

CITY OF ST. JOSEPH, MISSOURI
PUBLIC UTILITY RIGHT-OF-WAY MANAGEMENT ORDINANCE

AN ORDINANCE AMENDING CHAPTER 29 OF THE CODE OF ORDINANCES BY ENACTING A NEW ARTICLE V, TO BE ENTITLED “PUBLIC UTILITY RIGHT-OF-WAY MANAGEMENT ORDINANCE”.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ST. JOSEPH, MISSOURI, AS FOLLOWS:

SECTION 1: That Chapter 29 of the Code of Ordinances of the City of St. Joseph, Missouri, be, and hereby is, amended by enacting a new Article, Article V, to be entitled, numbered and read as follows:

ARTICLE V. PUBLIC UTILITY RIGHT-OF-WAY MANAGEMENT ORDINANCE

Section 29-350. Intent.

The City Council finds that the enactment of a Public Utility Right-of-Way Management Ordinance will have a beneficial impact on all of the citizens of the City. The use of the Public Right-of-Way is increasing due to the advancements in technology, changes in federal and state law and increased demand for services from residents, businesses, educational institutions, governmental offices located in the City and other public and private institutions. The City Council further finds that the public convenience, health, safety and welfare can be best served by establishing regulatory power and procedures to protect the Public Right-of-Way, ensure the orderly development of infrastructure which effectively serves the City, while at the same time not creating barriers which prohibit or effectively prohibit competition. The City Council further finds that such regulatory powers should be vested in the City or such Persons as the City shall designate.

Section 29-351. Definitions.

For the purpose of this Article the following terms, phrases, words, abbreviations and their derivations shall have the meaning given in this Section. Words used in the present tense include the future tense, words in the single number include the plural number, words in the plural number include the single number. The words “shall” and “will” are mandatory and the word “may” is permissive. Words not defined shall be given their common and ordinary meaning.

- (a) **“Abandoned Equipment or Facilities”** shall mean any equipment, materials, apparatuses, devices or facilities that are:
 - (i) Declared abandoned by the owner of such equipment, materials, apparatuses, devices or Facilities; or
 - (ii) No longer in active use, physically disconnected from a portion of the operating facility or any other 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, materials, apparatuses or Facilities were installed; or

- (iii) No longer in active use and the owner of such equipment, materials, apparatuses, devices or Facilities fails to respond within thirty (30) days to a written notice sent by the City that the City deems such equipment, materials, apparatuses, devices or Facilities abandoned.
- (b) **“Applicant”** shall mean any Public Utility Right-of-Way User that applies for a Public Utility Right-of-Way Permit.
- (c) **“Application”** shall mean the process by which an Applicant submits a request to be issued a Public Utility Right-of-Way Permit. An Application includes all written documentation and representations, in whatever form, made by the Applicant to the City regarding the matters pertaining to a requested Public Utility Right-of-Way Permit.
- (d) **“Article”** shall mean this Public Utility Right-of-Way Management Ordinance.
- (e) **“Cable Communications System” or “Cable System”** shall have the meaning set forth in Section 9-3 of the Code.
- (f) **“Cable Franchise”** shall mean a Franchise to construct and operate a Cable System or provide Cable Service granted pursuant to Chapter 9 of the Code.
- (g) **“City”** shall mean the City of St. Joseph, Missouri as now incorporated and including all future annexations.
- (h) **“City Council”** shall mean the governing body of the City.
- (i) **“Code”** shall mean the Code of Ordinances of the City of St. Joseph, Missouri.
- (j) **“Completed Application”** shall mean when an Applicant has submitted all documents, plans, specifications and information required by this Article, the Applicant has fully paid all applicable fees required by this Article and satisfied all other requirements for consideration of the Application by the City under this Article.
- (k) **“Department of Public Works”** shall mean the Department of Public Works and Transportation of the City.
- (l) **“Emergency”** includes, but is not limited to, the following:
 - (i) An unexpected or unplanned outage, cut, rupture, leak or any other failure of a Public Utility Facility that prevents or significantly jeopardizes the ability of a Public Utility to provide service to customers; or
 - (ii) An unexpected or unplanned outage, cut, rupture, leak or any other failure of a Public Utility 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 Public Utility Facilities is not immediately repaired, controlled, stabilized or rectified; or

(iii) Any occurrence involving a Public Utility Facility that a reasonable person could conclude under the circumstances that immediate and undelayed action by the Public Utility is necessary and warranted.

(m) **“Excavation”** shall mean any act by which earth, asphalt, concrete, sand, gravel, rock or any other material in or on the ground is cut into, dug, uncovered, removed or otherwise displaced, by means of any tools, equipment or explosives, except that the following shall not be deemed excavation:

(i) Any de minimis displacement or movement of ground caused by pedestrian or vehicular traffic; or

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

(iii) 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.

(n) **“Facilities”** shall mean any tangible thing located wholly or partially in, above or underneath the Public Right-of-Way, including, but not limited to, lines, pipes, wires, cables, conduit facilities, poles, towers, vaults, pedestals, boxes, appliances, antennas, transmitters, gates, motors, appurtenances or other equipment and systems.

(o) **“Law”** shall mean all duly enacted and applicable federal, state, county or generally applicable city laws, ordinances, resolutions, regulations, orders or other enactments now in force or hereafter adopted.

(p) **“Missouri One Call”** means the procedural requirements for excavation and utility safety established by Sections 319.010, et seq. of the Revised Statutes of Missouri as amended and the terms and conditions of Missouri One Call System, Inc.

(q) **“Person”** shall mean any natural person and all domestic and foreign corporations, closely-held corporations, limited liability companies, associations, syndicates, joint stock corporations, partnerships of every kind, clubs, businesses, common law trusts, societies and any other legal entity.

(r) **“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 land owned by the City.

- (s) **“Public Right-of-Way”** shall mean the surface, the air space above the surface (to the extent such air space may be regulated by the City under Federal Law) and the area below the surface of any public roadway, highway, street or alleyway, in which the City has an interest, in fee or easement, but not including:
- (i) The airwaves above a Public Right-of-Way with regard to cellular or other nonwire telecommunications or broadcast service; or
 - (ii) Easements obtained by utilities or private easements in platted subdivisions or tracts, (excluding those dedicated for public use); or
 - (iii) Railroad rights-of-way and ground utilized or acquired for railroad facilities; or
 - (iv) 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 municipally owned or operated utility pursuant to Chapter 91, RSMo, or pursuant to a charter form of government.
- (t) **“Public Utility”** shall mean every cable television service provider, every pipeline corporation, gas corporation, electrical corporation, rural electric cooperative, telecommunications company, water corporation, heating or refrigerating corporation or sewer corporation under the jurisdiction of the public service commission; every municipally owned or operated utility pursuant to Chapter 91, RSMo, or pursuant to a charter form of government or cooperatively owned or operated utility pursuant to Chapter 394, RSMo; 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, Facilities, 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 Right-of-Way. “Public Utility” shall include a Public Utility provider that does not own Facilities in the Public Right-of-Way but uses the Public Right-of-Way by interconnecting with or using the network elements of another Public Utility utilizing the Public Right-of-Way, and/or by leaving excess capacity from another Public Utility.
- (u) **“Public Utility Right-of-Way User”** shall mean a Public Utility owning, controlling, or utilizing a Facility in the Public Right-of-Way.
- (v) **“Public Works Director”** shall mean the Director of the Department of Public Works and Transportation of the City, or his or her designee.

- (w) **“Public Utility Right-of-Way Permit”** shall mean a permit issued by the City authorizing the performance of Excavation in the Public Right-of-Way by a Public Utility Right-of-Way User.
- (x) **“Trenchless Technology”** shall mean the use of directional boring, horizontal drilling and microtunneling and other techniques in the construction of Facilities underground which results in the least amount of disruption and damage to the Public Right-of-Way as possible.

Section 29-352. Registration.

- (a) All existing Public Utility Right-of-Way Users shall register with the Director of Financial Services of the City within thirty (30) days from the effective date of this Article. Any Person who is not a Public Utility Right-of-Way User prior to the effective date of this Article and who desires to become a Public Utility Right-of-Way User must first register with the City.
- (b) No Public Utility Right-of-Way User shall be authorized to use the Public Right-of-Way without registering with the Director of Financial Services of the City and obtaining any necessary Public Utility Right-of-Way Permit. A Public Utility Right-of-Way 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.
- (c) A Public Utility Right-of-Way User shall report any changes in its registration within sixty (60) days of the change or upon application for a Public Utility Right-of-Way Permit, whichever occurs first. Failure to report any change shall be a violation of this Article.
- (d) The valid registration shall be on the form provided by the City and at a minimum shall include the following:
 - (i) Identity and legal status of the Public Utility Right-of-Way User; and
 - (ii) Name, address, telephone number and e-mail address of the employee, agent or officer of the Public Utility Right-of-Way User responsible for the accuracy of the registration statement. Such employee, agent or officer shall be the Person to whom notices shall be sent, and shall be responsible for facilitating all necessary communications; and
 - (iii) Name, address, telephone number and e-mail address of the employee, agent or officer of the Public Utility Right-of-Way User who shall be available at all times to act on behalf of the Public Utility Right-of-Way User in the event of an Emergency; and
 - (iv) Proof of 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 Federal

Communications Commission or the Missouri Public Service Commission; and

- (v) Description of the Public Utility Right-of-Way User's use or intended use of the Public Right-of-Way; and
 - (vi) Information which identifies any Person that interconnects with or uses the Public Utility Right-of-Way User's Facilities in the Public Right-of-Way or leases any excess capacity from the Public Utility Right-of-Way User; and
 - (vii) A list of authorized agents, contractors or subcontractors eligible to obtain permits on behalf of the Public Utility Right-of-Way User. A registration may be updated to add such Person at the time of an Application if the updated registration is submitted by an authorized representative of the Public Utility Right-of-Way User; and
 - (viii) Information sufficient to determine the amount of net assets of the Public Utility Right-of-Way User.
- (e) Except as provided in this Article, or as otherwise required by Law, no registration may be transferred without the written consent of the City. Any Person not named on a valid registration, including any affiliates or successors in interest to a registered Public Utility Right-of-Way 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 29-353. Permit Required.

A Public Utility Right-of-Way User shall not perform any Excavation within a Public Right-of-Way without obtaining a Public Utility Right-of-Way Permit.

Section 29-354. Permit Application and Submittal Requirements.

- (a) An Application for a Public Utility Right-of-Way Permit in the form provided by the City must be filed with the Director of Public Works to obtain a Public Utility Right-of-Way Permit either by a registered Public Utility Right-of-Way User or an authorized agent of the Public Utility Right-of-Way User who will perform or furnish the Excavation.
- (b) A Public Utility Right-of-Way User desiring to perform Excavation in the Public Right-of-Way to construct or install new Facilities, extend Facilities, or replace existing Facilities in the Public Right-of-Way shall submit with the Application three (3) sets of construction plans and specifications bearing the stamp of a professional engineer duly licensed and registered in the State of Missouri,

including the following information, for review and approval by the Director of Public Works:

- (i) The location of all visible topographic features affected by the project within the Public Right-of-Way; and
 - (ii) The horizontal and vertical location of other Facilities in the Public Right-of-Way within the project limits verified by compiling data from other Public Utility Right-of-Way Users and acquisition of filed data; and
 - (iii) The Subsurface Utility Engineering study required by Section 29-355; and
 - (iv) Complete plan and profile drawings indicating the horizontal and vertical location of all components of the proposed project, the design details of such proposed project, and other related information including, but not limited to, pipe and manhole flow line elevations, type and size of the proposed Facilities, and other related structures; and
 - (v) Complete plan and profile drawings detailing the restoration of the Public Right-of-Way and the design details of such restoration, including the proposed pavement and Public Right-of-Way restoration, all in compliance with Section 29-361 of this Article; and
 - (vi) An erosion control plan in compliance with applicable provisions of the Code; and
 - (vii) A safety plan indicating the methods used to protect the general public from injury including, but not limited to, the proposed use of barricades, signs, lights, fencing and other barriers. Such safety plan shall be in compliance with all applicable Law, including, but not limited to, the rules, regulations and standards adopted pursuant to the Williams-Steiger Occupational Safety and Health Act of 1970 and applicable amendments (“OSHA”); and
 - (viii) A traffic control plan in compliance with the applicable provisions of the Code; and
 - (ix) A landscape plan; and
 - (x) A work plan including a schedule indicating the extent and duration of Excavation work and restoration work, including a proposed start and end date.
- (c) The Application for a Public Utility Right-of-Way Permit for the purpose of constructing or installing new Facilities, or extending existing Facilities, in the Public Right-of-Way shall also contain at least the following information and documents:

- (i) A detailed description of all services proposed to be provided in the City by the Applicant; and
 - (ii) The area proposed to be served within the City by the Applicant; and
 - (iii) The manner in which services are proposed to be rendered to customers in the City; and
 - (iv) Evidence of the Applicant's financial ability to construct and operate the proposed Facilities in the Public Right-of-Way and to pay all applicable fees, taxes and other charges allowed by the Code and Law; and
 - (v) A sworn statement executed by a duly authorized representative of Applicant that Applicant is in compliance with the Law in other jurisdictions where the Applicant operates; and
 - (vi) Evidence that the Applicant has obtained and secured all certificates and other authorizations required by Law in order to construct and operate the Proposed Facilities in the manner proposed by the Applicant; and
 - (vii) Evidence of the technical ability of the Applicant to construct, maintain and operate the proposed Facilities in compliance with Law.
- (d) A Public Utility Right-of-Way User desiring to excavate in the Public Right-of-Way for the purpose of repairing or maintaining existing Facilities that results in no material change to the Facilities, shall submit with the Application for a Public Utility Right-of-Way Permit three (3) sets of construction plans and specifications that, if required by the Public Works Director, bears the stamp of a professional engineer duly licensed and registered in the State of Missouri, including the following information for review and approval by the Public Works Director:
- (i) Standard details including the type and nature of the work; and
 - (ii) A safety plan indicating the methods used to protect the general public from injury including, but not limited to, the proposed use of barricades, signs lights, fencing and other barriers. Such safety plan shall be in compliance with applicable Law, including but not limited to OSHA; and
 - (iii) An erosion control plan as required by applicable provisions of the Code; and
 - (iv) Traffic control plan in compliance with the applicable provisions of the Code; and
 - (v) Drawings detailing the restoration of the Public Right-of-Way, including, proposed pavement and Public Right-of-Way restoration all in compliance with Section 29-361 of this Article; and

- (vi) A landscape plan; and
- (vii) A schedule for Excavation work and restoration work, including a proposed start and end date.

Section 29-355. Subsurface Utility Engineering Study Required.

- (a) Prior to commencement of any construction or extension or replacement of Facilities, in the Public Right-of-Way, an Applicant shall conduct a subsurface utility engineering study on the proposed route of construction or expansion. A subsurface utility engineering study consists of, at a minimum, completion of the following tasks:
 - (i) Secure all available record plans, plats and other location data indicating the existence and approximate location of all Facilities located underground along the proposed construction route; and
 - (ii) Visibly survey and record the location and dimensions of any above-ground features of all Facilities located underground along the proposed construction route including, but not limited to, manholes, valve boxes, utility boxes, posts and visible street cut repairs; and
 - (iii) Plot and incorporate the data obtained from completion of the tasks described in subsections (a)(i) and (a)(ii) above on the Applicant's proposed system route maps, plan sheets and computer aided drafting and design (CADD) files, and provide the City with this information. The CADD files shall be consistent and compatible with the type and version of the CADD files maintained by the City; and
 - (iv) Determine and record the presence and approximate horizontal location of all Facilities located underground in the Public Right-of-Way along the proposed system route utilizing surface geophysical designating techniques such as electromagnetic, magnetic and elastic wave locating methods;
 - (v) Plot, incorporate and reconcile the data obtained by completion of the task described in subsection (a)(iv) above with the updated route maps, system plans and CADD files described in subsection (a)(iii) above and provide the City with this information; and
 - (vi) Where system design and the location of Facilities located underground appear to conflict on the updated system route maps, plans and CADD files, utilize non-destructive digging methods, such as vacuum excavation, at the critical points identified to determine as precisely as possible, the horizontal, vertical and spatial position, composition, size and other specifications of the conflicting Facilities located underground. An Applicant shall not Excavate more than an eight inch (8") by eight inch

(8") hole in the Public Right-of-Way to complete this task without the express, written permission of the Public Works Director; and

- (vii) Plot, incorporate and reconcile the data obtained by completion of the tasks described in subsection (a)(vi) above with the updated route maps, system plans and CADD files described in subsection (a)(iii) above and also provide the City with this information; and
- (viii) Based on all of the data collected upon completion of the tasks described in this Section, adjust the proposed Facilities design elevations, horizontal or vertical locations to avoid the need to relocate other Facilities.
- (b) Upon completion of subsection (a) above, the Applicant shall record all of the data collected into a CADD file compatible with the type and version of the CADD files used by the City and deliver a copy to the City.
- (c) All subsurface utility engineering requirements of this Section shall be performed by a firm that specializes in subsurface utility engineering, provided however, the requirements may be performed by the Applicant if the Applicant possesses the requisite education and experience to complete the study itself.
- (d) The Applicant shall bear the cost of compliance with this Section of this Article.

Section 29-356. Design Standards.

- (a) The construction plans and specifications required by Section 29-354(b) and Section 29-354(d) shall comply with all Law and the Code including, but not limited to, the rules and regulations adopted by the Public Works Director pursuant to Chapter 25, Article II, Division 3 of the Code. The design shall not provide for the disruption or interference with any other Facilities or Public Improvement.
- (b) New Facilities shall be installed underground or contained within buildings or other structures in conformity with applicable standards, Law and the Code. A Person shall not erect new poles or other wire holding structures without the City's consent, which consent shall not be unreasonably withheld.
- (c) The Public Works Director shall assign specific corridors within the Public Right-of-Way, or any particular segment thereof as may be necessary, for Facilities, that are, or pursuant to current technology the Public Works Director expects will someday be, located in Public Right-of-Way. All Facilities shall be designed and constructed in the proper corridor as designated by the Public Works Director pursuant to the authority contained in this Section. All Persons whose Facilities are located in Public Right-of-Way in a position at variance with the corridors established by the Public Works Director shall, no later than at the time of the next reconstruction or Excavation of the area where its Facilities are located, move the Facilities to the proper corridor designated by the Public Works Director.

- (d) All construction or maintenance of Facilities shall be accomplished in the manner resulting in the least amount of damage and disruption of the Public Right-of-Way. Specifically, every Applicant shall utilize Trenchless Technology and specify the use of Trenchless Technology in the design of projects located below or under pavements or other locations that will require cutting or patching of Public Right-of-Way. If and when the City requires a Public Utility Right-of-Way User to cease using existing poles, all other Public Utility Right-of-Way Users utilizing the same poles shall also relocate their Facilities underground at the same time. The cost of such relocations shall be borne in accordance with this Article and approved applicable tariffs governing that Public Utility Right-of-Way User. The design of each project shall be the design that will result in the least amount of disruptions to the Public Right-of-Way.

Section 29-357. Processing of Applications and Approval.

- (a) The Public Works Director shall promptly, but not longer than thirty-one (31) days, process each Completed Application for a Public Utility Right-of-Way Permit. The Public Works Director may require an Applicant to separate proposed work into individual or distinct Applications due to the complexity of a proposed project or for other reasonable reasons.
- (b) If the Public Works Director determines that an Applicant has complied with the requirements of this Article, the Public Works Director shall issue a Public Utility Right-of-Way Permit.
- (c) Issued Public Utility Right-of-Way Permits are not transferable without prior written consent of the Public Works Director. The Public Works Director shall not unreasonably withhold consent for transfer of a Public Utility Right-of-Way Permit.
- (d) A Public Utility Right-of-Way Permit shall only be valid for the area of the Public Right-of-Way specified within the Public Utility Right-of-Way Permit. No Public Utility Right-of-Way User may cause any Excavation to be done outside the area specified in the Public Utility Right-of-Way Permit. Any Public Utility Right-of-Way User who determines that an area greater than that which is specified in the Public Utility Right-of-Way Permit must be Excavated must do the following prior to the commencement of Excavation in that greater area: (a) make an application for a Public Utility Right-of-Way Permit amendment describing the area in which the Excavation will occur; and (b) pay any additional fees required thereby.
- (e) Public Utility Right-of-Way Permits issued shall be available by the Public Utility Right-of-Way User at all times at the indicated work site and shall be available for inspection by the Public Works Director, other City employees and the public.

Section 29-358. Denial of Application for Public Utility Right-of-Way Permit.

The Public Works Director may deny an Application for a Public Utility Right-of-Way Permit for any of the following reasons:

- (a) The Public Utility Right-of-Way User fails to provide all the necessary information and documents required by this Article and reasonably requested by the City for managing the Public Right-of-Way; or
- (b) The Public Utility Right-of-Way User has failed to return the Public Right-of-Way to its previous condition under a previous Public Utility Right-of-Way Permit; or
- (c) A reasonable, competitively neutral, and nondiscriminatory justification for requiring an alternative method for performing the work identified in the Application or a reasonable alternative route that will result in neither additional installation expense up to ten percent (10%) to the Public Utility Right-of-Way User nor a declination of service quality; or
- (d) The Public Works Director determines that the denial is necessary to protect the public health, safety or welfare. In determining whether denial of a Public Utility Right-of-Way Permit application is necessary to protect the public health, safety or welfare, the Public Works Director may consider one or more of the following factors:
 - (i) The extent to which the Public Right-of-Way space where the Public Utility Right-of-Way Permit is sought is available, including the consideration of competing demands for the particular space in the Public Right-of-Way, or other general conditions of the Public Right-of-Way;
 - (ii) The applicability of any ordinance, Code provision, or other regulations that affect the location of Facilities in the Public Right-of-Way;
 - (iii) The degree of disruption to surrounding communities and businesses that will result from the use of that part of the Public Right-of-Way, including whether the issuance of a Public Utility Right-of-Way 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 Law or is a historic district as defined by Law.

Section 29-359. Other Conditions.

- (a) The Public Works Director in issuing a Public Utility Right-of-Way Permit is authorized to impose such conditions as is necessary to protect the public health, safety or welfare, to properly manage the Public Right-of-Way and to properly restore the Public Right-of-Way.

- (b) The Public Works Director may establish in the Public Utility Right-of-Way Permit limitations on the amount of Excavation which may occur at one time and the amount of Public Right-of-Way which may be obstructed during construction.
- (c) The Public Utility Right-of-Way User shall not permit Excavation to remain open longer than is necessary to complete the repair or installation, and in no event may Excavation remain open beyond the expiration of the Public Utility Right-of-Way Permit or any approved extension.
- (d) Non-Emergency Excavation on arterial and collector streets shall be performed during the hours allowed by Law.
- (e) The Public Works Director may limit the number of conduits that may be installed by each Public Utility Right-of-Way User based on the reasonable needs so that no one Public Utility Right-of-Way User may unreasonably consume a disproportionate amount of the available Public Right-of-Way to deter competition.

Section 29-360. Construction.

- (a) Before the start date of any Excavation, each Public Utility Right-of-Way User who has Facilities located in the area to be excavated shall be responsible to mark the horizontal and approximate vertical placement of all its Facilities in accordance with Missouri One Call System. A Public Utility Right-of-Way User shall be solely liable for any damages caused by its mismarks. Any Public Utility Right-of-Way User whose Facilities are less than twenty (20) inches below a concrete or asphalt surface shall notify and work closely with the Person performing Excavation in an effort to establish the exact location of its Facilities and the best procedure for Excavation.
- (b) Before the commencement of any Excavation, the Public Utility Right-of-Way User shall provide the Director of Public Works forty-eight (48) hours written notice before commencing any such work.
- (c) Before the commencement of any Excavation, the Public Utility Right-of-Way User shall provide each occupant of premises adjacent to the project forty eight (48) hours written notice before commencing any such work.
- (d) The Public Utility Right-of-Way User shall provide the Public Works Director seventy-two (72) hours prior written notice before the closure of any roadway, highway or street or interruption in traffic flow.
- (e) All work permitted by the Public Utility Right-of-Way Permit shall be in accordance with the approved plans and specifications, the terms of the Public Utility Right-of-Way Permit, and all applicable Law and the Code including, but not limited to, rules and regulations adopted by the Public Works Director pursuant to Chapter 25, Article II, Division III of the Code.

- (f) All work allowed under the Public Utility Right-of-Way Permit shall be completed by the time required in the Public Utility Right-of-Way Permit. At the completion of said work, record drawings shall be provided for all extensions or new installations of Facilities. Any Abandoned Equipment or Facilities shall also be identified on record drawings.

Section 29-361. Restoration.

- (a) In the event that the City does not exercise its rights to perform restoration work under subsection (b) below, each Permittee shall provide for the restoration of the Public Right-of-Way and surrounding areas in accordance with the following requirements:
 - (i) Any Public Right-of-Way within the City which are disturbed or damaged during the work under a Public Utility Right-of-Way Permit shall be repaired and restored by the Public Utility Right-of-Way User pursuant to the terms of the approved plans and specifications, the terms of the Public Utility Right-of-Way Permit and the rules and regulations adopted by the Public Works Director pursuant to Chapter 25, Article II, Division III of the Code and in all events the Public Right-of-Way shall be repaired and restored to a condition as good as that previously existed before such work was commenced; and
 - (ii) The restoration of the Public Right-of-Way as required herein must be completed within the time set forth in the Public Utility Right-of-Way Permit. In addition to its own work, the Public Utility Right-of-Way User must restore the general area of the work, and the surrounding areas, including the paving and its foundations. The Public Utility Right-of-Way User shall also inspect the area of the work and maintain the restored Public Right-of-Way in the condition required hereunder for four (4) years thereafter; and
 - (iii) If the Public Utility Right-of-Way User fails to restore the Public Right-of-Way as required by this Section, the City may restore the Public Right-of-Way itself and the Public Utility Right-of-Way User shall reimburse the City for the cost of restoration as provided in subsection (v) below; and
 - (iv) For four (4) years following completion of any restoration, each Public Utility Right-of-Way User guarantees that the restoration work shall comply with the applicable requirements of this Article (“Guarantee Period”). The Guarantee Period shall commence when the restoration work and all required corrections have been inspected and completed to the satisfaction of the Public Works Director. During the Guarantee Period, each Public Utility Right-of-Way User shall, upon notification from the City, perform all follow-up restoration work required to correct, repair or replace restoration work performed by a Public Utility Right-of-Way User which fails to conform to the applicable requirements under this Article using any method or materials specified by the City. Such follow-up work shall be completed within five (5) calendar days after the receipt of notice from the City that such follow-up restoration work is necessary. Follow-

up restoration work required because of an Emergency shall be performed by a Public Utility Right-of-Way User immediately upon verbal or written notification from the City; and

(v) Upon the failure, refusal or neglect of a Public Utility Right-of-Way User to comply with the provisions of this Section, the Public Works Director, after reasonable notice is given to such Public Utility Right-of-Way User, may cause the work or other activity required by this Section to be completed or performed, in whole or in part, to the satisfaction of the City. Upon so doing, the City shall submit to such Public Utility Right-of-Way User an itemized statement of the cost for repairing and restoring the Public Right-of-Way. The Public Utility Right-of-Way User shall, within thirty (30) days after receipt of the statement, pay to the City the entire amount thereof, or such amounts may be charged against any performance bond required by Section 29-372.

(vi) All Excavation shall have a metal or plastic marker of a color, size and shape approved by the Public Works Director inserted into restored pavement which shall identify the Public Utility Right-of-Way User.

(b) The City shall have the option to perform or caused to be performed street restoration work, in which case the Public Utility Right-of-Way User shall reimburse City any reasonable and actual restoration work costs within thirty (30) days from a Public Utility Right-of-Way User's receipt of a statement from the City for such costs.

Section 29-362. Revocation of Public Utility Right-of-Way Permit.

(a) The City may, after reasonable notice and an opportunity to cure, revoke a Public Utility Right-of-Way Permit granted to a Public Utility Right-of-Way User, without fee refund, but only in the event of a substantial breach of the terms and material conditions of the Public Utility Right-of-Way Permit. A substantial breach by a Public Utility Right-of-Way User includes, but is not limited to:

(i) A material violation of a provision of the Public Utility Right-of-Way Permit; or

(ii) An evasion or attempt to evade any material provision of the Public Utility Right-of-Way Permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens; or

(iii) A material misrepresentation of fact in the Application for a Public Utility Right-of-Way Permit; or

(iv) A failure to complete work by the date specified in the Public Utility Right-of-Way Permit, unless a permit extension is obtained; or

- (v) A failure to correct, within the time specified by the City, work that does not conform to applicable Law, this Article and other provisions of the Code.

Section 29-363. Emergencies.

In case of an Emergency, a Public Utility Right-of-Way User may proceed with required work without a Public Utility Right-of-Way Permit, however, in such event, the Public Utility Right-of-Way User shall, within five (5) days following the Emergency, submit the documents and information required by Section 29-354 of this Article and pay the Public Utility Right-of-Way Permit Fee(s) required by Section 29-373 of this Article. In case of an Emergency, a Public Utility Right-of-Way User shall immediately notify the Public Works Director of such Emergency and the Excavation necessary to address such Emergency. All required work necessitated by the Emergency and restoration work shall satisfy all requirements of this Article. If such required work necessitated by the Emergency or the restoration work fails to satisfy the requirements of this Article, then the Public Utility Right-of-Way User shall promptly correct such unsatisfactory work. In the event the Public Utility Right-of-Way User fails to correct such unsatisfactory work, then the City shall be entitled to correct such unsatisfactory work. The City shall submit to the Public Utility Right-of-Way User an itemized statement of the costs for such work. The Public Utility Right-of-Way User shall pay the amount of the statement within thirty (30) days from receipt.

Section 29-364. Abandonment of Equipment or Facilities.

- (a) Unless otherwise permitted by the City in writing, a Public Utility Right-of-Way User shall remove all Abandoned Equipment or Facilities which prevents or significantly impairs the Public Right-of-Way use, repair, Excavation or construction, upon receipt of written notice from the City and shall restore any affected Public Right-of-Way in accordance with the standards set forth in this Article. In the event a Public Utility Right-of-Way User fails to remove such Abandoned Equipment or Facilities, the City may do so at such Public Utility Right-of-Way User's cost and expense.
- (b) The City, upon such terms as it may impose, may give a Public Utility Right-of-Way User permission to abandon, without removing, any equipment or Facilities, so long as such equipment or Facilities abandoned in place does not materially interfere with the use of the Public Right-of-Way, or with the use of the Public Right-of-Way by any Public Utility Right-of-Way User.
- (c) If required by the City, a Public Utility Right-of-Way User shall submit to the City an accurate map of all Abandoned Equipment and Facilities.

Section 29-365. Facilities Relocation.

- (a) The Public Works Director may order a Public Utility Right-of-Way User, at the Public Utility Right-of-Way User's own cost, to permanently or temporarily remove, relocate, protect, support or disconnect its Facilities, in the Public Right-of-Way for the following reasons:

- (i) To prevent interference with a Public Improvement undertaken by the City;
 - (ii) When necessary, because of traffic conditions, street vacations, freeway grading, sewer, drainage, or tract installation or to otherwise prevent interference with the safety and convenience of ordinary travel over the Public Right-of-Way; or
 - (iii) When required to protect the public health, safety or welfare.
- (b) With respect to any permanent or temporary removal, relocation, protection, support or disconnection of Facilities, in the Public Right-of-Way pursuant to subsection (a) above, the City shall be liable to a Public Utility Right-of-Way User only for damages caused by the sole negligence of the City; provided, however, that nothing herein shall relieve any other Person from liability for damage to a Public Utility Right-of-Way User's Facilities.
- (c) Except in the case of an Emergency, the City shall provide a Public Utility Right-of-Way User with thirty (30) days' written notice if, in the reasonable judgment of the City, Facilities must be permanently or temporarily removed, relocated, protected, supported or disconnected pursuant to this Section. If the Public Utility Right-of-Way User fails to promptly commence such work and substantially complete such removal, relocation, protection, support or disconnection, including all associated repair of the Public Right-of-Way, within a reasonable time thereafter, then, to the extent not inconsistent with Law, the City shall have the right to authorize removal of the Facilities installed by the Public Utility Right-of-Way User on, over or under the Public Right-of-Way at the Public Utility Right-of-Way User's cost and expense.

Section 29-366. Damage to Property.

Each Public Utility Right-of-Way User shall be responsible for the cost of repairing any property owned by other Persons in the Public Right-of-Way damaged by the Public Utility Right-of-Way User or its Facilities. Each Public Utility Right-of-Way User shall be responsible for the cost of repairing any damage to the property of another Person caused during the City's response to an Emergency caused by a Public Utility Right-of-Way User or its Facilities, except for damage caused by the City's gross negligence or willful misconduct.

Section 29-367. Public Right-of-Way Vacation.

If the City vacates a Public Right-of-Way, the City shall reserve for itself and all Public Utility Right-of-Way Users having Facilities in the vacated Public Right-of-Way, the right to install, maintain and operate the Facilities in the vacated Public Right-of-Way and to enter upon such Public Right-of-Way at anytime for the purpose of reconstructing, inspecting, maintaining, repairing or restoring the same. The City shall retain all necessary easements in vacated Public Right-of-Way in existence at the time of vacation.

Section 29-368. Extensions and Inspection.

- (a) Any construction, Excavation, or restoration work required under this Article shall be completed in the time set forth in the Public Utility Right-of-Way Permit, unless extended. If a Public Utility Right-of-Way User is unable to complete the construction, Excavation or restoration work within the time set forth in the Public Utility Right-of-Way Permit due to reasons beyond the Public Utility Right-of-Way User's control, upon application to the Public Works Director, the time required for such work shall be extended to the extent of the delay caused by the reason beyond Public Utility Right-of-Way User's control. Upon completion of such work, the Public Utility Right-of-Way User shall immediately notify the Public Works Director. The Public Utility Right-of-Way User shall make the work site available to the Public Works Director and to all others as authorized by Law for inspection at any reasonable times during the execution and upon completion of the work.
- (b) At the time of inspection, the Public Works Director may order the immediate cessation of any work which poses a serious threat to the public health, safety or welfare.
- (c) The Public Works Director may order a Public Utility Right-of-Way User to perform or redo any work which does not conform to this Article, or other applicable standards, conditions or the Code. An order issued pursuant to this Section shall state that failure to correct the violation will be cause for revocation of the Public Utility Right-of-Way Permit. Within ten (10) days after issuance of the order, the Public Utility Right-of-Way User shall present proof to the Public Works Director that the violations have been corrected. If such proof has not been presented within the required time, the Public Works Director may revoke the Public Utility Right-of-Way Permit.

Section 29-369. Other Obligations.

- (a) Obtaining a Public Utility Right-of-Way Permit does not relieve the Public Utility Right-of-Way User of its duty to obtain all other necessary permits, licenses and authority and to pay all fees required by any other Law.
- (b) A Public Utility Right-of-Way User shall comply with all requirements of Law, including Missouri One Call System.
- (c) A Public Utility Right-of-Way User shall perform all work in conformance with all Law, and is responsible for all work done in the Public Right-of-Way pursuant to the Public Utility Right-of-Way Permit, regardless of who performs the work.
- (d) Except in the case of an Emergency, and with the approval of the Public Works Director, no Excavation may be performed when seasonally prohibited or when conditions are unreasonable for such work.

- (e) A Public Utility Right-of-Way User shall not obstruct a Public Right-of-Way to the extent that the obstruction interferes with the natural free and clear passage of water through gutters or other waterways.

Section 29-370. Trimming of Trees.

A Public Utility Right-of-Way User shall have the authority to trim trees, in accordance with the City Tree ordinance and all easement restrictions, upon and above Public Right-of-Way so as to prevent the branches of such trees from coming in contact with Facilities. City representatives shall have the authority to and approve all trimming of trees conducted by a Public Utility Right-of-Way User.

Section 29-371. Indemnification.

- (a) Each Public Utility Right-of-Way User shall indemnify, hold harmless, release and defend the City, its municipal officials, elected officials, boards, commissions, agents, attorneys and employees, from and against any and all lawsuits, claims, causes of action, liability, contractual damages and losses, economic damages and losses, all other damages and losses, and expenses, including reasonable attorneys' fees, resulting or in any manner arising from the action or inaction of a Public Utility Right-of-Way User, its agents, representatives, employees, contractors, subcontractors or any other Person for whose acts such Public Utility Right-of-Way User may be liable, in constructing, operating, maintaining, repairing, restoring or removing Facilities, or in carrying on a Public Utility Right-of-Way User's business or operations in the City. This indemnity shall apply, without limitation, to any claim or cause of action for invasion of privacy, defamation, antitrust, negligence, theft, fire, violation or infringement of any copyright, trademark, trade name, service mark or patent or intellectual property right of any Person, whether or not any act or omission complained of is authorized, allowed or prohibited by this Article; and
- (b) The City shall notify a Public Utility Right-of-Way User of any claims subject to indemnification by a Public Utility Right-of-Way User and shall cooperate with all reasonable requests by a Public Utility Right-of-Way User for information, documents, testimony or other assistance appropriate to a resolution of such claims. A Public Utility Right-of-Way User shall have full responsibility for and control of any action or undertaking directed at the resolution of such claims.

Section 29-372. Insurance and Bonds.

- (a) Each Public Utility Right-of-Way User shall secure and maintain commercial general liability insurance ("CGL Insurance") with a combined single limit per occurrence of not less than the amount required by the requirements for CGL Insurance established by the Public Works Director. The CGL Insurance required herein shall be written on a comprehensive form and shall cover claims and liability in connection with or resulting from the Public Utility Right-of-Way User's operations and activities for personal injuries, occupational sickness,

disease, death or damage to property of others, including loss of use resulting therefrom, arising out of any operations or activities of the Public Utility Right-of-Way User, its agents, or any Person directly or indirectly employed by them. The CGL Insurance required herein shall include premises, operations, independent contractors, products-completed operations, personal injury and advertising injury and liability assumed under an insured contract (including the tort liability of another assumed in a business contract) coverages. In particular, and not by way of any limitation, the CGL Insurance shall cover the Public Utility Right-of-Way User's indemnity obligations contained herein.

- (b) Each Public Utility Right-of-Way User shall secure and maintain commercial automobile liability insurance ("Auto Insurance") with a combined single limit for bodily injury and property damage per accident of not less than the amount required by the requirements for Auto Insurance established by the Public Works Director. This insurance, to be in comprehensive form, which shall cover claims and liability for all injuries and all damage to property arising from the use of automobiles, trucks and motorized vehicles, and shall cover the operation on or off the site of the work of all motor vehicles licensed for highway use whether they are owned, non-owned or leased.
- (c) The Public Utility Right-of-Way User shall purchase and maintain workers' compensation insurance which shall protect the Public Utility Right-of-Way User against claims for injury, sickness, disease or death of the Public Utility Right-of-Way User's employees or statutory employees in accordance with Law.
- (d) The City shall be endorsed as an additional insured under the policies described in Subparagraphs (a) and (b) above. However, nothing contained in this Section 29-372, including that the Public Utility Right-of-Way User maintain insurance, is intended or shall be construed to be a waiver of the sovereign immunity protections afforded the City under Law.
- (e) Before commencing any work allowed by the Public Utility Right-of-Way Permit, the Public Utility Right-of-Way User shall procure and furnish to the Department of Public Works a performance bond in the amount of the estimated cost of the required Public Right-of-Way restoration work to be performed by the Public Utility Right-of-Way User and approved by the Department of Public Works. Such bonds shall be in effect through the duration of the work allowed by the Public Utility Right-of-Way Permit and for the four (4) year Guarantee Period. The bonds required hereunder shall be in a form approved by the Public Works Director and executed by a responsible surety licensed in the State of Missouri. The Public Utility Right-of-Way User shall require the attorney in fact who executes the required bond on behalf of the surety to affix thereto a certified and current copy of this power of attorney indicating the monetary limit of such power. If the surety of any bond furnished by the Public Utility Right-of-Way User is declared bankrupt or becomes insolvent or its right to conduct business in the State of Missouri is terminated, or it ceases to meet the requirements of this paragraph, the Public Utility Right-of-Way User shall within ten (10) days

substitute another bond and surety, both of which must be acceptable to the Public Works Director. If the Public Utility Right-of-Way User fails to make such substitution, the City may procure such required bonds on behalf of the Public Utility Right-of-Way User at the Public Utility Right-of-Way User's expense.

- (f) If the Public Utility Right-of-Way User can demonstrate through certified documents reasonably acceptable to the Public Works Director that the Public Utility Right-of-Way User has Twenty Five Million Dollars (\$25,000,000) in net assets and does not have a history of permitting noncompliance within the City, the requirements of subsections (a) through (e) of this Section 29-372 shall not apply to such Public Utility Right-of-Way User.
- (g) In the event the Public Utility Right-of-Way User contracts with any other Person to perform the work allowed by the Public Utility Right-of-Way Permit, such Person shall comply with all the terms and provisions of the Public Utility Right-of-Way Permit, this Article, including all insurance and bonding requirements, all Law and the Code and shall have the same obligations as the Public Utility Right-of-Way User under this Article. The Public Utility Right-of-Way User shall provide a written guaranty that the work allowed by the Public Utility Right-of-Way Permit and performed by another Person shall be in accordance with the Public Utility Right-of-Way Permit, this Article, applicable Law and the Code. The Public Utility Right-of-Way User shall be responsible for correcting acts or omissions by any other Person performing the work allowed by the Public Utility Right-of-Way Permit. The form of the written guaranty shall be approved by the Public Works Director.

Section 29-373. Public Utility Right-of-Way Permit Fees.

- (a) Each Applicant shall pay to the City a Public Utility Right-of-Way Permit Fee established by the Public Works Director and adopted by ordinance for each Application for Public Utility Right-of-Way Permit. Such Public Utility Right-of-Way Permit Fee shall be based upon all of the City's costs in issuing, processing and verifying Applications and inspections of the project site and restoration work up to two (2) hours. Such Public Utility Right-of-Way Permit Fee shall be paid by each Applicant to the City at the time the Applicant submits its Application for a Public Utility Right-of-Way Permit.
- (b) Each Public Utility Right-of-Way User shall pay to the City a supplemental Public Utility Right-of-Way Permit Fee in the amount of all of the City's costs associated with the following:
 - (i) Inspecting the project site and the restoration work in excess of two (2) hours; and
 - (ii) Protecting or moving the Public Utility Right-of-Way User's equipment or Facilities after reasonable notification to the Public Utility Right-of-Way User doing the Public Right-of-Way work; and

- (iii) Determining the adequacy of Public Right-of-Way restoration; and
 - (iv) Inspecting and/or testing restoration work after rejection of improper or defective restoration work;
 - (v) Restoring work inadequately performed after the City has provided notice and a ten (10)-day period for the Public Utility Right-of-Way User to correct such inadequate work; and
 - (vi) Revoking the Public Utility Right-of-Way Permit.
- (c) Fees paid for a Public Utility Right-of-Way Permit, which is subsequently revoked by the Public Works Director, are not refundable.
 - (d) In the event the scope of the project is revised during the course of the project, the Public Works Director may reevaluate the Fee based on the actual size of the Excavation and may require an additional Fee.
 - (e) The amount of the Public Utility Right-of-Way Permit Fee set forth in Section 29-373(a) shall be reviewed annually by the Public Works Director and adjusted based upon the costs to the City as set forth in Section 29-373(a) as approved by the City Council.

Section 29-374. Violation

- (a) No Public Utility Right-of-Way User shall Excavate in the Public Right-of-Way in violation of Section 29-353 of this Article. Any violation of Section 29-353 of this Article shall result in the immediate issuance of a citation to the Public Utility Right-of-Way User and enforcement action pursuant to Section 29-374(d) hereof.
- (b) Except as provided in subsection (a) of this section, if the Public Works Director determines that a Public Utility Right-of-Way User has committed a violation of this Article, any Law, or a condition of the Public Utility Right-of-Way Permit, the Public Works Director shall make written demand upon the Public Utility Right-of-Way User to remedy such violation, which may include the issuance of a stop work order.
- (c) The Public Utility Right-of-Way User shall, within seven (7) calendar days of receiving a notification of a violation, propose a plan to promptly correct such violation. The Public Utility Right-of-Way User shall promptly correct such violation in accordance with an approved plan. If the violation creates a threat to public safety, the Public Utility Right-of-Way User upon verbal or written notice from the Public Works Director shall immediately correct such violation. A Public Utility Right-of-Way User's failure to submit an acceptable plan, or to promptly cure a violation shall in addition to all other remedies provided by Law be cause for immediate revocation of the Public Utility Right-of-Way Permit.

- (d) Any Public Utility Right-of-Way User 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). 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 29-375. Appeals.

A Public Utility Right-of-Way User that has been denied a Public Utility Right-of-Way Permit, has had its Public Utility Right-of-Way Permit revoked, believes that the fees imposed upon it by the City do not conform to the requirements of R.S.Mo. Section 67.1840 or asserts any other issues related to the use of the Public Right-of-Way shall be entitled to have its disputes reviewed in accordance with the Chapter 2, Article XIII, of the Code, provided however, that a decision affirming the denial, revocation, fee imposition or dispute resolution shall be in writing and supported by written findings establishing the reasonableness of the decision.

Section 29-376. Separability.

If any provision of this Article is held by any federal, state or local court, or by any federal or state agency of competent jurisdiction, to be invalid as conflicting with any Law, or is held by such court or agency to be modified in any way in order to conform to the requirements of any such Law or regulation, such provision shall be considered a separate, distinct and independent part of this Article and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that such Law or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision which had been held invalid or modified is no longer in conflict with such Law, said provision shall return to full force and effect and shall again be binding on the City and each Public Utility Right-of-Way User, provided that the City shall give the Public Utility Right-of-Way User thirty (30) days, or a longer period of time as may be reasonably required for the Public Utility Right-of-Way User to comply with such a rejuvenated provision, written notice of the change before requiring compliance with such provision.

Section 29-377. Exceptions.

- (a) Regardless of any contrary provisions of this Article, nothing contained in this Article shall relieve the City of any obligations under an existing franchise agreement in effect on May 1, 2001.
- (b) Regardless of any contrary provisions of this Article, nothing contained in this Article shall relive a Public Utility Right-of-Way User of the provisions of an existing franchise, franchise fees, license or other agreement or permit in effect on May 1, 2001.

- (c) Regardless of any contrary provisions of this Article, nothing contained in this Article shall prohibit the City or a Public Utility Right-of-Way User from renewing or entering into a new franchise in compliance with applicable Law.
- (d) Regardless of any contrary provisions of this Article, nothing contained in this Article shall prohibit the City from enacting, renewing or enforcing ordinance Articles allowed by the provisions of RSMo. Section 67.1846.
- (e) Regardless of any contrary provisions of this Article, nothing contained in this Article shall prevent the City from imposing a franchise fee and other terms and conditions permitted by Law in connection with the City granting or renewing a Cable Franchise.
- (f) The permitting and other requirements for towers and other structures or equipment for wireless communications facilities in the Public Right-of-Way shall not be governed by this Article and shall be governed by other provisions of the Code.

Section 29-378. Reservation of Rights.

- (a) In addition to any rights specifically reserved to the City of by this Article, the City reserves unto itself every right and power which its required to be reserved by a provision of any ordinance under any registration, permit or other authorization granted under this Article.
- (b) The City may grant a special exception to the requirements of this Article if an Applicant, upon Application, demonstrates with written evidence that the exception will not create any threat to the public health, safety or welfare, and:
 - (i) The Applicant demonstrates that the increased economic burden and the potential adverse impact on the Applicant's construction schedule resulting from the strict enforcement of the requirement actually or effectively prohibits the ability of the Applicant to provide Public Utility services in the City; or
 - (ii) The Applicant demonstrates that the requirement unreasonably discriminates against the Applicant in favor of another Public Utility Right-of-Way User.
- (c) A grant of special exception to the requirements of this Section pursuant to Section 29-378(b) shall not be deemed to be a waiver of any other requirement of this Section or this Article or constitute a waiver of any requirement with respect to a new or separate Public Utility Right-of-Way Permit.

Section 29-379. City's Failure to Enforce

The City's failure to enforce or remedy any noncompliance of the terms and conditions of this Article or of any Public Utility Right-of-Way Permit granted hereunder shall not constitute a waiver of the City's rights nor a waiver of any Public Utility Right-of-Way User's obligations as herein provided.

SECTION 2. That it is the intention of the City Council and its is hereby ordained that the provisions of this Article shall become and be made a part of the Code of Ordinances of the City of St. Joseph, Missouri, and the sections of this Article may be renumbered to accomplish such intention.

SECTION 3. That this Article shall be in full force and effect from and after date of passage.