

**AN ORDINANCE OF THE CITY COUNCIL AMENDING TITLE V ("BUILDING AND CONSTRUCTION"),
CHAPTER 515 ("RIGHTS-OF-WAY MANAGEMENT"), SECTION 515.020 ("DEFINITIONS") OF THE
MUNICIPAL CODE OF THE CITY OF REPUBLIC, MISSOURI AND ADDING NEW SECTION 515.130 ("UTILITY
DAMAGE PREVENTION")**

WHEREAS, the City of Republic, Missouri, ("City" or "Republic") is a municipal corporation and Charter City located in Greene County, Missouri, being duly created, organized, and existing under the laws of the State of Missouri; and

WHEREAS, the City incurs significant costs as the result of utility strikes occurring during construction projects within the City; and

WHEREAS, according to a study on the impacts of utility strikes across the nation, losses due to utility strikes are estimated to exceed \$40 billion nationwide and total nearly \$1 million annually within the City; and

WHEREAS, the City currently requires all contractors working within City right-of-way areas to meet specific criteria and adhere to specified standards at all times when performing their work, pursuant to Republic Code Section 515.050; and

WHEREAS, the City makes additional efforts to minimize losses resulting from utility strikes through frequent communication with contractors, requiring strict adherence to City Code requirements and other applicable construction specifications, and assessing penalties for those in violation of such standards; and

WHEREAS, despite these efforts, the City believes that further risk mitigation measures are appropriate to maximize the protection of City infrastructure, reduce financial losses to the City, and prevent injuries caused by utility strikes.

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

Section 1: Title V ("Building And Construction"), Chapter 515 ("Rights-Of-Way Management"), Section 515.020 ("Definitions") of the Municipal Code of the City of Republic, Missouri, is hereby **amended** to read as follows:

Title V Building And Construction

Chapter 515 Rights-Of-Way Management

515.020 Definitions

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

ABANDONED Any equipment, materials, apparatuses, devices, or Facilities that are: 1) declared abandoned by the owner of such equipment or Facilities, 2) no longer in active use and the owner of such equipment or Facilities fails to respond

within thirty (30) days to a written notice sent by the City, or 3) as otherwise may be defined by applicable law.

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

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

CITY The City of Republic, Missouri.

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

CONSTRUCTION CONTRACTOR Any party or company engaged in construction or excavation work within the city's right-of-way or other public or private property, excluding City-funded construction projects.

DIRECTOR The BIULDS Administrator or his/her designee.

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

EXCAVATION, EXCAVATING, or EXCAVATE Any act by which earth, asphalt, concrete, sand, gravel, rock or any other material in or on the ground is cut into, dug, uncovered, removed, or otherwise displaced, through the use of any tools, equipment, motor vehicles, or explosives, including trenchless excavating or boring, except as excluded in this Chapter or by other applicable law.

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

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

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

FCC The Federal Communications Commission.

FRANCHISE The rights and obligations extended by the City to certain ROW Users to occupy the Rights-of-Way for the purpose of providing, transporting or distributing electricity, gas, water, steam, lighting, energy or sewer service to any Person or area within the City's limits and boundaries.

GOVERNING BODY The City Council of the City.

LICENSE The rights and obligations extended by the City to a Person to use and occupy the Rights-of-Way for the purpose of installing temporary Facilities in the Rights-of-Way or incidental uses such as ingress and egress facilities, lateral utility lines, mailboxes or driveway aprons.

PERMIT An Excavation Permit or a Facilities Maintenance Permit.

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

PREVENTABLE DAMAGE Any utility strike that occurs due to failure to comply with proper safety, communication, and locate procedures.

PSC The Missouri Public Service Commission.

RIGHTS-OF-WAY or ROW The full width of the surfaced, un-surfaced or traveled portion of any road, street, path, lane, or alley used by or intended for use by the general public, including any shoulder, ditch, and slope of cuts and/or fills, when those roads, streets, paths, lanes, and alleys have been declared to be part of the City's system of public streets, including all such areas in which the City has an enforceable ownership interest whether be in fee simple or otherwise.

RIGHTS-OF-WAY USE AGREEMENT or ROW USE AGREEMENT The rights and obligations extended by the City to a Person to occupy the ROW for the purpose of providing any form of Communications Service to any Person or area within the City's limits and boundaries, or any other Person desiring to use the ROW for which a Franchise or License is not applicable, subject to the regulations and requirements herein.

ROW USER All Persons and entities, whether a PSC registered utility or otherwise, owning, controlling, leasing, maintaining, using or installing Facilities in the Rights-of-Way of the City, not otherwise expressly exempted.

UTILITY STRIKE Any damage to underground or aboveground utility infrastructure, including but not limited to water, sewer, gas, electric, fiber optic, or communications lines, caused during construction or excavation activities.

EXPLANATION: Matter shown above in **bold-face/underlined font** (except for the Title, Chapter, and Section titles) is added language. Matter shown above in ~~strike through font~~ is deleted language.

Section 2: Title V (“Building And Construction”), Chapter 515 (“Rights-Of-Way Management”) of the Municipal Code of the City of Republic, Missouri, is hereby amended to add new Section 515.130 (“Utility Damage Prevention”) to read as follows:

Title V Building And Construction

Chapter 515 Rights-Of-Way Management

515.130 Utility Damage Prevention

A. Preconstruction Requirements

All contractors performing work that may impact utilities within the City of Republic shall:

1. **Attend bi-weekly preconstruction meetings as scheduled by the City.**
2. **Review and agree to construction specifications set forth in this Chapter and as otherwise provided by the City.**
3. **Obtain all necessary permits and communicate any upcoming projects with the City.**

B. Utility Damage Prevention Measures

1. **Contractors are required to follow all local, state, and federal utility location and excavation laws, including but not limited to obtaining utility locates prior to the commencement of any digging or construction.**
2. **Contractors shall follow the City’s Utility Easement and Right-of-Way (ROW) Construction Specifications, which shall be included as an enforceable part of all construction contracts.**

C. Penalties for Utility Strikes

Contractors that cause preventable damage to utility infrastructure within the City of Republic shall be subject to the following penalties:

1. **First Offense: A fine of \$500.**
2. **Second Offense: A fine of \$1,000.**

3. Third Offense: A fine of \$10,000 and a one-week Stop Work Order, during which the contractor shall cease all work related to the project.

Note: City-funded construction projects shall be exempt from the Stop Work Order penalty, though fines will still apply.

D. Enforcement and Compliance

1. The City's BUILDS Department, Public Works Department, or other appropriate division as determined by the City, shall be responsible for enforcement of this Section.
2. Any preventable utility strike will be investigated by the City, and upon determination that a violation has occurred, the contractor in violation will be subject to a penalty or penalties as set forth in Section C.
3. Contractors who fail to comply with this Section or who fail to pay assessed penalties as they become due may be subject to denial of all future permit requests submitted to the City until such time as those assessed penalties are paid in full.

EXPLANATION: Matter shown above in **bold-face/underlined font** (except for the Title and Chapter titles) is added language. Matter shown above in ~~strikethrough font~~ is deleted language.

Section 3: All other Sections of the Municipal Code of the City of Republic, Missouri, not specifically referenced in this Ordinance shall remain unmodified and in full force and effect.

Section 4: The City Administrator or his/her designee, on behalf of the City, is authorized to take the necessary steps to execute this Ordinance.

Section 5: The WHEREAS clauses are hereby specifically incorporated herein by reference.

Section 6: The provisions of this Ordinance are severable and if any provision hereof is declared invalid, unconstitutional, or unenforceable, such determination shall not affect the validity of the remainder of this Ordinance.

Section 7: This Ordinance shall take effect and be in force from and after its passage as provided by law.

PASSED AND APPROVED at a regular meeting of the City Council of the City of Republic, Missouri, this _____ day of _____, 2024.

Attest:

Eric Franklin, Mayor

Laura Burbridge, City Clerk

Approved as to Form:

A handwritten signature in blue ink, appearing to read 'Megan McCullough', is written over a horizontal line.

Megan McCullough, City Attorney

Final Passage and Vote: