Proposed by Law Department BILL NO. 4384

Introduced by Councilman Edmondson ORDINANCE NO. 4557

AN ORDINANCE AMENDING CHAPTER 505, STREETS AND SIDEWALKS, OF THE CODE OF ORDINANCES, CITY OF BLUE SPRINGS, MISSOURI, BY ADOPTING A NEW ARTICLE VI CONCERNING THE USE AND MANAGEMENT OF CITY RIGHTS-OF-WAY

WHEREAS, the City rights-of-way are used by citizens, utility providers and the City and are a finite asset of the community;

WHEREAS, the management of the rights-of-way is a nondelegable duty of the City of Blue Springs; and

WHEREAS, it is desirable to have in place City Code provisions that manage the rights-of-way as allowed by state and federal law; and

WHEREAS, adoption of this Ordinance will provide the framework and authority to exercise the City's rights to manage this asset in the best interests of the City and the community.

THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF

BLUE SPRINGS, MISSOURI, AS FOLLOWS:

Section 1: That Chapter 505, Streets and Sidewalks of the Code of Ordinances, City of Blue Springs, Missouri, is hereby amended by adopting a new Article VI, which new Article shall read as follows:

ARTICLE VI. USE AND MANAGEMENT OF RIGHTS-OF-WAY

Sec. 505.300- Declaration of findings and intent; scope of ordinance.

This Article is enacted to define the authority of the City and its officers and employees with regard to public ownership, control and management of its rights-of-way. The rights-of-way is a valuable public resource that has required and will continue to require substantial public investment and is intended to be used by the public in travel and utilities when such use does not incommode the public.

A. Declaration of Finding and Intent. The City of Blue Springs ("Blue Springs") finds that the public streets, alleys, easements and other rights-of-way within Blue Springs:

    1) are critical to the travel and transport of Persons and property in the business and social life of Blue Springs and in the conduct of the health, education and commerce of its citizens;

2) are intended for appropriately regulated public and private uses and must be managed and controlled consistent with that intent;

3) can be partially occupied by the facilities of utilities and other public service entities delivering utility and public services rendered for profit, to the enhancement of the health, welfare, and general economic well-being of Blue Springs and its citizens; and

4) are a unique and physically limited resource requiring proper management to maximize the efficiency and to minimize the costs to the taxpayers of the foregoing uses and to minimize the inconvenience to and negative effects upon the public from such facilities' construction, placement, relocation, and maintenance in the Rights-of-way;

5) are assets of the City of Blue Springs that taxpayers have spent millions of dollars to acquire, and millions of dollars to improve and maintain, and that when utility and similar companies and other users of the Rights-of-way excavate and otherwise disturb the Rights-of-way, the City must repave, re-improve, repair and at times regrade the Rights-of-way. Some of this expense is paid for from the general revenue fund, and some from dedicated tax sources; and

6) some Rights-of-way users have failed to provide accurate information to City contractors as to the location and nature of facilities in the Rights-of-way, or to relocate facilities prior to City projects, and make demands on City contractors to pay for damages to such facilities despite a failure to properly locate and identify same, resulting in delays in public works projects and increased costs to the City through higher bids from such contractors, and

have located facilities in such a way as to interfere with large commercial trucks using the City's Rights-of-way; and

7) passage of a rights-of-way ordinance to deal in a competitively neutral fashion with telecommunications and other utility providers will have a beneficial effect on all the citizens and users of the rights-of-way as competition among utilities and telecommunications providers within Blue Springs continues to increase due to changes in technology, in federal and state law and increased demand for such services by City residents, businesses, educational institutions, governmental officers and other public and private institutions.

B. City finds that the right to occupy portions of the Rights-of-way for limited times and at specific locations for the business of providing telecommunications services or utility services is a valuable economic right to use a unique public resource that has been acquired and is maintained at great expense to City and its taxpayers, and the economic benefit of such rights should be shared with all the taxpayers of City.

C. City finds that while telecommunications and fiber optic facilities are in part an extension of interstate commerce, their operations also involve Rights-of-way, municipal franchising, and vital business and community service, which are of local concern.

D. City finds that it is in the best interests of its citizens to promote the rapid, but safe, development of telecommunications, fiber optic and utility facilities responsive to community and public interest, to assure that telecommunications and utility companies provide adequate, economical and efficient service to their subscribers, and to assure availability for municipal services, educational and

community services while not compromising the public's rights to use of the Rights-of-way for travel and compensation for private commercial use of the Rights-of-way.

E. City finds that it is in the interests of the public to establish standards for all users of the rights-of-way not covered by a specific franchise agreement such as the cable operator or payment of gross receipts taxes regardless of type of service being provided that

a) consider compensating City for the fair market value of the property used and reimbursement or recovery of one hundred percent of ongoing costs associated with the use of such property including administrative actions as required by Article VI, Sections 23 and 25, Mo. Const;

b) takes into account that a gross receipts license tax or a franchise fee is paid by some users;

c) encourages competition by establishing terms and conditions under which users may use valuable public property to serve the public while creating and maintaining a level playing field among similarly situated participants;

d) fully protects the public, other rights-of-way users and City from any harm that may flow from such private commercial use of Rights-of-way while providing for innovative uses of technology;

e) protects the authority of City, in a manner consistent with federal and state law including, but not limited to, Sections 82.190, 82.230, 392.080, RSMo and Sections 2.61 (10) and (34) and Article XVII of the Blue Springs City Charter, and Article VI, Section 19 of the Missouri Constitution as amended 1971, and as required by Article Ill, Section 38(a)(prohibition on gifts or grants of

property to private entities), and Article VI, Sections 23 and 25 (no grant or aid to corporations of public property) of the Missouri Constitution and as recognized by various State and federal courts;

f) otherwise protects the public interests in the development and use of City infrastructure including recognizing that disturbance of the rights-of-way and infrastructure therein for utility and facility deployment impacts the rights-of-way in a different and greater manner than other users both private and public;

g) minimizes physical disruption of the rights-of-way for other users, the City, and travelers while maintaining aesthetic quality throughout the City while also recognizing the rights of abutting landowners including but not limited to landscaping, uninterrupted use of and undamaged private sewer laterals and waterlines, irrigation systems and storm pipes;

F. This Article shall apply to all users of the rights-of-way engaged in any activities defined in, regulated by, or requiring a permit pursuant to this Article; and

G. This Article and its application is in addition to all other City Codes, provisions of this Chapter and the Design and Construction Manual of the Department of Public Works as adopted, approved, maintained and modified from time to time by the Director of Public Works.

Section 505.301. Definitions.

The following words, terms, and phrases, when used in this article, shall have the meanings given to them in this section, except where context clearly indicates a different meaning:

Abandoned equipment or facilities means any equipment, materials, apparatuses, devices or facilities that are:

A. Declared abandoned by the owner of such equipment or facilities;

B. No longer in active use, physically disconnected from a portion of the operating facility or any other; or

C. Facility that is in use or in service, and no longer capable of being used for the same or similar purpose for which the equipment, apparatuses or facilities were installed.

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

Applicant means any person requesting permission to occupy or operate facilities using the rights-of-way, or to work, excavate, or locate facilities in the rights-of-way.

Charter means the Charter of the City of Blue Springs, Missouri.

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

City Council means the City Council of the City of Blue Springs, Missouri.

City Engineer means the City Engineer of Blue Springs, Missouri, or an authorized representative.

Code means the Code of Ordinances of the City of Blue Springs, Missouri.

Commission means the Missouri Public Service Commission.

Construct means and includes construct, install, erect, build, affix or otherwise place any fixed structure or object, in, on, under, through or above the rights-of-way.

Conduit means a tube or for protecting electric wiring. Synonyms: pipe, duct, chase, chute.

Day means calendar day unless otherwise specified.

Design and Construction Manual means the official document adopted by the City of Blue Springs to regulate the construction of public infrastructure improvements within the city including the design and construction of streets, water lines, sanitary sewers, and storm sewers.

Director shall mean the Director of Public Works or his specified designee. When another Director of the City is intended, that Director shall be referred to with the Department he/she oversees.

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

A. An unexpected or unplanned outage, cut, rupture, leak or any other failure of a ROW-user facility that prevents or significantly jeopardizes the ability of a ROW-user to provide service to customers;

B. An unexpected or unplanned outage, cut, rupture, leak or any other failure of a ROW-user facility that results or could result in danger to the public or a material delay or hindrance to the provision of service to the public if the outage, cut, rupture, leak or any other such failure of ROW-user facilities is not immediately repaired, controlled, stabilized or rectified; or

C. Any occurrence involving a ROW-user facility that a reasonable person could conclude under the circumstances that immediate and undelayed action by the ROW-user is necessary and warranted.

Excavate, excavating or excavation means any act by which earth, asphalt, concrete, sand, gravel, rock or any other material in or on the ground is cut into, dug, uncovered, removed, tunneled into, bored into, graded, or otherwise displaced, by means of any tools, equipment or explosives, except that the following shall not be deemed excavation:

A. Any de minimis displacement or movement of ground caused by pedestrian or vehicular traffic;

B. The replacement of utility poles and related equipment at the existing general location that does not involve either a street or sidewalk cut; or

C. Any other activity which does not disturb or displace surface conditions of the earth, asphalt, concrete, sand, gravel, rock or any other material in or on the ground.

FCC means Federal Communications Commission.

Facility or facilities means lines, pipes, irrigation systems, wires, cables, conduit facilities, poles, towers, vaults, pedestals, boxes, appliances, antennas, transmitters, gates, meters, appurtenances, or other equipment used for or related to providing service.

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

Governmental entity means any county, township, city, town, village, school district, library district, road district, drainage or levee district, sewer district, water district, fire

district or other municipal corporation, quasi-municipal corporation or political subdivision of the State of Missouri or of any other state of the United States and any agency or instrumentality of the State of Missouri or of any other state of the United States or of the United States.

Manual means the Design and Construction Manual adopted, approved, maintained and modified from time to time by the Director of Public Works.

Missouri One Call means the procedural requirements for excavation and utility safety established by RSMo 319.010, et seq. as amended from time to time.

Parkway means the area between a property line and the street curb or the edge of pavement, sometimes called boulevards, tree-shelves or snow-shelves.

Pavement means and includes portland cement concrete pavement, asphalt concrete pavement, asphalt treated road surfaces and any aggregate base material.

Person means any natural or corporate person, business association or business entity including, but not limited to, a corporation, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.

Public improvement means any project undertaken by the City, or its agents, contractors, or subcontractors, for the construction, reconstruction, maintenance, or repair of any public infrastructure, and including without limitation, streets, alleys bridges, bikeways, parkways, sidewalks, sewers, drainage facilities, traffic control devices, street lights, public facilities, public buildings or public lands; provided that projects undertaken by the City for the construction, reconstruction, maintenance, or repair of any public infrastructure funded by, or substantially by, user fees imposed upon those

using the public infrastructure shall not be deemed "public improvements" and shall not be exempt from the permit requirements of this article.

Public lands means any real property of the City that is not rights-of-way.

Public Works Committee means the committee comprised of the Director of Public Works, the City Engineer, the Director of Community Development and the Deputy City Administrator which shall conduct routine business for the Public Works Department of the City of Blue Springs, Missouri with respect to implementing this Article.

Reseller service provider means a rights-of-way (ROW) user 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 facility based service provider.

Restoration means the process by which an excavated rights-of-way and surrounding area, including pavement and foundation, is returned to the same or better condition than existed before the commencement of the excavation or work as determined by the Director of Public Works.

Rights-of-way or ROW means generally public property vested in the City in trust for the citizens, in fee or easement, to which the public has a right to access and use for the purpose intended by the dedication, including but not limited to, the area on, below or above a public sidewalk, roadway, highway, street or alleyway in which the City has an ownership interest, but not including:

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

B. Easements obtained by utilities or private easements in platted subdivisions or tracts;

C. Railroad rights-of-way and ground utilized or acquired for railroad facilities to the extent the City may provide for protection of same or the railroad rights-of-way are adjacent to or within City rights-of-way; or

D. Poles, pipes, cables, conduits, wires, optical cables, or other means of transmission, collection or exchange of communications, information, substances, data, or electronic or electrical current or impulses utilized by a utility owned or operated by a governmental entity pursuant to RSMo Ch. 91, or pursuant to a charter form of government.

Rights-of-way permit means the authorization to work, excavate, or locate facilities in the rights-of-way.

Routine service operation means excavation or work that makes no material change to the facilities and does not disrupt traffic.

ROW-user means a person, its successors and assigns, that uses the rights-of-way for purposes of work, excavation, provision of services, or to install, construct, maintain, repair facilities, equipment, or structures thereon or adjacent to, for which a rights-of-way permit and/or a temporary traffic control permit is required, including but not limited to landowners and service providers. A ROW-user shall not include ordinary vehicle or pedestrian traffic.

Service means a commodity provided to a person by means of a delivery system that is comprised of facilities located or to be located in the rights-of-way, including, but not limited to gas, telephone, cable television, internet services, open video systems, alarm

systems, steam, electric, water, telegraph, data transmission, petroleum pipelines, or sanitary sewerage.

Service provider means any person that is a provider of a service for or without a fee that has the requisite certifications and authorizations from applicable government entities, including the FCC, to provide such service, including, but not limited to, every cable television service provider, pipeline corporation, gas corporation, electrical corporation, rural electric cooperative, telecommunications company, water corporation, water district, heating or refrigerating corporation or sewer corporation under the jurisdiction of the public service commission; every municipally owned or operated utility pursuant to RSMo Ch. 91, or pursuant to a charter form of government or cooperatively owned or operated utility pursuant to RSMo Ch. 394; every street light maintenance district; every privately owned utility; and every other entity, regardless of its form of organization or governance, whether for profit or not, which in providing a public utility type of service for members of the general public, utilizes pipes, cables, conduits, wires, optical cables, poles, or other means of transmission, collection or exchange of communications, information, substances, data, or electronic or electrical current or impulses, in the collection, exchange or dissemination of its product or services through the public rights-of-way. Service provider includes both facility based service providers and reseller service providers.

Street means the pavement and sub-grade of a City local, collector, commercial, industrial, or arterial roadway and alleys.

Temporary traffic control means the temporary management of motorized and nonmotorized traffic through the use of official traffic control devices as called for in the MUTCD (Manual on Uniform Traffic Control Devices) as amended from time to time, including but not limited to signs, markings, fence, barricades, lights, delineators, and

channelizers, as necessary when the construction, repair, removal, excavation, work, events, or other activity, whether within or adjacent to the public rights-of-way, impacts normal traffic conditions.

Temporary traffic control permit means the written authorization for a ROW-user to act in a manner that narrows, closes, or otherwise impacts the normal flow of vehicular traffic or pedestrian traffic on any public street or sidewalk.

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

Section 505.310. Administration and Authority.

A. The Director is the principal city official responsible for administration of the rights-of-way registration and permitting processes. The Director may delegate any and all duties under this article consistent with the Charter.

B. The Public Works Committee may hear appeals as provided under this article and make recommendations to the City Council for actions on appeals.

Section 505.320. Registration of Rights-of-way (ROW) Users.

A. All existing ROW-users who do not possess a franchise or other written consent to use the ROW approved by the City Council must register within ninety (90) days of the effective date of this article.

B. Any person who is not a ROW-user prior to the effective date of this article and who wishes to become a ROW-user must first register with the City.

C. No ROW-user shall be authorized to use the rights-of-way in any capacity or manner without registering with the city and obtaining any necessary rights-of way permit or temporary traffic control permit from the Director.

D. The ROW-user shall be responsible for all costs incurred by the City due to the failure to provide any information to the City required for registration.

Section 505.330. Transferability.

Except as provided in this article, or as otherwise required by law, no registration may be transferred without the written consent of the City Council. Any person not named on a valid registration, including any affiliates or successors in interest to a registered ROW-user, must register in accordance with this article or receive written authorization to transfer the registration. Written authorization to transfer a registration shall be granted according to the same standards for a registration. The City shall not unreasonably withhold its consent to transfer as provided herein.

Section 505.340. Rights-of-Way Use and Equipment Placement.

A. Except as otherwise provided herein, no person, service provider, or row-user shall perform excavation or work, as those terms are defined in Section 505.320 hereof, in the rights-of-way without a rights-of-way permit or a permit obtained under another City Code Section. Obtaining a permit under this Article does not excuse or replace permits required under other provisions of this Code.

B. No adjoining property owner shall construct, maintain, or permit in or on the portion of the public rights-of-way to which such land is adjacent, any fixed structure, material or object without having obtained the appropriate rights-of-way permit under this Chapter.

C. The application for a rights-of-way permit shall be submitted to the Director either by the registered ROW-user or an authorized agent of the ROW-user who will do the work and/or excavation in the rights-of-way.

D. If the Director determines that the applicant has satisfied the requirements of this article, the Director shall issue a rights-of-way permit.

E. Any person who is found to be working or excavating in the public rights-of-way without a rights-of-way permit will be directed to stop the excavation or work until a rights-of-way permit is acquired and available at the excavation or work site.

F. Except as otherwise provided herein, no person, service provider, or ROW-user shall narrow, close, alter, affect, or otherwise impact the normal flow of vehicular traffic or pedestrian traffic in the rights-of-way without a temporary traffic control permit.

G. The application for a temporary traffic control permit shall be submitted to the Director either by the registered ROW-user or an authorized agent of the ROW-user who will do the temporary traffic control.

H. If the Director determines that the applicant has satisfied the requirements of this article, the Director shall issue a temporary traffic control permit.

I. Any person who is found narrowing, closing, altering, affecting or otherwise impacting the normal flow of vehicular traffic or pedestrian traffic in the rights-of-way without a temporary traffic control permit will be directed to stop the cause for temporary traffic control, remove all temporary traffic control devices, restore normal traffic conditions and leave the site until a temporary traffic control permit is acquired and available at the site.

J. ROW-user equipment, facilities and structures shall be placed so as not to incommode the public, diminish the rights of use of abutting landowners or impede or interfere with the use of other ROW-users and in accordance with Section 505.41 O.H in addition this Subsection. Equipment, facilities and structures shall be placed in accordance with directions and standards set by the Director. In addition, wherever feasible, utility cabinets should be placed in rear yards or other areas not visible from the street right-of-way. Cabinets and other structures to shelter and house equipment shall be screened in a manner to make them less aesthetically obtrusive to the area and painted a color that blends in with the surroundings. The maximum size of such a cabinet allowed in a commercial area or within the ROW for an arterial or through street will be 64 cubic feet and the maximum size of such a cabinet allowed in a residential area or within the ROW for a residential street will be 25 cubic feet. Any exemption form this size requirement granted by the Director shall also be reviewed by the Planning and Zoning Commission for determination if the size of the cabinet or structure incommodes the public, interferes with abutting landowner rights as recognized by Missouri and federal law, will interfere or impede a public works project already identified by the City, overwhelms the immediate area rendering it out of scale with adjacent structures, plantings, landscaping and already existing uses, impedes or interferes with other ROW-user rights and access to their own facilities and equipment, or otherwise interferes with traffic both vehicle and pedestrian.

Section 505.350 Permit Conditions.

Except as provided within this Chapter for sidewalk and driveway excavation, no person may narrow, alter, affect or otherwise change or impact the ROW without obtaining a permit under this Section.

A. Rights-of-way permit conditions include the following:

1. The Director may impose reasonable conditions upon the issuance of a rights-of- way permit and the performance of the ROW-user in order to protect the public health, safety and welfare, to ensure the structural integrity of the 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 general public. Notwithstanding the provisions of Section 505.070 of this Code, the deposit and fee for any ROW permit for the installation of facilities under this Article involving excavation or disturbance of surface or built infrastructure such as a cut in a paved surface and require repair or return to a condition that is the same or better than before the excavation, shall be $1500.00. A portion of this fee shall serve as a deposit and be refunded to the permit holder less Twenty Dollars ($20) for issuance of the fee and the actual cost of inspection of the area of excavation to determine if the requirements of this Article have been met and any costs associated with the City repairing the area of excavation or returning it to the condition that existed just prior to the excavation.

2. Any right-of-way or permit fee involving the right-of-way provided for in this Code, actions of City Council such as passage of the budget or other policy of the City may be raised from time to time by posting same on the City's website and in the City Clerk's office thirty (30) days before the effective date of same and providing electronic notice to the registered ROW-users of such posting. The ROW-user may file an objection to any fee and if it does so, the fee shall be reviewed by City Council and approved, modified or rejected through a motion, resolution or ordinance. The payment of this fee and

deposit shall not excuse or exempt the ROW-user from all costs it is liable for under this Article.

3. When a rights-of-way permit is requested for purposes of installing additional facilities and the performance and maintenance bonds for additional facilities is reasonably determined to be insufficient, the posting of an additional or larger performance or maintenance bond for the additional facilities may be required by the Director.

4. A ROW-user shall perform all excavation or work in full accord with any and 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 commission or any other local, state or federal agency having jurisdiction over the parties. A ROW-user shall perform all excavation or work in conformance with all applicable codes and established rules and regulations and shall be responsible for all excavation or work done in the rights-of-way pursuant to its rights-of-way permit, regardless of by whom the excavation or work is done.

5. Except in cases of an emergency or with approval of the Director, no rights-of-way excavation or work 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 work based on standard engineering and construction practices.

6. A ROW-user shall not disrupt a 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 work or excavation area, except for such areas which may be designated and marked

as safe areas for vehicle parking in accordance with an approved temporary traffic control permit.

7. If excavation or work is being done for the ROW-user by another person, a subcontractor or otherwise, the ROW-user shall be responsible for ensuring that the excavation or work of said person is performed consistent with its rights-of-way permit and applicable law and shall be responsible for promptly correcting acts or omissions by said person.

8. The Director may establish in the rights-of-way permit limitations on the amount of excavation or work which may occur at one (1) time and the amount of rights-of-way which may be obstructed during construction.

9. The ROW-user shall, in the performance of any excavation or work required for the installation, repair, maintenance, relocation and/or removal of any of its facilities, limit all excavation or work to that necessary for efficient operation.

10. The ROW-user shall not permit excavation or work to remain open longer than is necessary to complete the repair or installation, and in no event may excavation or work remain open beyond the expiration of the rights-of-way permit or any approved extension.

11. The ROW-user shall perform excavation or work on the rights-of-way at such times that will allow the least interference with the peace and quiet of the neighborhood, and shall not work between the hours of 10 p.m. and 7 a.m. The ROW-user may perform excavation work after regular working hours for the Public Works Department inspectors and on weekends if the Director approves such a schedule and the ROW-user deposits with the City an

amount mutually agreeable to cover the additional costs to City of supervising and managing the work during these time periods. City may draw on this amount as it incurs costs for labor, materials and other expenses. However, only restoration work will be allowed to be performed on weekends.

12. The Director may limit the number of conduits that may be installed by each ROW-user based on the reasonable needs to ensure that no one ROW-user may unreasonably consume a disproportionate amount of the available rights-of-way to deter competition.

B. Temporary traffic control permit conditions include the following:

1. The Director may impose reasonable conditions upon the issuance of a temporary traffic control permit and the activities of the ROW-user in order to protect the public health, safety and welfare, to ensure the structural integrity of the 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.

2. A ROW-user shall comply with all laws, ordinances, codes, regulations and all applicable engineering codes adopted or approved by the City. A ROW-user shall be responsible for all traffic control in the rights-of-way pursuant to its Temporary Traffic Control Permit, regardless of who performs the temporary traffic control.

3. The Director may order the cessation of temporary traffic control approved by such permit if in the opinion of the Director, based on standard engineering and construction practice, conditions are unreasonable for the continuation of such temporary traffic control. Except in cases of an emergency or with the

approval of the Director, there shall be no interruption of normal traffic in violation of a stop work order issued by the Director.

4. No person may park private vehicles within or next to the temporary traffic control area, except for such areas which may be designated and marked as safe areas for vehicle parking in accordance with an approved plan and areas where parking is legally permitted under normal conditions.

5. If temporary traffic control is being done for the ROW-user by a third person, such as a subcontractor, the ROW-user shall be responsible for ensuring that the temporary traffic control of said third person is performed consistent with the temporary traffic control permit and applicable law and the permit holder shall be responsible for promptly correcting any wrongful or erroneous acts or omissions by said third person.

6. The Director may establish in the temporary traffic control permit limitations the extent to which of traffic may be impacted at any one (1) time.

7. The ROW-user shall limit all temporary traffic control to that which is approved through the permit.

8. The ROW-user shall not impact normal traffic flow longer than is necessary to complete the project, and in no event may the impact to traffic exceed the expiration of the temporary traffic control permit or any approved extension.

9. Non-emergency temporary traffic control on arterial and collector streets may not be performed before 9:00 a.m. and after 4:00 p.m. Monday thru Friday, nor anytime on Saturday, Sunday or public holidays observed by the City of Blue Springs. The Director may grant exception to this condition in the temporary traffic control permit.

Issued rights-of-way permits and temporary traffic control permits are not transferable without prior written consent of the Director. The Director shall not unreasonably withhold consent for transfer of a rights-of-way permit or a temporary traffic control permit.

Section 505.360 Permit Validity and Display.

Issued rights-of-way permits and temporary traffic control permits shall be displayed by the ROW-user at all times at the indicated project item and shall be available for inspection by the Director, other City employees and the public at all times.

A. A rights-of-way permit and a temporary traffic control permit shall only be valid for the area specified within such permit.

    1. No ROW-user may cause any excavation or work to be done outside the area specified in the rights-of-way permit, except as provided herein.

    2. No ROW-user may cause temporary traffic control to be done outside the area specified in the temporary traffic control permit, except as provided herein.

    3. Any ROW-user who determines that an area greater than that which is specified in the rights-of-way permit must be excavated must do the following prior to the commencement of excavation or work in that greater area:

        a) Make application for a rights-of-way permit amendment describing the area in which the excavation or work will occur; and

        b) Pay any additional fees required thereby.

4. Any ROW-user who determines that temporary traffic control is necessary for an area greater than that which is specified in the temporary traffic control permit must do the following prior to the commencement of temporary traffic control in that greater area:

    a) Make application for a temporary traffic control permit amendment describing the area in which the temporary traffic control will occur; and

    b) Pay all additional fees required thereby.

B. A rights-of-way permit and a temporary traffic control permit shall be valid for sixty (60) days.

1. No ROW-user may commence excavation or work before the rights-of-way permit start date or, except as provided herein, may continue excavation or work after the end date. If a ROW-user does not complete the excavation or work by the rights-of-way permit end date, the ROW-user must apply for and receive a new rights-of-way permit or a rights-of-way permit extension for additional time.

2. No ROW-user may perform temporary traffic control before the temporary traffic control permit start date or, except as provided herein, continue temporary traffic control after the end date specified in the permit. If a ROW-user requires temporary traffic control beyond the temporary traffic control permit end date, the ROW-user must apply for and receive a new temporary traffic control permit or a temporary traffic control permit extension for additional time.

3. One extension of up to sixty (60) days may be granted for a rights-of-way permit or a temporary traffic control permit upon request and may be granted

without payment by the ROW-user of additional rights-of-way permit or temporary traffic control permit fees. To qualify for an extension, a supplementary application must be submitted to the City prior to the permit end date.

C. A rights-of-way permit and a temporary traffic control permit will only be valid for those persons indicated on the approved permit and may only be transferred with prior written consent of the Director.

Section 505.370 Permit Denial.

The Director may deny an application for a rights-of-way permit or a temporary traffic control permit under this Chapter 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 noncompliance or permitting noncompliance within the City. For purposes of this Section, "history of noncompliance, or permitting noncompliance, within the city", shall mean the ROW-user, or any persons acting on the behalf of the ROW-user, including contractors or subcontractors, has failed to return the public rights-of-way to its previous condition under a previous rights-of-way permit or temporary traffic control 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 temporary traffic control, excavation or work identified in the respective

rights-of-way permit or temporary traffic control permit application or a reasonable alternative route that will result in neither additional installation expense up to ten (10) percent to the ROW-user nor a declination of service quality.

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 public service commission, 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 rights-of-way permit or a temporary traffic control permit application is necessary to protect the public's health and safety, the Director may consider one (1) or more of the following factors:

    1. The extent to which the rights-of-way space where the rights-of-way permit or temporary traffic control 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 and public travel in the rights-of-way.

    3. The degree 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 rights-of-way permit or a temporary traffic control permit for the particular dates and/or times requested would cause a conflict or interfere with an exhibition, celebration, festival, or any other event.

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

F. Any permit not granted within twenty-one (21) days after application shall be deemed denied. The applicant may refile for a permit without additional fees unless the failure to act on the permit was the result of the applicant not submitting a complete application or failing to provide information requested by the Director or his designee.

Section 505.380 Permit Exemptions.

A. ROW-users performing routine maintenance which does not require excavation or work in the rights-of-way, which does not disrupt traffic, and which does not require more than two (2) hours to complete, shall be exempt from the requirement of a rights-of-way permit provided they meet all other requirements for performance such as return of the rights-of-way condition. Failure to meet the other requirements for working within the rights-of-way under the exemption shall result in no future exemptions and permits will be required regardless of the time to perform the work.

B. A ROW-user shall not be required to obtain a rights-of-way permit or a temporary traffic control permit for temporary traffic control, excavation or work which is necessary because of an emergency, and that emergency is declared by a proper governmental authority with jurisdiction over the emergency to be a "disaster" or "state of emergency" under federal, state or local law. In the event that temporary traffic control, excavation or work is necessary during a disaster or state of emergency, the ROW-user performing temporary traffic control, excavation or work in the rights-of-way shall notify the Public Works Department of the nature and scope of the temporary traffic control, excavation or work to be

performed in the rights-of-way, along with the location of the temporary traffic control, excavation or work, and the estimated time of the temporary traffic control, excavation or work.

Section 505.390 Completed Work.

The ROW-user shall notify the office of the Director upon completion of the temporary traffic control, excavation or work authorized by the applicable rights-of-way permit or temporary traffic control permit.

Section 505.400 Emergency Work.

A rights-of-way permit and temporary traffic control permit are required for emergency situations. If, however, due to an emergency it is necessary for the ROWuser to immediately perform temporary traffic control, excavation or work in the rights-of-way, and it is impractical for the ROW-user to first get a rights-of-way permit or a temporary traffic control permit, the temporary traffic control, excavation or work may be performed, and the required permit shall be obtained as soon as reasonably possible, but not later than five (5) business days after the temporary traffic control, excavation or work has begun. The ROW-user shall notify the City's Public Works Department if emergency temporary traffic control, excavation or work is necessary.

Section 505.410 Use of rights-of-way generally

A. The ROW-user shall coordinate the placement of facilities in a manner that minimizes adverse impact on any public improvement, as reasonably determined by the City. Where placement is not regulated, the facilities shall be placed with adequate clearance from such public improvements so as not to impact or be impacted by such public improvement as defined in the City's Design and Construction Manual.

B. All facilities shall be located and laid so as not to disrupt or interfere with any pipes, drains, sewers, irrigation systems or other structures or public improvements already installed. In addition, the ROW-user shall, in doing excavation or work in connection with its facilities, avoid disrupting or interfering with the lawful use of the streets, alleys, sidewalks or other public lands of the City except as may be specifically authorized by a temporary traffic control permit.

C. All facilities of the ROW-user shall be placed so that they do not interfere with the use of rights-of-way and public lands. The City, through its Director, shall have the right to consult and review the location, design and nature of the facility prior to installation.

D. The ROW-user shall not interfere with the facilities and structures of the other ROWusers without their permission. If and when the City requires or negotiates to have a ROW-USER cease using its existing poles and to relocate its facilities underground, all other ROW-users using the same poles shall also relocate their facilities underground at the same time. The cost of such relocation shall be borne in accordance with this article and the Commission approved applicable tariff governing that ROW-user.

E. All facilities and other appurtenances laid, constructed and maintained by the ROWuser shall be laid, constructed and maintained in accordance with acceptable engineering practice and in full accord with any and all applicable engineering codes adopted or approved by the City, the Code, the City's Design and Construction Manual, applicable statutes of the State of Missouri, and rules and regulations of the FCC, the Commission, or any other local, state or federal agency having jurisdiction over the ROW-user.

F. The ROW-user shall cooperate promptly and fully with the City and take all reasonable measures necessary to provide accurate and complete on-site information regarding the nature and location of its facilities within the rights-of-way, both underground and overhead, when requested by the City or its authorized agent for a public improvement. Such location and identification shall be at the sole expense of the ROW-user without any expense to the City, its employees, agents, or authorized contractors.

G. Unless otherwise agreed to by the City and the ROW-user by license, agreement or permit, the City shall not be liable for any damage to or loss of any of the ROW-users' facilities within the rights-of-way unless the damage is the result of the sole negligence, or willful, intentional, or malicious acts or omissions of the City.

H. No above-ground facility, cabinet or storage/housing structure or fixture located on the rights-of-way shall exceed any the limits set forth in the Unified Development Code and this Article without consent of the Director and review and approval of the City's Planning and Zoning Commission for a determination of the impact of such a facility, cabinet or storage/housing structure on surrounding uses including view and plantings and sight triangles and mitigation of impact that may be accomplished if such a facility, cabinet or storage/housing structure is allowed. No above-ground facility, cabinet or storage/housing structure shall be placed on the rights-of-way in such a way as to impede or prohibit direct access by another ROW-user to its facilities or any sight triangles or in such a way as to impede access and use for the disabled, handicapped or pedestrians and vehicles in the normal use of the rights-of-way. Cabinets should be located outside the ROW in private easements whenever possible. A suitable reason must be presented to the Director for each cabinet location to be

considered for placement in the ROW. The reason must detail why locations outside of the ROW are not possible.

Section 505.420 Sale, Transfer, Lease or Sublease of Facilities.

A. In the event that the ROW-user shall sell, lease, assign, sublet or dispose of its facilities, or any portion thereof, that are located in the rights-of-way, or any right, title or interest in the same, or transfer any rights granted by the City to any person either by forced or involuntary sale, or by ordinary sale, consolidation or otherwise, the ROW-user shall notify the City of the same. In such case, the buyer, transferee, lessee or assignee shall be subject to all provisions of this article, including the requirement to register. This provision shall not apply to the sale of property or equipment in the normal course of business or to the sale or lease of facilities to reseller ROW-users. No notice to the City shall be required for a transfer in trust, mortgage, or other similar instrument, in whole or in part, to secure an indebtedness, or for a pro forma transfer to a corporation, partnership, or other entity controlling, controlled by or under common control with the ROW-user.

B. A ROW-user may permit and has the authority to sell, sublet, or lease any use of excess capacity and sell services for resale to any reseller service provider providing service within the City, including the ROW-user's subsidiary or affiliate. The reseller service provider shall first register and obtain any necessary permit, license, certification, grant, registration, franchise agreement or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC or the Commission. The ROW-user shall also provide the City, on at least a semi-annual basis, the identity of entities with which the ROWuser has entered into an interconnection and/or resale agreement within the

City. This notice will not relieve the reseller service provider from its own obligation to register and obtain any necessary franchise with the City. Nothing in this article shall prevent a facility based service provider from providing to any reseller service provider the use of the facility based service provider's facilities in the rights-of-way as authorized by federal or state law.

Section 505.430 Facility Corridors.

The Director may designate specific utility corridors by assigning specific locations for each type of facility that is currently, or that the Director expects will someday be, located within the rights-of-way. All rights-of-way permits issued by the Director shall indicate the proper location for the ROW-user's facilities and standard detail as required in the City's Design and Construction Manual. Specific locations shall be specified in the City's Design and Construction Manual and can include reservation of space for any planned or future anticipated uses of the City, in its sole discretion.

Section 505.440 Conduits.

If, in the preparation and planning of a public improvement, the Director deems it appropriate for a conduit to be constructed by the City along, across or under the rights-of-way, the Director shall contact all appropriate ROW-users for their input on the planning and design of such conduit. If a ROW-user desires to construct, maintain or operate facilities along such rights-of-way concurrently, the Director may allow the ROWuser to use such conduit if the ROW-user agrees to contribute to the expense of such conduit. When a ROW-user is installing conduit in a trench, the Director may install conduit for the City at City's cost for the conduit. The City shall not be responsible for reimbursing any costs of the ROW-user in digging the trench that the City does not specifically ask for.

Section 505.450 Coordination.

A. Applicants may apply jointly for rights-of-way permits to excavate the rights-of-way at the same time and place. Applicants who apply jointly for a rights-of-way permit may share in the payment of the rights-of-way permit fee. Applicants must agree among themselves as to the portion each shall pay.

B. The ROW-user shall participate in any joint planning, construction and advance notification of excavation or work, including coordination and consolidation of excavation or work as required by the Director. In addition, the ROW-user shall cooperate with other ROW-users and the City for the best, most efficient, most aesthetic, and least obtrusive use of the rights-of-way.

Section 505.460 Facility Relocation

A. A ROW-user shall promptly relocate or adjust any facilities located in the rights-of-way as directed by the City for a public improvement. The ROW-user shall promptly remove, relocate or adjust any facilities located in the rights-of-way as directed by the City which create a threat to public safety. Such removal, relocation or adjustment shall be performed by the ROW-user at the ROW-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 City to begin removal, relocation, or adjustment.

B. The ROW-user shall promptly relocate or adjust any facilities located in private easements for the construction of a public improvement at the cost of the row-user if:

1. The City has condemned the private easement or the City has purchased from the ROW-user the portion of the private easement necessary for the public improvement; and

2. The City has compensated the ROW-user, through the condemnation, purchase process, or other means of compensation, for the cost of relocation of the ROW-user's facilities.

C. As soon as City prepared working drawings are available for public improvements that will require the ROW-user to relocate or adjust its facilities, the City shall provide the ROW-user with written notice of required relocations or adjustments, the anticipated bid letting date of the public improvement, and notice of the deadline for completion of the relocations or adjustments. The ROW-user shall respond with any conflicts and a proposed construction schedule within thirty (30) days, subject to approval by the Director.

D. Following delivery of final design plans for such public improvements, the ROW-user shall relocate or adjust its facilities in accordance with the schedule set by the Director, provided the project is not delayed by adverse weather conditions and other factors beyond the control of the ROW-user. The ROW-user shall certify to the City, in writing, that its facilities have been relocated or adjusted in accordance with project plans provided by the City so as to allow the City, and its contractors, to proceed with the public improvement.

E. If any facilities are not relocated in accordance with this section, the City or its contractors may relocate the facilities. The ROW-user and its surety shall be liable to the City for any and all costs incurred by the City should the City be required to have the facilities relocated including any increase in cost associated with the

City's improvements that are delayed or could be delayed by failure to move the facilities.

F. In the event the ROW-user is required to move its facilities in accordance with this section, any ordinary rights-of-way permit fee shall be waived.

G. It is the intent of this section for both the City and the ROW-user to cooperate with one another so that the need for facility relocation is minimized and, when required and feasible, relocations may be completed prior to receipt of bids by the City for a public improvement.

H. Failure to comply with the relocation schedule set by the Director will subject the ROW-user to penalties as provided in Section 505.670 hereof in addition to any other remedies available to the City.

Section 505.470 Unused and Abandoned Facilities.

A. A ROW-user owning abandoned facilities in the rights-of-way must notify the City of its intent to abandon the faci lities and must either:

1. 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. At such time, the City may take ownership and responsibility of such abandoned facilities left in place at its discretion;

2. Provide information satisfactory to the City that the ROW-user's obligations for its facilities in the rights-of-way have been lawfully assumed by another authorized ROW-user; or

3. Submit to the City a proposal and instruments for transferring ownership of its facilities to the City. If the ROW-user proceeds under this subsection, the City may, at its option, purchase the equipment, require the ROW-user, at its own expense, to remove it, or require the ROW-user to post a bond in an amount sufficient to reimburse the City for reasonable anticipated costs to be incurred to remove the facilities, except as otherwise provided herein.

B. If the City discovers abandoned facilities in its rights-of-way and the owner of the abandoned facilities fails to respond within thirty (30) days to a written notice sent by the City stating that the City considers the facilities abandoned, or the City is unable to locate the owner of the abandoned facilities after reasonable attempts, the City shall deem the facilities to be abandoned, unless the City receives confirmation that the ROW-user intends to use the facilities. Abandoned facilities are deemed to be a nuisance. The City may exercise any remedies or rights it has at law or in equity, including, but not limited to,

1. Abating the nuisance;

2. Taking possession and ownership of the facility and restoring it to a useable function; or

3. Requiring the removal of the facility by the ROW-user.

Section 505.480 Costs when rights-of-way is vacated.

If the City vacates a rights-of-way which contains the facilities of a ROW-user, the vacation requires the relocation of facilities, and:

A. Vacation proceedings are initiated by the ROW-user, then the ROW-user must pay the relocation costs.

B. Vacation proceedings are initiated by the City, then the ROW-user must pay the relocation costs unless otherwise agreed to by the City and the ROW-user.

C. Vacation proceedings are initiated by a person other than the ROW-user or the City, then such other person must pay the relocation costs, unless otherwise agreed to.

Section 505.490. Traffic Control and Street Closures for Rights-of-way Use.

A. All traffic control, permanent and temporary, shall be properly installed and maintained at the ROW-user's expense. All traffic control materials and methods shall be in conformance with the latest edition of the Manual on Uniform Traffic Control Devices.

B. The ROW-user shall notify the City no less than ten (1 0) working days in advance of any temporary traffic control that results in the full closure of any direction of vehicle travel along any street. Any other person doing temporary traffic control that will disrupt vehicle or pedestrian traffic shall notify the City no less than two (2) days in advance of any temporary traffic control. Except in the event of an emergency as reasonably determined by the ROW-user and Director, no such closure shall take place without notice and prior authorization from the City.

C. Coordination:

1. An applicant may apply jointly for a rights-of-way permit and temporary traffic control permit to perform temporary traffic control, excavate or work in the rights-of-way at the same time and place.

2. Applicants may apply jointly for temporary traffic control permit for temporary traffic control at the same time and place. Applicants who apply

jointly for a temporary traffic control permit may share in the payment of the temporary traffic control permit fee. Applicants must agree among themselves as to the portion each shall pay.

3. The ROW-user shall participate in any joint planning, construction and advance notification of temporary traffic control, including coordination and consolidation of temporary traffic control as required by the Director. In addition, the ROW-user shall cooperate with other ROW-users and the City for the best, most efficient, most aesthetic, and least obtrusive use of the rights-of-way.

D. A traffic control plan shall be submitted for approval by the Director. This may include a detour traffic plan if the Director so requires. All safety and traffic control measures must be implemented according to any approved traffic control plan required by the temporary traffic control permit.

Section 505.510 Excavation Procedures and Responsibilities.

Except as provided in this Chapter and other City Code, the following shall regulate and control excavation within the ROW.

A. Prior to the commencement of placement of facilities, or repair of existing facilities, the ROW-user shall provide at least ten (1 0) days written notice to abutting landowners in a form approved by the Director and during the time of any excavation or construction of facilities provide to abutting landowners a telephone number of a person to whom the landowner may speak about complaints or conditions of the ROW adjacent to the landowner's property or interference with enjoyment of his/her land.

B. All ROW-users shall locate existing facilities before beginning any work. The ROW-user shall identify and locate any underground facilities in conformance with the "Missouri One Call" system.

C. The ROW-user shall be liable for any damages to facilities due to excavation or work performed prior to obtaining the location of all facilities in the area in which the excavation or work is to be performed, or for any damage to facilities that have been properly identified prior to excavation or 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.

D. Whenever there is excavation or work by the ROW-user, the ROW-user shall be responsible for acquiring all necessary temporary traffic control permits and providing adequate temporary traffic control to the surrounding area as provided in this article. In the event the excavation or work is not completed in a reasonable period of time, the ROW-user may be liable for actual damages to the City for delay caused by the ROW-user pursuant.

E. The ROW-user responsible for the excavation or work who leaves any debris in the rights-of-way shall be responsible for providing all necessary temporary traffic control and safety protection in accordance with the temporary traffic control permit and any applicable federal or state requirement. The ROW-user shall also be responsible for removing said debris from the rights-of-way. If the ROW-user fails to comply with the temporary traffic control permit or fails to remove debris from the rights-of-way, the ROW-user shall be responsible for damages to the City, or its contractors, resulting from said failures and shall indemnify the City and its contractors as provided in this Article.

F. In the event the ROW-user severely disturbs or damages the root structure of any tree or landscaping in the rights-of-way to the detriment of the health and safety of the tree or plantings, the ROW-user shall be required to remove and replace the tree or plantings at the ROW-user's cost. Further, in review of the ROW-user's plan, the Director, in his or her discretion, may require the ROW-user to directionally bore around any tree in the rights-of-way.

G. All excavation or work shall have a metal or plastic marker, of a color, size, and shape approved by the Director, inserted into the restored pavement which shall identify the ROW-user.

H. Upon completion of all rights-of-way restoration activities, the ROW-user shall notify the City's Public Works Department, which shall then schedule a closeout inspection. Damage to water, sewer, storm or road assets (private or public) shall be repaired. The contractor will be responsible for any claims as the result of the contractor or ROW-user's excavation, installation or repair to any of its facilities in the ROW including but not limited to claims for damage to landscaping, trees, laterals, pipes, driveways, sidewalks or property in which rights are protected by Missouri law. The ROW-user or its contractor shall be responsible for any and all damage to water, storm and road asset (public or private).

Section 505.520 Standard of Work.

All temporary traffic control, excavation or work performed in the rights-of-way shall be done in conformance with the City's Design and Construction Manual and the MUTCD.

Section 505.530 Temporary Traffic Control, Excavation or Work Restoration

A. After any temporary traffic control, excavation or work, the ROW-user shall, at its expense, restore all portions of the rights-of-way to the same condition or better condition than it was prior to the temporary traffic control, excavation or work.

B. If excavation or work cannot be back-filled immediately and is left unattended, the ROW-user shall securely and adequately cover and mark the unfilled excavation or work. The ROW-user has sole responsibility for maintaining proper temporary traffic control, barriers, safety fencing, signage, and/or lights as required, from the opening of the excavation or work until the excavation or work is surfaced and opened for travel.

C. In addition to repairing its own street cuts, the ROW-user must restore any area within five (5) feet of the new street cut that has previously been excavated by any entity, including the paving and its aggregate foundations.

D. All earth, materials, sidewalks, paving, crossing, utilities, public improvement or improvements of any kind damaged or removed by the ROW-user shall be fully repaired or replaced promptly by the ROW-user at its sole expense and to the reasonable satisfaction of the Director. However, a ROW-user shall not make or attempt to make repairs, relocation or replacement of damaged or disturbed facilities without the approval of the owner of the facilities.

    1. The Director has the authority to inspect the repair or replacement of the damage, and if necessary, to require the ROW-user to do additional and necessary excavation or work. Notice of the unsatisfactory restoration and the deficiencies found will be provided to the ROW-user and a reasonable time not to exceed fifteen (15) days will be provided to allow for the deficiencies to be corrected.

2. Any deficiencies not corrected shall be considered a "failure to restore" and the City shall proceed according to this article. Upon determination by the Director that the failure to repair or replace creates a threat to public safety, all such repair or replacement shall be corrected within twenty-four (24) hours of notice from the City, or the Director may direct the City to make such repair or replacement at the ROW-user's expense.

Section 505.540 Failure to Restore

If the ROW-user fails to restore the rights-of-way in the manner and to the condition required by the Director, or fails to satisfactorily and timely complete all restoration, the City may, at its option, serve written notice upon the ROW-user and its surety that, unless within ten (1 0) days after serving of such notice, a satisfactory arrangement is made for the proper restoration of the rights-of-way, the City shall immediately serve notice of failure to comply upon the surety and the ROW-user, and the surety shall have the right to arrange for and complete the restoration excavation or work; provided, however, that if the surety does not commence performance thereof within fourteen (14) days from the date of notice, the City may perform its own restoration excavation or work and prosecute same to completion, by contract or otherwise.

A. Upon determination by the Director that the failure to repair, replace or restore creates a threat to public safety, all such repair or replacement shall be corrected within twenty-four (24) hours of notice from the City, or the City will perform its own restoration excavation or work and prosecute same to completion, by contract or otherwise.

B. Upon determination by the Director that the failure to repair, replace or restore creates an immediate threat to public safety, all such repair or replacement shall be corrected within one (1) hour of notice from the City, or the City will perform

its own restoration excavation or work and prosecute same to completion, by contract or otherwise.

C. The ROW-user and its surety shall be liable to the City for its actual costs of such restoration, including the value of any time or overtime incurred through the labor of City employees, the value of the use of City equipment, and the cost of City materials used in the restoration project.

Section 505.550 Guarantee of Restoration.

A. In restoring the rights-of-way, including but not be limited to plant coverings, landscaping, grading, artificial surface, the ROW-user shall guarantee its excavation or work on artificial surfaces and settlement and shall maintain such restoration and work result for a period of forty-eight (48) months, and plant coverings and landscaping and similar conditions shall be guaranteed and maintained for a period of twenty-four (24) months, or for any type of repair, replacement or condition resulting from the excavation the maximum period of time allowed by law, whichever is greater, following its completion and provide a bond to secure such guarantee at the request of the Director.

1. During said guarantee period the ROW-user shall, upon notification from the Director, correct all restoration excavation or work to the extent necessary, using any method as required by the Director.

2. Said excavation or work shall be completed within a reasonable time, not to exceed thirty (30) calendar days, of the receipt of notice from the Director.

3. 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, if the Director determines there was action by the ROW-user not to comply with the conditions of the rights-of-way permit and any restoration requirements.

B. When any required corrective actions have been completed and inspected to the Director's satisfaction, the guarantee period will begin.

C. The guarantee period shall be applicable to failure of the pavement surface as well as failure below the pavement surface

Section 505.560 Mapping Requirements.

The ROW-user shall submit to the Director in a form approved by the Director electronic shape files showing the location of its facilities within fifteen (15) days of registering or for new facilities within thirty (30) days of inspection by the Director. Such maps shall be updated every six (6) months beginning on January 1 of each year.

Section 505.570 Appeals.

Whenever a person has been denied a rights-of-way permit or a temporary traffic control permit, had its rights-of-way permit or temporary traffic control permit revoked, believes that the fees imposed on the person by the City do not conform to the requirements of RSMo 67.1840, relating to the amount of fees, asserts any issues related to the use of the rights-of-way, or deems themselves otherwise aggrieved by any decision or action taken by the City or the Director under this article, the person may file an appeal to the City Administrator or his/her designee by filing written notice of such appeal with the City Clerk's office within ten (1 0) calendar days of the date of notice of such decision or action.

A. The City Administrator or his/her designee shall schedule an informal meeting with the aggrieved person and shall have the power to overrule such decision or action taken by the City or the Director, may extend the time limit of such decision or action, or may grant exceptions to, or waive requirements of, or grant a variance from the specific provisions of this article.

B. The City Administrator or his/her designee shall issue their decision in writing. After the decision of the City Administrator or his/her designee is rendered, the aggrieved person may appeal the decision of the City Administrator or his/her designee to the Public Works Committee by filing written notice of such appeal with the City Clerk's office within ten (1 0) calendar days of the date of notice of such decision or action.

Section 505.580- Actions on Appeal to City Council.

A. Such appeals to the Public Works Committee as provided for in Section 505.590 hereof shall be heard by the Public Works Committee on the record with evidence and testimony as a contested hearing pursuant to RSMo Ch. 536.

    1. The Public Works Committee shall deliver a transcript of the written record and exhibits along with its written recommendation for action to the City Council.

    2. The City Council may overrule such decision or action taken by the City or the Director, may extend the time limit of such decision or action, or may grant exceptions to, or waive requirements of, or grant a variance from the specific provisions of this article.

3. Any decision by the City Council affirming the denial, revocation, fee imposition or dispute resolution shall be in writing and supported by written findings establishing the reasonableness of the decision.

B. Pending a decision by the City Council, the order of the Director shall be stayed, unless the Director determines that such action will pose a threat to public safety or the integrity of the public infrastructure.

C. In the event the City Council affirms the prior decision of the City or the Director, in addition to all other remedies and if both parties agree, the aggrieved person shall have the right to have the matter resolved by mediation or binding arbitration.

1. Non-binding arbitration shall be before an arbitrator agreed to by both the City and the aggrieved person.

2. The costs and fees of a single arbitrator shall be borne equally by the City and the aggrieved person.

3. If the parties cannot agree on an arbitrator, the matter shall be resolved by three-person arbitration panel consisting of one (1) arbitrator selected by the City, one (1) arbitrator selected by the aggrieved person, and one (1) arbitrator selected by the other two (2) arbitrators. In the event that a three-person arbitrator panel is necessary, each party shall bear the expense of its own arbitrator and shall jointly and equally bear with the other party the expense of the third arbitrator and of the arbitration.

4. Each party to the arbitration shall pay its own costs, disbursements and attorney fees.

5. In no event shall litigation of any kind be filed until the City and ROW-user have submitted to mediation, with the mediator being selected and paid for in the same manner as an arbitrator.

Section 505.590 Insurance Requirements.

A. Unless a ROW-user has twenty-five million dollars ($25,000,000.00) in net assets and does not have a history of noncompliance, or permitting noncompliance, within the City, then the ROW-user shall file with the City evidence of liability insurance with an insurance company licensed to do business in Missouri.

   1. The ROW-user shall provide all information to the City necessary to determine the amount of net assets of the ROW-user.

   2. The amount of insurance shall be in amounts sufficient to protect the City against all liabilities not protected by the State of Missouri's sovereign immunity statute. The insurance will protect the City from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death, or property damage arising out of or alleged to have arisen out of the negligent or willful acts or omissions of the ROW-user.

   3. If the ROW-user is self-insured, it shall provide the City proof of compliance regarding its ability to self-insure and proof of its ability to provide coverage in the above amounts.

   4. A copy of the Liability Insurance Certificate must be on file with the City Clerk.

B. No liability insurance will be required of any residential property owner excavating or working in the rights-of-way adjacent to his/her residence who does not utilize a contractor to perform the excavation or work and who does not

require a temporary traffic control permit. However, said residential property owner shall be required to demonstrate proof of a homeowner's policy with coverage and limits acceptable to the Director.

C. For purposes of this section, "history of noncompliance, or permitting noncompliance, within the City", shall mean the ROW-user, or any persons acting on the behalf of the ROW-user, including contractors or subcontractors, has failed to return the public rights-of-way to its previous condition under a previous rights-of-way permit or temporary traffic control permit.

Section 505.600 Bonding.

A. If a ROW-user has twenty-five million dollars ($25,000,000.00) in net assets and does not have a history of noncompliance, or permitting noncompliance, within the City, then the ROW-user shall not be required to maintain a performance or maintenance bond.

1. The ROW-user shall provide all information to the City necessary to determine the amount of net assets of the ROW-user.

2. For purposes of this section, "history of noncompliance, or permitting noncompliance, within the City," shall mean the ROW-user, or any persons acting on the behalf of the ROW-user, including contractors or subcontractors, has failed to return the public rights-of-way to its previous condition under a previous rights-of-way permit or temporary traffic control permit.

B. If it is determined pursuant to subsection A of this section that a ROW-user does not have twenty-five million dollars ($25,000,000.00) in net assets or does have a

history of noncompliance, or permitting noncompliance, within the City, then the ROW-user shall:

1. Maintain a performance bond in a form approved by the City Attorney. The amount of the bond will be ten thousand dollars ($1 0,000.00) or the value of the restoration, whichever is greater, as determined by the Director, for a term consistent with the term of the applicable rights-of-way permit or temporary traffic control permit, conditioned upon the ROW-user's faithful performance of the provisions, terms and conditions conferred by this article.

2. Maintain a maintenance bond in a form approved by the City Attorney. The amount of the bond will be ten thousand dollars ($1 0,000.00) or the value of the restoration, whichever is greater, as determined by the Director, for a term consistent with the term of the applicable rights-of-way permit or temporary traffic control permit plus four (4) additional years, conditioned upon the ROW-user's faithful performance of the provisions, terms and conditions conferred by this article.

C. In the event the City shall exercise its right to revoke the rights-of-way permit or the temporary traffic control permit as permitted herein, then the City shall be entitled to recover under the terms of said bonds the full amount of any loss occasioned. A copy of the maintenance and performance bonds must be on file with the City Clerk. No maintenance or performance bond will be required of any residential property owner excavating or working in the rights-of-way adjacent to his/her residence, who does not utilize a contractor to perform the excavation or work and who does not require a temporary traffic control permit.

Section 505.610 Indemnification.

A. Any person operating under the prov1s1ons of this article or performing any temporary traffic control, excavation or work in the rights-of-way shall fully indemnify, release, defend and hold harmless the City, officers, employees and agents of the City when acting in their capacity as municipal officials, employees, elected officials, attorneys, and agents, from and against any and all claims, demands, suits, proceedings, and actions, liability and judgment by other persons for damages, losses, costs, and expenses, including attorney fees, to the extent caused by acts or omissions of the person, or its agents, contractors, or subcontractors, in the performance of the permitted temporary traffic control, excavation or work. In no event shall the requirements of this Article and more specifically any provision dealing with indemnification be construed as a waiver of any sovereign or other immunity available to the City, its offers, employees or agents.

B. Nothing herein shall be deemed to prevent the City, or any agent, from participating in the defense of any litigation by their own counsel at their own expense. Such participation shall not under any circumstances relieve the person from its duty to defend against liability or its duty to pay any judgment entered against the City, or its agents.

C. All ROW-users shall be responsible for promptly correcting acts or omissions by any contractor or subcontractor performing permitted temporary traffic control, excavation or work for such ROW-user hereunder.

Section 505.620 Indemnification for Contractual or Economic Loss Damages.

Any person operating under the provisions of this article or performing any temporary traffic control, excavation or work in the rights-of-way shall fully indemnify, release, defend and hold harmless the City and agents of the City when acting in their capacity

as municipal officials, employees, elected officials, attorneys, contractors, and agents, from and against any and all claims, demands, suits, proceedings, and actions, liability and judgment by other persons for contractual or economic losses, damages, losses, costs, and expenses, including attorney fees, to the extent caused by failure of a ROW-user, or its agents, contractors, or subcontractors, to relocate or adjust its facilities pursuant to the provisions of this article.

Section 505.630 Indemnification for Damages to Facilities.

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

B. Any person operating under the provisions of this article or performing any excavation or work in the rights-of-way shall fully indemnify, release, defend and hold harmless the City and agents of the City when acting in their capacity as municipal officials, employees, elected officials, attorneys, contractors, and agents, from and against any and all claims, demands, suits, proceedings, and actions, liability and judgment by other persons for damages, losses, costs, and expenses, including attorney fees, associated with damage to the facilities of other ROW-users by a person, or its agents, contractors, or subcontractors.

Section 505.640 Other Agreements.

A. Any ROW-user may satisfy the insurance, bonding, and indemnification provisions of this article through a valid franchise agreement with the City. Any requirements thus satisfied shall be indicated on the ROW-user's registration and

shall not be required for each rights-of-way permit and temporary traffic control permit.

B. This section shall not apply to an applicant acting on behalf of a ROW-user, unless the applicant is listed as an additional insured on the ROW-user's insurance policy and is covered by the surety. The applicant must submit evidence of the satisfaction of these requirements prior to issuance of a rights-of-way permit or a temporary traffic control permit.

Section 505.650 Violations.

A. No Person shall perform temporary traffic control, excavate or work in the rights-of-way in violation of this Article. Any violation of this Article shall result in the immediate issuance of a citation to the person and enforcement action pursuant to City Code and state law. In addition, a stop work order may be issued by the Director which shall be complied with. Failure to comply with such stop work order may be enforced through any legal means available to the City at City's option including daily penalties as provided in this Article.

B. Except as provided in subsection A of this section, if the Director determines that a ROW-user has committed a violation of this article, any law or ordinance, or a condition placed on the rights-of-way permit or the temporary traffic control permit, the Director shall make a written demand upon the ROW-user to remedy such violation, which may include the issuance of a stop work order. The demand shall state that the continued violation may be cause for revocation of the rights-of-way permit or the temporary traffic control permit as provided for herein, or legal action if applicable.

C. A violation will allow the Director, at his or her discretion, to place additional or revised conditions on the rights-of-way permit or the temporary traffic control permit, specifically related to the manner in which the violation is cured by the ROW-user.

1. Within fourteen (14) calendar days of receiving notification of the violation, the ROW-user shall contact the Director with a plan, acceptable to the Director, for correction of the violation.

2. Upon determination by the Director that the violation creates a threat to public safety, the ROW-user shall within twenty-four (24) hours of notice from the City contact the Director with a plan, acceptable to the Director, for correction of the violation.

3. Upon determination by the Director that the violation creates an immediate threat to public safety, the ROW-user shall within one (1) hour of notice from the City contact the Director with a plan, acceptable to the Director, for correction of the violation.

4. A ROW-user's failure to contact the Director, ROW-users failure to submit an acceptable plan, or ROW-user's failure to reasonably implement the approved plan shall be cause for immediate revocation of the rights-of-way permit or the temporary traffic control permit.

Section 505.660 Revocation of Permits.

A. The City may, after reasonable notice and an opportunity to cure, revoke a rights-of-way permit or a temporary traffic control permit granted to a ROW-user, without a fee refund, if one (1) or more of the following occurs:

1. A material violation of a provision of the rights-of-way permit or temporary traffic control permit;

2. An evasion or attempt to evade any material provision of the rights-of-way permit or temporary traffic control permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the political subdivision or its citizens;

3. A material misrepresentation of fact in the rights-of-way permit or temporary traffic control permit application;

4. A failure to complete temporary traffic control, excavation or work by the date specified in the associated rights-of-way permit or temporary traffic control permit, unless a rights-of-way permit or temporary traffic control permit extension is obtained or unless the failure to complete the temporary traffic control, excavation or work is due to reasons beyond the ROW-user's control;

5. A failure to correct, within the time specified by the City, temporary traffic control, excavation or work that does not conform to applicable engineering standards, specifications, national safety codes, industry construction standards, or applicable City Code provisions or safety codes that are no more stringent than national safety codes or provisions, upon inspection and notification by the City of the faulty condition; and

6. A failure to comply with a stop work order.

B. If a rights-of-way permit or temporary traffic control permit is revoked, the ROW-user shall also reimburse the City for the City's reasonable costs, including administrative costs, restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

Section 505.670 Penalty.

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

Section 505.680. Failure to Enforce.

The City's failure to enforce or remedy any noncompliance of the terms and conditions of this article or of any rights-of-way permit or temporary traffic control permit granted hereunder shall not constitute a waiver of the City's rights nor a waiver of any person's obligation as herein provided.

Section 505.690 Other Rights and Laws

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

B. In addition, the ROW-user shall meet or exceed the most stringent technical standards set by regulatory bodies, including the City, now or hereafter having jurisdiction.

C. The ROW-user's rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. The ROW-user shall comply with all applicable laws and ordinances enacted pursuant to that power.

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

Section 505.690 Reservation of Rights.

A. In addition to any rights specifically reserved to the City by this article, 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 article.

B. The City shall have the right to waive any provision of this article or any registration, permit or other authorization granted thereunder, except those required by federal or state law, if the City determines as follows:

    1. That it is in the public interest to do so; and,

    2. That the enforcement of such provision will impose an undue hardship on the person.

C. To be effective, such waiver shall be evidenced by a statement in writing signed by a duly authorized representative of the City. Further, the City hereby reserves

to itself the right to intervene in any suit, action or proceeding involving the provisions herein.

D. Notwithstanding anything to the contrary set forth herein, the provisions of this article shall not infringe upon the rights of any person pursuant to any applicable state or federal statutes, including, but not limited to the right to occupy the rights-of-way.

Section 2. Savings Clause. Nothing in this ordinance shall be construed to affect any suit or proceeding now pending in any court or any rights acquired or liability incurred nor any cause or causes of action occurred or existing, under any act or ordinance repealed hereby. Nor shall any right or remedy of any character be lost, impaired, or affected by this ordinance.

Section 3- Severability Clause. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Council hereby declares that it would have adopted the ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

Section 4: That this ordinance shall be in full force and effect from and after its passage and approval.

PASSED by the City Council of the City of Blue Springs, Missouri, and approved by the Mayor of Blue Springs, this 20th day of July, 2015.

Carson Ross, Mayor

ATTEST:

Sheryl Morgan, City Clerk

1st Reading: July 20, 2015
2nd Reading: July 20, 2015

CITY OF BLUE SPRINGS
CITY COUNCIL INFORMATION FORM

DATE: July 16, 2015

SUBMITTED BY: **Nancy K Yendes** **DEPARTMENT: Law**

☒ Ordinance	☐ Resolution	☐ Presentation	☐ Public Hearing
☐ Agreement	☐ Discussion	☐ Rezoning	☐ Other

ISSUE/REQUEST

Amend Chapter 505 of the City Code by adopting a new Article VI dealing with management of the rights-of-way for utility users.

BACKGROUND/JUSTIFICATION

The City receives requests for construction and excavation in the rights-of-way for utility companies. Staff has been considering the City's options for managing the rights-of-way under current federal and state law. The State of Missouri has enacted legislation since 2001 and passage of SB 369 to further define, clarify and narrow City authority over the rights-of-way for utility user purposes. With the recent deployment of Google Fiber and AT&T high speed internet facilities in Jackson County, staff has discussed with surrounding communities such as Lee's Summit and Independence on how those cities manage the rights-of-way when underground facilities are being constructed. In addition, the City holds ownership to the rights-of-way on behalf of the public and residents of the City and has a non-delegable duty to act as a trustee for the public in the care of same. Based on discussions internally and with surrounding communities, and the status of current federal and state law, staff recommends that the City adopt Code provisions that exercise the authority allowed to it to manage the rights-of-way. This amendment will also include the City's own utilities (sewer and water) having to obtain permits for construction and excavation in the rights-of-way as required by state law.

The right-of-way permit fee is proposed to be established based upon a targeted cost recovery of 100 percent of program administration costs from the preceding year. This is consistent with the City's approach to setting City utility fees. It is anticipated the fee will initially be between $120-130. There is a specific fee/deposit set out for excavations of $1500 based on the City's experience in needing to repair or return areas excavated to their previous condition.

FINANCIAL IMPACT

Contractor:	N/A
Amount of Request/Contract:	
Amount Budgeted:	
Funding Source/Account #:	
Additional Funds Needed:	
Funding Source/Account #:	

PROJECT TIMELINE

Estimated Start Date	Estimated End Date
N/A	N/A

STAFF RECOMMENDATION

Staff recommends adoption of this new Article for Chapter 505.

OTHER BOARDS & COMMISSIONS ASSIGNED

Name of Board or Commission:	N/A
Date:	
Action:	

LIST OF REFERENCE DOCUMENTS ATTACHED

1. Proposed Ordinance

IF CONTRACT REQUIRED:

1. E-Verify Affidavits Required?	N/A	Parent Company:
2. Contract Executed?		
3. Affidavits Executed		

REVIEWED BY

Requesting Director: Nancy K Gendes	Budget: N/A
Legal:	City Administrator: