

BILL NO. 10- \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AMENDING CHAPTER 24 OF THE  
CODE OF ORDINANCES OF THE CITY RELATED TO  
REGULATION OF PUBLIC RIGHTS-OF-WAY**

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WHEREAS, the City Council of the City of Columbia is authorized under its Charter to regulate public rights-of-way, and other aspects of development that may affect the public health, safety or welfare and is additionally authorized under state law to control such matters to protect the public,

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBIA, MISSOURI, AS FOLLOWS:**

**ARTICLE 1.** Chapter 24 of the Code of Ordinances of the City of Columbia, Missouri, titled "Streets and Sidewalks," is hereby amended by adopting and adding a new Article X, "Public Utility Rights-of-Way Users," Sections 24-160 through 24-172, inclusive, to read as follows:

**CHAPTER 24, STREETS AND SIDEWALKS  
ARTICLE X  
PUBLIC UTILITY RIGHTS-OF-WAY USERS**

**Sec. 24-160 Policy and Definitions.**

A. It shall be the policy of the City to authorize use of the Rights-of-Way by Public Utility Rights-of-Way user in a manner that minimizes interference to the public use and minimizes the burden on the Rights-of-Way physically and aesthetically to the full extent permitted by law. Any use of the Rights-of-Way by any person shall be subject to the terms and conditions hereof, in addition to all applicable federal, state or local requirements, and nothing herein shall be enforced or interpreted to contravene any superseding law, including but not limited to R.S.Mo. § 67.1830, et seq., to the extent applicable to any given circumstance.

The right granted to a Public Utility Rights-of-Way User to use the Rights-of-Way is limited to the use authorized in accordance with this Article. These rights shall grant non-exclusive use only to that ROW-User except where otherwise provided herein or when expressly authorized by the City.

B. The following definitions shall apply to this Section, except that where the definitions set forth in R.S.Mo. § 67.1830, as may be amended, are required by law to apply to specific uses of the Rights-of-Way, such definitions shall apply to such circumstances.

1. **"City"** means the City of Columbia, Missouri, a municipal corporation and any duly authorized representative.
2. **"Director"** means the Director of Public Works of the City of Columbia,

Missouri, or his or her authorized representative, who shall be the primary city official responsible for administration of this Chapter. The Director may delegate any or all of the duties hereunder.

3. **“Excavation Permit”** means the authorization required to make Excavations for the construction, installation, repair or maintenance of any type of Facility within the Rights-of-Way.

4. **“Facilities Maintenance”** means construction, alteration, maintenance, installation, storage, or location of Facilities installed below, on or above ground in the public Rights-of-Way, other than Excavation, that also:

- a. causes or threatens to cause any obstruction or interference to any vehicular or pedestrian traffic or traffic lane in the Rights-of-Way,
- b. involves temporary or permanent storage of materials or equipment on Rights-of-Way,
- c. causes or reasonably may cause damage or alteration to any public improvement or vegetation within the Rights-of-Way, or
- d. involves removal, replacement or alteration to any safety feature or requirement within the Rights-of-Way, including but not limited to removal of manhole covers, altering lighting, traffic signage or signals, placement or removal of traffic barricades, etc.
- e. Facilities Maintenance shall not include routine or other maintenance on poles, boxes, or other facilities that does not result in or qualify under one or more of the conditions described in subparagraphs (a) through (e) herein.

5. **“Facilities Maintenance Permit”** means the authorization required to perform Facilities Maintenance within the Rights-of-Way other than Excavations.

6. **“Facility”** means all/any lines, pipes, wires, cables, conduit facilities, poles, towers, vaults, pedestals, boxes, or other equipment owned or controlled by an entity other than the City.

7. **“PSC”** means the Missouri Public Service Commission.

8. **“Pavement”** means the improved surface of the public way with concrete, asphalt, aggregate or other treated materials.

9. **“Person”** means an individual, person or body natural or corporate.

10. **“Public Easement”** means any easement for utilities, access, or other use dedicated to the City or in the name of the City irrespective of whether the easement is

held in trust by the City for private and public users and regardless of whether private utilities or others in addition to or other than the City are actually using the easements.

11. **“Public Improvement”** means any public project undertaken by the City for the public good.

12. **“Public Utility”** means every cable television or video service provider, every 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 cooperatively owned or operated utility pursuant to 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, 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.

13. **“Restoration”** means returning the Rights-of-Way surface to its original condition, or better.

14. **“Reseller Service Provider”** means a person providing service within the City that does not have its own Facilities in the Rights-of-Way, but instead uses the Rights-of-Way by interconnecting with or using the network elements of another ROW-User utilizing the Rights-of-Way, and/or by leasing excess capacity from a ROW-User.

15. **“Rights-of-Way” or “ROW”** means the area on, below or above a public roadway, highway, street or alleyway in which the City has an ownership interest, and including such adjacent areas of such public ways within such ownership interest as made available by the City for Rights-of-Way use herein, but not including:

- a. Easements obtained by utilities or private easements in platted subdivisions or tracts;
- b. Railroad rights-of-way and ground utilized or acquired for railroad facilities; or
- c. Valves, meters, hydrants, 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 Chapter 91, R.S.Mo., or pursuant to a charter form of government.

16. **“ROW Authorization” or “Authorization”** means an authorization to use the Rights-of-Way granted to a ROW-User by the City as provided in subsection (A)(1)-(4) of Section 24-161 of this Article.

17. **“Rights-of-Way User” or “ROW-User”** means a Public Utility owning, controlling, maintaining, constructing, or installing Facilities in the public Rights-of-Way of the City unless otherwise expressly exempted by law. The term also shall not include the City; provided that the City shall nevertheless comply with all such requirements applicable to ROW-Users to the extent such compliance is otherwise required by applicable state or federal law.
18. **“ROW Work Permit” or “Permit”** means either an Excavation Permit and a Facilities Maintenance Permit and shall constitute a “right-of-way permit” as that term is defined in § 67.1830 RSMo.
19. **“Service”** means that function provided to property adjoining the public Rights-of-Way from a service provider.
20. **“Standard Specifications”** means the City of Columbia *Street, Storm Sewer, and Sanitary Specifications and Standards*, as may be amended, or other successor documents, on file with the Director of Public Works.

#### **Sec. 24-161 Authorization to Use Rights-of-Way Required.**

A. *Authorization Required.* Except when otherwise authorized by applicable law, no ROW-User may construct, maintain, own, control, or use Facilities in the Rights-of-Way without authorization of the City as provided herein and the Director shall not issue a ROW Work Permit to any ROW-User that has not obtained such authorization from the City. Authorization to use the Rights-of-Way shall be approved on a non-discriminatory basis provided that the applicant is in compliance with all applicable requirements. Such authorization shall be deemed to incorporate the terms of this Article and other applicable laws of the City, except as may be expressly stated in such authorization. Reseller Service Providers shall not be required to obtain a franchise or agreement but shall be required to register with the City on forms provided by the City prior to providing service. Authorization for use of the Right-of-Way by a ROW-User may be provided by the City by the following means:

1. *Franchise.* A franchise shall be required from the City in conformance with all applicable franchise procedures for any ROW-User seeking to use the Rights-of-Way for purposes of providing or distribution of electricity, gas, water, steam, lighting, or sewer public utility service in the City, except where otherwise provided by law. Such franchise may be granted only after satisfaction of all applicable procedural or substantive requirements established by City Code or other law.
2. *ROW Agreement.* A ROW Agreement authorizing general use of all Right-of-Way within the City shall be required with the City for all ROW-Users not set forth in subsection 1, irrespective of any state licensing, franchise or certificate that may also be held by the ROW-User, except as otherwise required herein or by law. Such agreements shall conform to all applicable law, but shall not be subject to procedures applicable to

franchises and the City may, if appropriate, approve form agreements that may be executed by the Director after approval by the Council.

3. *Registration.* Any ROW-User expressly exempt by law from being required to execute a franchise or ROW agreement shall register with the City on forms provided by the City, which shall require the ROW-User to specifically identify the law under which the ROW-User claims such exemption. Registrations under this Article shall be valid for no more than five years.

4. *Use Permit.* Use permits or use agreements authorizing use of specific portions of the public Rights-of-Way that were executed prior to enactment of this Article may constitute authorization under this section, but such authorization shall be limited to the specific portion of Rights-of-Way set forth in the permit or agreement.

B. *Nonexclusive Use of Right-of-Way.* The authorization granted by the City under this Article shall be for nonexclusive use of the Rights-of-Way. The City specifically reserves the right to grant, at any time, such additional authorizations 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 law. The granting of an Authorization to use the Rights-of-Way shall not be deemed to create any property interest of any kind in favor of the ROW-User. Any use of the Rights-of-Way by a ROW-User shall be deemed subordinate to the primary public use by the City.

C. *Lease Required for Public Lands.* Unless otherwise provided, use or installation of any Facilities in, on or over public lands of the City not constituting Rights-of-Way 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 and conditions as the City may require.

D. *Transferability.* Except as provided in this Article or as otherwise required by law, no authorization or ROW Work Permit may be transferred without the written application to and consent of the City based on the requirements and policies of this Article and only after satisfaction of all applicable procedural or substantive requirements established by Charter or other law. The City shall not unreasonably withhold its consent to transfer as provided herein, but any costs incurred shall be paid by the applicant.

E. *Application for Authorization Required.*

1. *Application.* An application for an Authorization shall be presented to the Director in writing on such forms provided by the City and shall include all such information as is required by this Section. The ROW-User shall be responsible for accurately maintaining the information in the application during the term of any Authorization 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 Fee.* An application fee for such Authorization shall be submitted to the City in the amount of \$500.00 or as otherwise established by the Director to recover any actual costs anticipated and incurred by the City in reviewing, documenting, or

negotiating such agreement or franchise, including reasonable legal fees and costs to review compliance of the applicant and any initial proposed Facilities and uses, provided that no costs, if any, shall be included if such inclusion is prohibited by law as to that applicant. If the actual costs are thereafter determined to be less than the application fee, such amount shall be returned to the applicant after written request therefrom; if the actual costs reasonably exceed the application fee, applicant shall, after written notice from the City, pay such additional amount prior to issuance by the City of any final approval. Nothing herein shall be construed to prohibit the City from also charging reasonable compensation for use of the public Rights-of-Way where such a fee is not contrary to applicable law.

3. *Approval Process.*

(a) *Approval of Franchise or ROW Agreement.* After submission by the ROW-User of a duly executed and completed application and application fee, and executed franchise or ROW 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 Article and all applicable law, the Director shall submit such franchise or agreement to the City Council for approval. Upon determining compliance with this Article, the City Council shall authorize execution of the franchise or agreement (or a modified agreement otherwise acceptable to the City consistent with the purposes of this Article), and such executed franchise or agreement shall constitute consent to use the public Rights-of-Way; provided that nothing herein shall preclude the rejection or modification of any executed franchise or agreement submitted to the City to the extent such applicable law does not prohibit such rejection or modification, including where necessary to reasonably and in a uniform or nondiscriminatory manner reflect the distinct engineering, construction, operation, maintenance, public works or safety requirements applicable to the applicant.

(b) *Approval of Registration Application.* After submission by the ROW-User of a duly executed and completed Registration application form and application fee, the Director shall review the Registration application form for eligibility and completeness. If the Registration application form is complete and the ROW-User is eligible to utilize a registration under this Section, the Director shall approve such registration.

F. *No Cause of Action.* 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 Authorization, or from the use of the Rights-of-Way. Nothing herein shall preclude injunctive or declaratory judgment relief where such relief is otherwise entitled under law and the requirements therefor are otherwise satisfied; provided, however, that the validity of an executed franchise or agreement shall not be subject to challenge.

## **Sec. 24-162 ROW Work Permits.**

A. *Excavation Permit.* No Person shall make an Excavation within the Rights-of-Way without first obtaining an Excavation Permit from the Director. All Excavation Permits shall expire after 30 days from the date of issuance, unless otherwise specified in the Permit.

B. *Facilities Maintenance Permit; Bulk or Individual Permits.* No Person shall perform Facilities Maintenance within 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 maintenance location. In addition to the conditions set forth in Section 24-163 below, conditions of a Facilities Maintenance Permit shall be as established in the permit and shall include requirements of notice to 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 permit. All Facilities Maintenance Permits shall expire after 30 days from the date of issuance, unless otherwise specified in the Permit.

1. *Bulk Facilities Maintenance Permits.* The Director may issue bulk Facilities Maintenance Permits covering multiple projects, types of actions or locations during a period of up to one year that may be thereafter performed during that permit year. Where a bulk permit is proposed, the applicant shall provide sufficient information regarding the types of actions and locations to be approved so as to allow the Director to condition and ensure compliance with safety and other regulations herein.

2. *Work under Bulk Facilities Maintenance Permit.* Prior to beginning any work under a Bulk Facilities Maintenance Permit, a ROW-User shall provide 72-hour's notice to the Director of such work, providing the location of the work, anticipated time and duration of the work, and a description of any traffic and pedestrian safety plans applicable to such work.

C. *Emergencies.* In case of emergency requiring immediate attention to remedy defects, and in order to prevent loss or damage to persons or property, it shall be sufficient that the person making such Excavation or performing such Facilities Maintenance obtain the necessary Permit as soon as possible and may proceed without a Permit when such Permit cannot be obtained before starting such Excavation or Facilities Maintenance. Notice to the City of the emergency shall be provided at the earliest possible time and a Permit shall be obtained as soon as reasonably possible, or as otherwise directed by the City.

D. *Application for ROW Work Permit.* Applications for ROW Work Permits shall be submitted to the Director of Public Works on forms provided by the City for review for compliance with the provisions of this Chapter and all other applicable ordinances, codes, rules, and regulations and such application shall include all such plans and drawings necessary to complete such review. Applications for ROW Work Permits shall be processed within thirty-one (31) days of submission of a completed application, including all necessary plans and drawings required by the Director, unless such time is extended with written consent of the applicant.

E. *Applicable Regulations.* All ROW-Users and persons obtaining an Excavation Permit or Facilities Maintenance Permit shall be subject to the “Permit Conditions” in Section 24-163 herein and all rules, regulations, policies, resolutions, and ordinances now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power and are subject to all applicable laws, order, rules and regulations adopted by governmental entities now or hereafter having jurisdiction. In addition, the 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, utility location, construction coordination, surface restoration, and other requirements on the use of the Rights-of-Way. All Persons obtaining a ROW Work Permit under this Article shall provide the Director certificates of insurance showing proof of liability coverage for personal injury and property damage, as required herein.

F. *Stop Work Orders.* Any ROW-User found to be working without a permit, failing to provide for required safety and traffic control measures, or otherwise violating any requirements herein, may be directed to stop work until the necessary ROW Work Permit is obtained, the appropriate measures are implemented, or violations are discontinued or remedied in accordance with this Article. Any Person who shall continuing work within the rights-of-way after issuance of a stop work order shall guilty of an offense subject to the penalty set forth in § 1-8 of this Code.

### **Sec. 24-163 Permit Conditions.**

The following conditions shall apply to all ROW Work Permits issued under this Article unless specifically stated otherwise in the Permit and all work in the Rights-of-Way by an ROW-User.

A. *City Specification; Applicable Codes.* All Excavations and Facilities Maintenance shall comply with the City Standard Specifications as may be amended from time to time by the authority of the Director establishing such specifications and procedures consistent with the requirements and purposes of this Chapter. 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 PSC and any other local, state or federal agency having jurisdiction over the parties. A ROW-User shall be responsible for all Excavations or Facilities Maintenance done in the Rights-of-Way, regardless of by whom the Excavation or Facilities Maintenance is performed.

B. *Permit-Specific Conditions.* Each ROW Work Permit shall be deemed to incorporate the provisions of this Article as permit conditions. The Director may also impose additional reasonable conditions upon the issuance of a ROW Work 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 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:

1. the amount of Excavation or Facilities Maintenance which may occur at one time and the amount of Rights-of-Way which may be obstructed during construction;
2. 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 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;
3. posting of an additional or larger performance and maintenance bond for additional Facilities, except as otherwise provided in Section 24-168 hereof, when the established amount is reasonably determined to be insufficient;
4. the design, location, and nature of all Facilities based on nondiscriminatory bases in ensuring the safe, efficient and appropriate use of the ROW consistent with this Article and applicable law;
5. reasonable conditions to effectively manage erosion and sediment control; and
6. other reasonable conditions regarding the timing, safety precautions, or specific implementation of the specific work proposed.

C. *Responsible for Costs.* A ROW-User shall be responsible for all reasonable costs borne by the City that are directly associated with a ROW-User's ROW Work Permit or use of the Rights-of-Way thereunder.

D. *Stop Work Orders.* Except in cases of an Emergency or with approval of the Director, no Excavation or Facilities Maintenance may be done in violation of a stop work order issued by the Director if in his or her determination conditions are unreasonable for such Excavation or Facilities Maintenance based on standard engineering and construction practices.

E. *No Interference with ROW Uses.* A ROW-User shall not disrupt Rights-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 Facilities Maintenance or Excavation area, except for such areas which may be designated and marked as safe areas for vehicle parking in accordance with an approved traffic control plan.

F. *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 and shall be responsible for promptly correcting acts or omissions by said Person.

G. *Minimum Impact Required; No Interference.* The ROW-User shall, in the performance of any Excavation or Facilities Maintenance required for the installation, repair, maintenance, relocation and/or removal of any of its Facilities, limit all Excavations or Facilities Maintenance to that necessary for efficient operation and so as not to interfere with other users of the Rights-of-Way.

H. *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 or installation or action, and in no event may an Excavation or Facilities Maintenance remain open or continue beyond the expiration of the ROW Work Permit or any approved extension. Any Excavation left open overnight on any thoroughfare or collector type street shall be securely covered. Unless otherwise approved by the Director in writing, all Excavations shall be filled in or covered at the end of each working day. 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 Excavation until the Excavation is surfaced and opened for travel. Street Plate Bridging (SPB) to cover open Excavations shall be authorized subject to requirements contained in the Standard Specifications.

I. *Barricades and Safety Devices.* All Excavations and Facilities Maintenance 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. 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. No open Excavation may be left in the pavement area without placing street plates over the opening.

J. *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. 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 Article.

K. *Hours of Activity.* Non-Emergency Excavations or Facilities Maintenance on arterial and collector streets may not be performed during the hours of 7:00 AM to 8:30 AM and 4:00 PM to 6:00 PM, in order to minimize disruption of traffic flow. The ROW-User shall perform Non-Emergency 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 work shall be limited to the hours of 7:00 AM to 7:00 PM on Mondays through Fridays and 9:00 AM to 5:00 PM on Saturdays; no such work shall be performed on Sundays unless approved by the Director.

L. *Location of Facilities; Undergrounding.*

1. All underground mains and service lines with ancillary appurtenances thereto shall, wherever available, be placed in utility easements adjacent to the rights-of-way. If a utility easement or space within a utility easement is not available, whenever practicable, underground mains and service lines with ancillary appurtenances thereto be placed between the curb or pavement edge and sidewalk line in the section of the street known as the parkway. Where the pavement and sidewalk occupy the entire street, the underground utilities shall be located under the sidewalk, unless otherwise directed by the City.
2. Except as provided herein, all Facilities constructed after the date of this Article shall be placed underground. Facilities may be located above-ground if approved by the Director for good cause or as may otherwise be specifically authorized in a franchise or ROW Agreement consistent with law. Above-ground Facilities may be installed if approved by the Director where alternative underground Facilities are not technically or economically feasible, or where the imposition of such additional costs of undergrounding on the ROW-User are precluded by applicable law.

M. *Notice of Completion.* The ROW-User shall notify the office of the Director upon completion of the Excavation or Facilities Maintenance authorized by the Permit.

N. *Guarantee of Work.* Every ROW-User to whom an Excavation Permit has been granted shall guarantee for a period of four (4) years the restoration of the Rights-of-Way in the area where such ROW-User conducted an Excavation and performed the restoration. Such ROW-User shall guarantee and pay for the restoration of the Rights-of-Way against sagging, buckling, deterioration, and other premature failures of the restoration.

O. *Tree Trimming.* A ROW-User shall neither remove, cut, nor damage any trees, or their roots, in and along the Rights-of-Way of the City except as authorized by the City pursuant to an approved tree trimming plan authorized by an Excavation or Facilities Maintenance Permit. Tree trimming and pruning may be permitted to occur only after prior written notice to the City of the extent of trimming and pruning to be performed and the prior written approval thereof by the City. The type and extent of trimming and pruning shall be in accordance with the requirements of the City as provided in Article II of this Chapter.

P. *Inspection of Permits.* Permits issued shall be available by the ROW-User at all times at the indicated work site and shall be available for inspection by the Director, other City employees and the public.

## **Sec. 24-164 Inspection and Acceptance of Excavations**

A. When an Excavation has been made within the limits of any street, alley or sidewalk and after the same has been properly backfilled, the ROW-User making the Excavation shall notify the Director that the same is ready for final repair. The Director or his duly authorized agent shall immediately inspect the same, and if he finds that such Excavation has been properly backfilled, the Permit holder shall complete the restoration of the surface of such street, alley or

sidewalk, all in accordance with the City's Standard Specifications for street restoration. 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.

B. After inspection and acceptance of Excavation by the Director, the Permit holder shall be responsible for restoration of the Excavation pursuant to the Standard Specifications, to be completed prior to expiration of the Permit.

C. If the Excavation or other Facilities Maintenance is not properly completed and restored by the expiration of the Permit, the City may, in addition to all other remedies, perform the restoration and completion and obtain reimbursement for such costs from the Permit holder or surety, provided that if the City provides an invoice to the Permit holder for such restoration, such invoice shall be paid in not more than 30 days of such invoice.

#### **Sec. 24-165 Permit Denial.**

The Director may deny an application for a Permit if:

A. The ROW-User, or any Persons acting on the behalf of the ROW-User, fails to provide all the necessary information requested by the City for managing the public Rights-of-Way.

B. The ROW-User, or any Persons acting on the behalf of the ROW-User, including contractors or subcontractors, has a history of non-compliance or permitting non-compliance 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 public Rights-of-Way to its previous condition under a previous Permit.

C. The City has provided the ROW-User with a reasonable, competitively neutral, and nondiscriminatory justification for requiring an alternative method for performing the 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 percent to the ROW-User or a declination of service quality.

D. The City determines that the denial is necessary to protect the public health and safety, provided that the authority of the City does not extend to those items under the jurisdiction of the PSC, such denial shall not interfere with a ROW-User's right of eminent domain of private property, and such denials shall only be imposed on a competitively neutral and nondiscriminatory basis. In determining whether denial of a Permit application is necessary to protect the public health and safety, the Director may consider one or more of the following factors:

1. The extent to which the Rights-of-Way space where the Permit is sought is available, including the consideration of competing demands for the particular space in the Rights-of-Way, or other general conditions of the Rights-of-Way.

2. The applicability of any ordinance, Code provision, or other regulations that affect the location of Facilities in the Rights-of-Way.
3. The degree and nature of disruption to surrounding communities and businesses that will result from the use of that part of the Rights-of-Way, including whether the issuance of a Permit for the particular dates and/or times requested would cause a conflict or interfere with an exhibition, celebration, festival, or any other event.

E. The area is environmentally sensitive as defined by state statute or federal law or is a historic district designated by City ordinance.

F. The failure to comply with applicable City ordinances or any other violation, unsafe conditions, or damage or threatened harm to the Rights-of-Way or public, except where such circumstance would otherwise not constitute a lawful basis for revocation of a Permit.

#### **Sec. 24-166 Permit Fees; Supplemental Deposit.**

A. *Permit Fee.* Every applicant for a ROW Work Permit shall pay a fee to the City for such Permit in accordance with the fee schedule on file with the Director to reimburse the City for its actual costs incurred and anticipated from the Permit, inspections and applicant's use of the Rights-of-Way, and including the City's Rights-of-Way management costs and as may otherwise be permitted by law.

B. *Supplemental Review Deposit.* Where the ROW Work Permit application requires investigation, inspection, studies, review or other costs in excess of the Permit fee to be incurred by the City to reasonably determine, enforce or condition compliance with the applicable requirements, the Director may require, subject to other applicable requirements, that an estimated payment for such additional costs be submitted before the application is deemed complete. Any portion of such additional deposit above actual costs incurred by the City therein shall be returned to the Applicant upon completion of the application and project upon written request of the Applicant.

#### **Sec. 24-167 Map and Location.**

Where an application is made for a Permit by a ROW-User to install, move, or repair its Facilities, the applicant shall submit a map or plat of where the Excavation or Facilities Maintenance is to take place. Such plat or map shall be specific as to location and depth of the Excavation or Facilities Maintenance, as to street address or other location. Unless otherwise approved by the Director, such notice shall be provided to the City in writing at least three business days in advance of the work, and shall be subject to denial or modification by the Director based on public safety or other the requirements in this Chapter.

#### **Sec. 24-168 Liability Insurance, Performance and Maintenance Bond Requirement.**

A. *Insurance.* Except as provided in this Section, each ROW-User shall provide, at its sole expense, and maintain during the term of an agreement or franchise, 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 operations under an agreement or franchise, whether such operations are by the ROW-User, its officers, directors, employees and agents, or any 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 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 at least \$3,000,000.00, but in no event less than the individual and combined sovereign immunity limits established by R.S.Mo. § 537.610 for political subdivisions; provided that nothing herein shall be deemed to waive the City's sovereign immunity. An endorsement shall be provided which states that the City is listed as an additional insured 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. 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 insurance requirements in this Section or otherwise shall not apply to a ROW-User to the extent and for such period during an agreement or franchise as ROW-User is exempted from such requirements pursuant to R.S.Mo. § 67.1830(6)(a) and has on file with the Director an affidavit certifying that ROW-User has twenty-five million dollars in net assets and is otherwise therefore so exempted unless otherwise provided by agreement or franchise. The City reserves the right to waive any and all requirements under this Section when deemed to be in the public interest.

B. *Performance and Maintenance Bond.* Except as otherwise may be required by law for ROW-Users who have on file with the Director an affidavit certifying that the ROW-User has twenty-five million dollars in net assets and is otherwise therefore so exempted, the Person shall at all times during the term of the Permit, and for four (4) years thereafter, maintain a performance and maintenance bond in a form approved by the City Counselor. The amount of the bond will be \$5,000 or the value of the restoration as determined by the Director, whichever is greater, for a term consistent with the term of the permit plus four (4) additional years, conditioned upon the Person's faithful performance of the provisions, terms and conditions conferred by this Chapter. Unless otherwise established in the Permit, an annual bond in an amount of \$50,000 automatically renewed yearly during this period shall satisfy the requirement of this Section. The City shall be entitled to recover under the terms of such bond the full amount of any loss and damage occasioned from violation of the Permit or provisions of this Article.

C. *Proof of Compliance.* Unless exempt, a copy of a ROW-User's Liability Insurance Certificate and Performance and Maintenance Bond must be on file with the Director.

**Sec. 24-169 Facility Relocation.**

A. A ROW-User shall promptly remove, relocate or adjust any Facilities located in the Rights-of-Way or in Public Easements as directed by the Director for a Public Improvement or as necessary to eliminate a threat to public health or safety. Such removal, relocation or adjustment shall be performed by the ROW-User at the ROW-User's sole expense without expense to the City, its employees, agents, or authorized contractors and shall be specifically subject to rules, regulations and schedules of the City pertaining to such. The ROW-User shall proceed with the removal, relocation, or adjustment of Facilities with due diligence upon notice by the Director to begin removal, relocation, or adjustment. Where the ROW-User's Facilities are located in whole or in part in private easements, the ROW-User shall promptly relocate the Facilities if the City has agreed to compensate the ROW-User, through the condemnation, purchase process, or other reasonable means for the cost of relocation of the ROW-User's Facilities.

B. The City shall provide the ROW-User with written notice of required relocations or adjustments, the anticipated bid letting date, if any, of the Public Improvement, and notice of the deadline for completion of the relocations or adjustments. The ROW-User shall respond within ten (10) days with any conflicts and a proposed construction schedule for relocation to be completed in not more than sixty (60) days from date of the notice to ROW-User, unless such other schedule is requested and reasonably approved by the Director. If Facilities cannot be fully relocated within Rights-of-Way, the ROW-User shall be responsible at its own cost to obtain alternative locations to timely relocate its Facilities.

C. If any Facilities are not relocated in accordance with this Section, the City or its contractors may relocate the Facilities after notice to the ROW-User. The ROW-User and its surety shall be liable to the City for any and all costs incurred by the City. In the event the ROW-User is required to move its Facilities in accordance with this Section, any ordinary Permit fee shall be waived. Failure to comply with the relocation schedule set by the Director shall be a separate violation for each day subject to penalties as provided for violation of this Article.

D. The City retains the right to vacate any Rights-of-Way within the City. The City may condition vacation of its Rights-of-Way on granting and recording of an acceptable easement authorizing the City to use the vacated area, or a portion thereof, for specific purposes as may be deemed appropriate in the public interest. The City may also condition such vacation on payment of any relocation costs that may result from such vacation. In the event that the vacation of Rights-of-Way requires relocation of Facilities of a ROW-User, such user shall bear all costs of relocation or removal of its Facilities unless otherwise provided by the party initiating the vacation. In no event shall the City be obligated to pay for relocation costs due to a vacation of Rights-of-Way.

#### **Sec. 24-170 Abandoned and Unusable Facilities.**

A. A ROW-User owning abandoned Facilities in the Rights-of-Way must remove its Facilities and replace or restore any damage or disturbance caused by the removal at its own expense. The Director may allow underground Facilities or portions thereof to remain in place if the Director determines that it is in the best interest of public safety to do so.

B. At such time, the City may take ownership and responsibility of such vacated Facilities left in place; or the Person shall provide information satisfactory to the City that such Person's obligations for its Facilities in the Rights-of-Way have been lawfully assumed by another authorized entity; or submit to the City a proposal and instruments for transferring ownership of its Facilities to the City. If the Person proceeds under this Section, the City may, at its option purchase the equipment, require the Person, at its own expense, to remove it, or require the Person to post a bond in an amount sufficient to reimburse the City for reasonable anticipated costs to be incurred to remove the Facilities.

C. Facilities of a Person who fails to comply with this Section, and whose Facilities remain unused for two (2) years, shall be deemed to be abandoned, after the City has made a good faith effort to contact the Person, unless the City receives confirmation that the Person intends to use the Facilities.

D. 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, (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 Person.

#### **Sec. 24-171 Revocation of Permits.**

The City may, after reasonable notice and an opportunity to cure, revoke a Permit granted to a ROW-User, without a fee refund, if one or more of the following occurs:

A. A material violation of a provision of this Article or a Permit, including the violation of any provision of this Article or of any additional provisions of a specific Permit;

B. 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;

C. A material misrepresentation of fact in the Permit application;

D. A failure to complete Excavation or Facilities Maintenance by the date specified in the Permit, unless a Permit extension is obtained or unless the failure to complete the Excavation or Facilities Maintenance is due to reasons beyond the ROW-User's control;

E. A failure to correct, within the time specified by the City, Excavation or Facilities Maintenance that does not conform to applicable 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.

If a 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 fees incurred in connection with such revocation.

## **Sec. 24-172 Violations; 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 Article shall subject to such penalties as set forth in Section 1-8 of the City Code and including a fine of up to five hundred dollars (\$500.00) per day for each and every day the violation exists or continues.

**ARTICLE 2.** The historic areas of the City as designated by local, state or federal historic registrations, including adjacent rights-of-way, shall be hereby considered historic areas of the City for purposes of this Ordinance.

**ARTICLE 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 City Council would have enacted the valid portions without the invalid one, 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.

**ARTICLE 4.** This Ordinance shall be in full force and effect from and after its passage and approval.