be unlawful for any ROW User to permit any vehicle to enter upon the streets of the City loaded in violation of this provision and it shall be unlawful for any Person to operate a vehicle on the streets of the City which is loaded in such manner that it spills or is liable to spill mud, dirt, or other materials on the streets.
7. *Hours of Activity.* The ROW User shall perform Excavations or Facilities Maintenance on the Rights-of-Way at such times that will allow the least interference with the normal flow of traffic and the peace and quiet of the neighborhood, and in accordance with the Director's technical specifications that are on file with the City and made a part of the Permit application.
8. *Methods of Pavement Removal, Excavation, and Backfill.* The Person making an Excavation shall abide by the conditions contained within the technical specifications that are on file with the City and made a part of the Permit application

**Section 532.120. – Standards for all Work within the ROW.**

1. *Property Repair and Alterations.*

- A. *No Damage.* During any work, the Person doing the work shall protect from damage any and all existing structures and property belonging to the City and any other person. Any and all Rights-of-Way, public property, or private property disturbed or damaged during the work shall be repaired or replaced by the Person doing the work or the Person on whose behalf the work is being done and such Person shall immediately notify the owner of the fact of any damaged property. Such repair or replacement shall be completed within a reasonable time specified by the Director and to his/her satisfaction.
- B. *Alterations.* Any alteration to the existing water mains, sewerage or drainage system, or to any City, state, or other public structures or Facilities in the Rights-of-Way required on account of the construction, installation, repair, or Maintenance of Facilities in the Rights-of-Way shall be made at the sole cost and expense of the owner of such Facilities and shall be performed in accordance with the Director's specifications that are on file with the City and made a part of the Permit application.

2. *Specifications and Conditions for Work*

- A. *Barricades and Safety Devices.* The ROW User assumes the sole responsibility for maintaining proper barricades, plates, safety fencing, and/or lights as required from the time of opening of the ROW until the Excavation is surfaced and opened for travel. All Excavations and Facilities Maintenance that disturb traffic or pedestrian travel shall be barricaded in such a manner as to protect both pedestrians and vehicular traffic. Such Excavations, Facilities Maintenance, and barricades shall be lighted at night with danger signals in such a manner that all traffic may be warned of the existence and location of such Excavations, Facilities Maintenance, and barricades.
- B. *Traffic Control.* Whenever there is an Excavation or Facilities Maintenance by the ROW User, the ROW User shall be responsible for providing adequate traffic control to the surrounding area as determined by the Director. All traffic control devices shall be in compliance with the current version of the standard specifications and the Manual of Traffic Control Devices (MUTCD), unless otherwise agreed to by the City. All surplus Excavation materials, tools, or supplies at the site of the Excavation or Facilities Maintenance shall be barricaded and lighted at night in the manner described in this Section. In the event the Excavation or Facilities Maintenance 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. *Specifications and Restoration.* All work and Maintenance shall comply with all such specifications as may be established by the Director. The ROW User shall restore the Rights-of-Way and surrounding areas and shall comply with other reasonable conditions



of the Director. Restoration of the Rights-of-Way shall be completed within the dates specified in the Permit unless the Director issues a waiver, extension, or a new or revised Permit.

- D. *Failure to Restore.* If a ROW User fails to restore the Rights-of-Way to its reasonable before condition (including placement of sod to restore any grassy areas unless such requirement is waived by the Director in his/her sole discretion based on area disturbed and weather conditions) within the date specified either by the Permit or any extension thereof as granted by the Director, the City may perform its own restoration. If the City performs the restoration, the ROW User shall be responsible for reimbursing the City's reasonable actual restoration costs within thirty (30) days of invoice. The City may use the required performance bond to repair the same, if necessary. The ROW User shall not be relieved of the obligation to complete the necessary Rights-or-Way restoration and Maintenance because of the existence of any performance bond required by this Chapter.
- E. *Inspection.* When an Excavation has been made in the ROW, and after the same has been properly backfilled, the Person making the Excavation shall notify the Director that the same is ready for final repair. The Director or his duly authorized agent shall inspect the same. The judgment of the Director or his authorized agent as to when an Excavation has been properly backfilled to permit final repair shall be conclusive. If any Person fails to contact the Director for an inspection within a reasonable time, as determined by the Excavation Permit issued for the Excavation, after completion of the work, to ensure that the Rights-of-Way or other public place has been restored to as good a condition as it was previous to such Excavation being made, the Excavation shall not be deemed complete and the ROW User shall be in violation of this Chapter.
- F. *Notice of Completion.* The ROW User shall notify the Director upon completion of the Excavation or Facilities Maintenance authorized by the Permit.
- G. *Guarantee of Work.* Every ROW User in restoring the Rights-of-Way, shall guarantee its work and shall maintain it for forty-eight (48) months following its completion and in accordance with § 67.1834 RSMo. During the forty-eight (48) months, the ROW User shall, upon notification from the Director, correct all restoration work to the extent necessary, using any method as reasonably required by the Director. Said work shall be completed within a reasonable time, not to exceed thirty (30) calendar days, of the receipt of notice from the Director (not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable as reasonably determined by the Director). In the event the ROW User is required to perform new restoration pursuant to the foregoing guarantee, the Director 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 requirements. The guarantee period shall be applicable to failure of the pavement surface as well as failure below the pavement surface.

**Section 532.130. – Jurisdiction, Inspection, Stop Work Orders, Appeals, and Penalties.**

1. *Inspections.* All work and Facilities shall be subject to inspection by the City and the supervision of all federal, state, and local authorities having jurisdiction in such matters to ensure compliance with all applicable laws, ordinances, departmental rules and regulations, and the Permit.
2. *Stop Work Orders.* The Director shall have full access to all portions of the work and may issue stop work orders and corrective orders to prevent violations of this Chapter, unauthorized work, or substandard work as established herein. Except in cases of an emergency or with approval of the Director, no work may be done in violation of a stop work order issued by the Director.
3. *Repairs when Defective.* All violations of the standards and requirements herein shall be corrected within the time specified in the issuance of a written notice to correct. Action to correct violations which require immediate action shall be taken upon notification to the Person by the City. Every Person failing to comply with the oral or written notice shall be deemed in violation of this Chapter. If the action is not taken within the time period specified by notice and in addition to any other remedy, the Director may have the violation, including but not limited to, the existence of mud or debris on the Rights-of-Way, immediately remedied and the City's costs shall be reimbursed by the ROW User through the surety or otherwise. Nothing in this Subsection shall prevent prosecution of violation of this Chapter in the absence or in addition to the issuance of notice of violation.
4. *Appeals.* Unless otherwise required by law, the review procedures set forth in Chapter 155 of this Code shall govern appeals by any aggrieved person of a final action of any City officer, employee, board, commission, or the Board of Aldermen under this Chapter that are claimed by an aggrieved person to be unlawful or an unconstitutional taking of property without compensation. To the fullest extent permitted by law, the review procedures of Chapter 155 shall be exhausted before any action may be filed in any court against the City or its officers, employees, boards, officials, or commissions.
5. *Enforcement; Attorneys' Fees.* The City shall be entitled to enforce any provision of this Chapter through all remedies lawfully available, and any person determined to have violated the terms of this Chapter shall further be liable to pay the City's costs and attorneys' fees in enforcing such Chapter provisions. Additionally, any user of City services, Rights-of-Way, or other City facilities or property, shall, as a condition of such use or continued use, to the full extent permissible by law, be liable to pay the City's costs and attorneys' fees incurred in enforcing any lawful requirement applicable to such use, whether arising in contract, statute, ordinance, or other enforceable duty as to such use.
6. *Penalties.* In addition to any other penalties and remedies for violations that may exist in law or equity, any Person that violates any provision of this Chapter shall be subject to such penalties as set forth in Section 100.220 of the City Code per day for each and every day the violation exists or continues.

**Section 532.140. – Reservation of Rights.**

In addition to any rights specifically reserved to the City by this Chapter, the City reserves unto itself every right and power which is required to be reserved by a provision of any ordinance under any registration, Permit, or other authorization granted under this Chapter, and as may be authorized by Chapter 67 RSMo. and other authority applicable to regulation of the use of the Rights-of-Way. Notwithstanding anything to the contrary set forth herein, the provisions of this Chapter shall not infringe upon the rights of any Person pursuant to any applicable state or federal statutes, including, but not limited to any right that may exist to occupy the Rights-of-Way.