

**AN ORDINANCE OF THE CITY COUNCIL AMENDING TITLE V, CHAPTER 515, SECTIONS 515.010 (“APPLICABILITY; PREEMPTION”), 515.020 (“DEFINITIONS”), 515.050 (“PERMITS REQUIRED; REQUIREMENTS”), 515.090 (“ROW USER RESPONSIBILITIES AND REQUIREMENTS”), AND 515.110 (“INSPECTIONS, STOP WORK ORDERS, APPEALS, AND PENALTIES”) OF THE MUNICIPAL CODE OF THE CITY OF REPUBLIC, MISSOURI**

**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 routinely reviews its Municipal Code to ensure conformity with governing state and federal law, enhance clarity, and eliminate ambiguity, as well as to the further promote the City’s mission, vision and values in the best interests of the City and its citizenship body as a whole; and

**WHEREAS**, in reviewing the Municipal Code consistent with the priorities listed herein above, City staff identified the need to amend the existing code provisions governing right-of-way permitting procedures.

**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 515.010 (“Applicability; Preemption”), Section 515.020 (“Definitions”), Section 515.050 (“Permits Required; Requirements”), Section 515.090 (“ROW User Responsibilities And Requirements”), and Section 515.110 (“Inspections, Stop Work Orders, Appeals, And Penalties”) of the Municipal Code of the City of Republic, Missouri is hereby amended to read as follows:

**Chapter 515 Rights-Of-Way Management**

**515.010 Applicability; Preemption**

- A. Applicability. Except as provided for herein and where limited by applicable law, this Chapter shall apply to all Excavations and use, construction, operation, and Maintenance of Facilities or structures, in the ROW of the City. No Person shall commence or continue with the operation of any Facilities or structures in the ROW except as provided **for** and in compliance with this Chapter. **No ROW user shall be authorized to undertake work within the ROW in any capacity or manner unless and until the ROW user has obtained a valid City of Republic Business License and the required right-of-way permit from the City.** Because numerous types of users and uses of the ROW may be subject to various or changing regulatory schemes under Federal or State law, any such limitation or qualification that may be applicable to less than all users and uses of the ROW are not duplicated herein, but are nevertheless incorporated herein, whenever application is so required by law, including but not limited to applicable provisions of Chapter 67, RSMo., and other applicable State and Federal law.
- B. Construction Specifications. All public improvements including modifications to existing Rights-of-Way and driveways within the City of Republic, or within subdivisions intended to be annexed into the City of Republic, shall be constructed in conformance with the latest edition of the "Construction Specifications for Public Improvements, City of Republic" on file at the offices of

the City or Republic Planning and Development Department and incorporated herein by reference.

- C. Preemption. No provision of this Chapter shall apply to any circumstance in which such application shall be unlawful under superseding Federal or State law and furthermore, if any Section, Subsection, sentence, clause, phrase, or portion of this Chapter is now or in the future superseded or preempted by State or Federal law or found by a court of competent jurisdiction to be unauthorized, such provision shall be automatically interpreted and applied as required by law.

### **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.

#### **DIRECTOR**

The BUILDS Administrator or his/her ~~Public Works Director 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, ~~by means~~through the use of any tools, equipment, **motor vehicles**, or explosives, **including trenchless excavation 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.

**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 in fee simple or otherwise.**

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

#### **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.

#### **515.050 Permit Required; Requirements**

- A. Excavation Permit Required. Except as otherwise provided herein, no ROW User or other Person shall perform Excavation work in the ROW without an Excavation Permit. Any Person desiring to Excavate in the ROW shall first apply for an Excavation Permit, on an application form provided by the City, and submit the application fee and pay all applicable fees to obtain an Excavation Permit, in addition to any other building permit, license, easement, or other authorization required by law, unless such Excavation must be performed on an emergency basis as provided herein. The cost of said Permit shall be set out in Appendix V-1 at the end of Title V. The Director is authorized to draft an application form consistent with the requirements of this Chapter. An Excavation Permit should be obtained for each project unless otherwise provided for in this Chapter. A separate special permit or lease shall be required for Excavation in or use of any real property interest of the City that is not ROW. It shall be unlawful for any Person to perform Excavation work within the City of Republic at any time other than from 6:00 A.M. to ~~6~~**9**:00 P.M. Monday through Friday without prior approval from the City, except in the case of an emergency. No work shall be performed during City holidays, except in the case of an emergency. All Excavation Permits shall expire after sixty (60) days from the date of issuance, unless otherwise specified in the Excavation Permit. An Applicant whose Excavation Permit application has been withdrawn, abandoned or denied for failure to comply with this Chapter shall not be refunded the application fee.
- B. Facilities Maintenance Permit; Exemptions. No Person shall perform Facilities Maintenance in the Rights-of-Way without first obtaining a ~~Facilities Maintenance Permit~~ **Right of way permit** from the Director, except where such Facilities Maintenance is expressly authorized by an existing valid Excavation Permit for the applicable Maintenance location or is exempt herein. In addition to the conditions set forth below, conditions of a Facilities Maintenance Permit shall be

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

1. ROW Users performing routine Maintenance which does not require Excavation, does not substantially disrupt traffic or pedestrians, and requires no more than ~~twelve sixteen~~ (12~~6~~) hours to complete, provided that the Maintenance is performed between the hours of ~~6~~7:00 A.M. and ~~6~~9:00 P.M. **Central Standard Time**;
  2. Emergency situations as more fully described in Subsection (E) below; or
  3. Contractors working on the construction or reconstruction of public improvements and which are operating pursuant to a contract with the City for such construction.
- C. **For any work exceeding two thousand five hundred (2,500) linear feet, the ROW user must meet with the director for a preconstruction conference to discuss means and methods of construction, protection of other ROW users, notification of the public and other concerns implicated by the proposed work.**
- D. ~~C~~. Bulk Permits. The Director shall have the authority to establish procedures for bulk processing of applications and periodic payment of fees.
- E. ~~D~~. Emergencies. In case of an emergency requiring immediate attention to remedy defects, and in order to prevent loss or damage to Persons or property, it shall be sufficient that the Person making such Excavation or performing such Facilities Maintenance obtain the necessary Permit as soon as possible and may proceed without a Permit when such Permit cannot reasonably be obtained before starting such emergency Excavation or Facilities Maintenance. Notice to the City of the emergency shall be provided at the earliest possible time and the appropriate Permit shall be obtained as soon as reasonably possible, and not later than five (5) business days thereafter, or as otherwise directed by the City. In the event the City becomes aware of an emergency requiring Facilities work the City shall attempt to contact a representative of each ROW User affected, or potentially affected, by the emergency work. If no response is received by a particular ROW User to whom contact is attempted, the Director may take whatever action he/she deems necessary to respond to the emergency, the cost of which shall be borne by the Person whose action or inaction occasioned the emergency or by the ROW User if the emergency was occasioned by an act of nature.
- F. ~~E~~. Law Compliance Incorporation. Every Permit issued hereunder shall incorporate the requirements and terms of this Chapter, and all applicable ordinances, to the extent permitted by law. The ROW User shall, to the extent allowed by law, perform such work in accordance with the issued permit, all applicable provisions of this Chapter, any applicable ordinances or regulations that may be adopted by the City. In addition, all ROW Users shall be subject to all technical specifications, design and location criteria, policies, resolutions and ordinances now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power relating to Permits and fees, sidewalk and pavement cuts, Facility location, construction coordination, surface restoration, and other requirements on the use of the Rights-of-Way, including specifically the latest edition of the "Construction Specifications for Public Improvements, City of Republic." A ROW User shall perform all Excavations or Facilities Maintenance in full compliance with all applicable engineering codes adopted or approved by the City, and in accordance with applicable Statutes of the State of Missouri, and the rules and regulations of the PSC, FCC, and any other local, State or Federal agency having jurisdiction over the parties. The ROW User shall comply with the Excavation requirements of Missouri One Call

established by Sections 319.010 et seq., RSMo., as amended. A ROW User shall be responsible for all Excavations or Facilities Maintenance done in the Rights-of-Way on its behalf, regardless of by whom the Excavation or Facilities Maintenance is done.

- G. F. Permit Specific Conditions. The Director may also impose reasonable conditions upon the issuance of a Permit and the performance of Excavation and ROW work in order to protect the public health, safety, and welfare, to ensure the structural integrity of the Rights-of-Way, to protect the property and safety of other users of the Rights-of-Way, and to minimize the disruption, inconvenience and danger to the traveling public, including applicable permit requirements and design, location, appearance, and other reasonable requirements.
- H. ~~G.~~ Above-Ground Facilities. All new Facilities may be located Above-ground only if approved by the City Council for good cause. Unless extraordinary circumstances exist, good cause shall not include authorization for Above-ground Facilities requiring new poles or major modification to existing Above-ground structures. Above-ground pedestals, vaults, cabinets, or other Facilities may be installed only if approved by the City where alternative Underground Facilities are not feasible or where underground requirements are otherwise waived pursuant to the provisions of this Subsection. Existing conduit shall be used where feasible and available. Where reasonable and appropriate and where adequate Rights-of-Way exists, the ROW User shall place Above-ground Facilities underground in conjunction with City capital improvement projects and/or at specific locations requested by the City provided that such placement is practical, efficient, and economically feasible.
- I. ~~H.~~ Use Of Existing Facilities Required; Exceptions. All new Facilities or structures shall collocate on existing structures or within existing conduit, trenches, or other Facilities to minimize unnecessary use of Rights-of-Way space, reduce potential existing or future interference and obstructions, and to reduce the cost to the public or others therefrom, and to maximize the public's ability to use and license appropriate private or public uses of the Rights-of-Way in the public interest (except where preempted by law or where good cause is established as determined by the City applying these objectives). Where existing structures or Facilities are available, or exist at or near the proposed use, unless otherwise approved, the Applicant must either use such Facilities or file a written request verified by the Applicant for exception specifying the specific reasons why such Facilities are not available or feasible to be used and addressing the objectives hereof.
- J. ~~I.~~ Wireless Antennas And Facilities. Pursuant to City authority, including Section 67.1830(f), RSMo., and to properly manage the limited space in the City's Rights-of-Way, minimize obstructions and interference with the use of the Rights-of-Way by the public, and to ensure public safety, preserve property values, and enforce the public policy to maintain neutrality as to ownership of wireless locations, while also seeking to facilitate delivery of broadband technologies to City residents and businesses, wireless Facilities shall be permitted in the Rights-of-Way only in compliance with the requirements applicable to other Facilities and users in the Rights-of-Way, and the additional requirements set forth in this Section for wireless antennas and Facilities. Any wireless Facilities authorized in the ROW shall be only as authorized in a binding approved ROW Use Agreement, pole attachment agreement, or other written authorization with the City and subject to approval, denial, or condition relating to location, design, height, appearance, safety, specifications for use of City structures, and such zoning, building, or other regulations, including specifically Chapter **405**, except as may be limited by law.

1. General Conditions. Any wireless Facility in the ROW shall be subject to conditions

relating to the location (including prohibited or limited locations), design, height, appearance, safety, radio-frequency, and other interference issues as may be lawfully imposed by the City where necessary or appropriate to protect the public, and to conform to policies and interests of the public as may be set forth in special district plans, historic areas, or other policies as may be reasonably adopted by the Director to address changing infrastructure, technology, and uses of the Rights-of-Way and/or City Facilities.

2. Small Wireless Collocation. Any wireless Facility meeting the requirements of a "Fast Track Small Wireless Facility" as defined by Sections 405.885 and 405.905 of the Zoning Code, may be authorized to be located in the Rights-of-Way with approval of the Director subject to the following additional requirements:
  - a. Only one (1) Small Wireless Facility shall be permitted per structure in the ROW;
  - b. No ground equipment shall be authorized;
  - c. No Small Wireless Facility shall be located in a manner which obstructs or causes a safety concern for vehicle or pedestrian traffic; and
  - d. If the proposed structure the Applicant proposes to locate its Small Wireless Facility is not structurally sound, but the Director finds such to be a desired location, the director can require the Applicant to install a new substantially similar structure at its cost.
3. New Structures. Wireless Facilities shall not be permitted in the Rights-of-Way on new structures, provided that if evidence warranting an exception ~~is~~<sup>as</sup> provided by the Applicant pursuant to Section ~~515.050(H)(I)~~, the City Council may grant an exception authorizing a new structure for a wireless Facility if it also determines on a non-discriminatory basis such proposed application is in the public interest in light of the purposes of this Section and Chapter, and provided such use and location has received prior, separate zoning authorization as required by and in compliance with Chapter **405**, to the extent permitted by law. In such circumstances where any new wireless structure application is permitted in the Rights-of-Way, such use shall be subject to reasonable regulations or conditions and including any applicable specifications, compensation, and other terms established by the City in such approval or agreement as necessary or appropriate to preserve the purposes of this Section and Chapter.
4. All Other Wireless In ROW. Any wireless Facility located on an Existing Structure but not meeting the requirements of Subsections ~~(H)(I)(2)~~ or **(3)** above, may be approved, subject to conditions as may be imposed consistent with the purposes of this Section, only upon approval by the Council upon a determination by the Council that such wireless Facility is: (1) in the public interest to provide a needed service to persons within the City, (2) cannot feasibly meet all of the requirements of a "Small Wireless" but varies from such requirements to the minimum extent necessary, (3) does not negatively impact appearance or property values in light of the location, design, and circumstances to be approved, (4) does not create any reasonable safety risk, and (5) complies with all zoning, ROW, and other applicable requirements.
5. Wireless Facility Compensation. Unless otherwise established by the City Council, compensation to the City shall be as follows unless otherwise lawfully provided for in the agreement authorizing such use:
  - a. If the Small Wireless Facility is to be located on a City owned structure, a pole

attachment agreement or other authorization shall be required with terms including insurance, indemnification, and a monthly payment as provided for in the fee schedule found in Section 805.050, per attachment or such other compensation as may be lawfully provided for in such agreement or authorization;

- b. Pursuant to its authority including under Section 67.1830(6)(f), RSMo., and as may be authorized by Section 67.5094(11), RSMo., the ROW User wishing to install Small Wireless Facilities within the Rights-of-Way shall also pay to the City, in addition to the fees herein, a one-time administrative and zoning fee as provided for in the fee schedule found in Section 805.050, per each wireless Antenna installation to partly cover the City's costs and risks, including as may relate to the use of City Rights-of-Way.
6. Application Requirements. Any application including one (1) or more wireless Antennas or Facilities shall include all requirements: (1) for installation of any Facilities in the ROW as set forth in this Chapter, (2) of this Section, and (3) for installation of wireless Antennas and Facilities set forth in the Uniform Wireless Communications Infrastructure Deployment Act (Sections 67.5090, et seq., RSMo.), Zoning Code, and other applicable law including written proof of consent of landowner (copy of the ROW Use Agreement) and of structure owner (document authorizing use of the structure).
- K. ~~J~~. Limited Space. The City shall have the power to prohibit or limit the placement of new or additional equipment or Facilities in the Rights-of-Way if there is insufficient space to accommodate all of the requests of potential ROW Users, based on the public interest, public health and safety, the public's priority needs for the particular service, the condition of the Rights-of-Way, the time of year with respect to essential utilities, the protection of existing equipment, and future plans for City projects in the public interest.
  - L. ~~K~~. Exclusion Of Certain Locations/Facilities. To the extent not prohibited by applicable law, prior to its installation of any Facilities in the Rights-of-Way, and after Applicant provides the City with its proposed plans, the City may, in its discretion, designate certain locations or Facilities in the Rights-of-Way to be excluded from use by the ROW User, including, but not limited to, ornamental or similar specially-designed street lights or other Facilities or locations which, in the reasonable judgment of the Director, do not have electrical service adequate or appropriate for the provider's Facilities, or cannot safely bear the weight or wind loading thereof, or any other Facility or location that in the reasonable judgment of the Director is incompatible with the proposed Facilities, or would be rendered unsafe or unstable by the installation. The Director may further exclude certain other Facilities that have been designated or planned for other use or are not otherwise available for use by the ROW User due to engineering, technological, proprietary, legal, or other limitations or restrictions as may be reasonably determined by the City. In the event such exclusions conflict with the reasonable requirements of the ROW User, the City will cooperate in good faith with the ROW User to attempt to find suitable alternatives, if available, provided that the City shall not be required to incur financial cost nor require the City to acquire new locations for the ROW User.
  - M. ~~L~~. Location, Type, And Design Of Facilities Subject To Approval. The design, location, and nature of all Facilities shall be subject to the review and approval of the Director. Such review shall be on a non-discriminatory basis in application of City policy and approvals shall not be unreasonably withheld. Except as provided herein, all Facilities constructed after the date of this Chapter shall be placed underground, and in conduit, where capable. City height limitations,



applicable zoning restrictions, and general City policies with regard to all users of the Rights-of-Way shall also be applicable to all Facilities. The Director may establish such regulations or policies as may be deemed necessary or appropriate to affect this provision.

- N. ~~M.~~ **Guarantee Of Work.** Every Person to whom an Excavation Permit has been granted or otherwise performed Excavations, shall guarantee for a period of ~~onefour (1)(4)~~ years the restoration of the Rights-of-Way in the area where such Person conducted an Excavation and performed the restoration. Such Person shall guarantee and pay for the restoration of the Rights-of-Way against sagging, buckling, deterioration, and other premature failures of the restoration. 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. All repairs shall be completed within two (2) weeks after the street is cut (not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable) unless a two (2) week time extension is authorized by the Director. In the event the ROW User is required to perform new restoration pursuant to the foregoing guarantee, the Director shall have the authority to extend the guarantee period for such new restoration for up to an additional forty-eight (48) months, or other greater period allowed by law, from the date of the new restoration, if the Director determines there was action by the ROW User not to comply with the conditions of the Excavation Permit and any restoration requirements. The guarantee period shall be applicable to failure of the pavement surface as well as failure below the pavement surface.
- O. ~~N.~~ **Barricades And Lights.**
1. Generally. No person shall make any Excavation in, on, across or adjoining any Rights-of-Way and shall leave such Excavation open and unguarded. Warning devices shall be placed in accordance with the Manual of Uniform Traffic Control Devices.
  2. Removal, Etc. No unauthorized person shall remove, break, or extinguish any lantern or danger Digna 1 which has been placed on any Rights-of-Way to protect persons against accidents.
- P. ~~O.~~ **Limit Number Of ROW Users.** To the extent not prohibited by law, the City may limit the number of users in the Rights-of-Way in a competitively neutral manner, based upon, but not necessarily limited to, specific local considerations such as:
1. The capacity of the Rights-of-Way to accommodate current or future Facilities, public improvements, or public use;
  2. The impact on the community of the volume of Facilities in the Rights-of-Way;
  3. The disruption arising from the use of or numerous Excavations of the Rights-of-Way; or
  4. Any other consideration based upon the interests of the public safety and welfare.
- Q. ~~P.~~ **Interference Control.** The Person performing Excavation shall cause the Excavation to be done with the least possible injury to the pavement, sidewalk, curbing, parkway, or other surface and shall place the materials from the Excavation where they will cause the least possible inconvenience to the public and permit the uninterrupted passage of water along the gutters. The width of the Excavation shall be no greater than is necessary for doing the work. No Person shall open or encumber more of the Rights-of-Way than is reasonably necessary to complete the Excavation or ROW Work in the most expeditious manner or allow an Excavation to remain open longer than is necessary to complete the work.

- R. ~~Q.~~ Erosion Control. Before new Excavation or construction is commenced and until sodding, planting, concreting, paving, or other final surfacing is in place, which will avoid washing or spreading of dirt and mud onto other property, sidewalks, curbs, gutters, streets, and the Rights-of-Way, the Person performing Excavation shall erect and maintain approved temporary erosion control measures to prevent such washing or spreading of materials. At the end of each day and as required throughout the day during the course of Excavating or construction, dirt and mud on the sidewalks, curbs, gutters, streets, and the Rights-of-Way resulting from work must be removed.
- S. ~~R.~~ Mapping Of Facilities. Upon completion of the ROW work involving installation of new Facilities, the ROW User shall supply the City copies of as-built and detailed maps showing the exact location of Facilities installed in the ROW.

### **515.090 ROW User Responsibilities And Requirements**

- A. Insurance; Exceptions. Except as provided in this Section, each ROW User shall provide, at its sole expense, and maintain during the term of any ROW Use Agreement or Franchise or anytime the ROW User has Facilities in the ROW, commercial general liability insurance with a reputable, qualified, and financially sound company licensed to do business in the State of Missouri, and unless otherwise approved by the City, with a rating by Best of not less than "A," that shall protect the ROW User, the City, and the City's officials, officers, and employees from claims which may arise from such use of the ROW, whether such operations are by the ROW User, its officers, directors, employees and agents, or any contractors or subcontractors of the ROW User. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from all ROW User operations, products, services or use of automobiles, or construction equipment. The amount of insurance for single limit coverage applying to bodily and personal injury and property damage shall be in no event less than the individual and combined sovereign immunity limits established by Section 537.610, RSMo., for political subdivisions; provided that nothing herein shall be deemed to waive the City's sovereign immunity. An endorsement which states that the City as an additional insured with full and equivalent coverage as the insured under the insured's policy and stating that the policy shall not be cancelled or materially modified so as to be out of compliance with the requirements of this Section, or not renewed without thirty (30) days' advance written notice of such event being given to the Director, along with copies of the policy and all other documentation, shall be provided. If the Person is self-insured, it shall provide the City proof of compliance regarding its ability to self-insure and proof of its ability to provide coverage in the above amounts. Any self-insurance or deductible above fifty thousand dollars (\$50,000-~~00~~) must be declared to and pre-approved by the City. The insurance requirements in this Section or otherwise shall not apply to a ROW User to the extent and for such period as the ROW User is exempted from such requirements pursuant to Section 67.1830(6)(a), RSMo., and has on file with the City Clerk an affidavit certifying that ROW User has twenty-five million dollars (\$25,000,000-~~00~~) in net assets and is otherwise therefore so exempted unless otherwise provided by a ROW Use Agreement or Franchise. The City reserves the right to waive any and all requirements under this Section when deemed to be in the public interest.
- B. Performance Bond; Exceptions. Except as otherwise may be required by law for ROW Users who have on file with the City Clerk an affidavit certifying that the ROW User has twenty-five million dollars (\$25,000,000-~~00~~) in net assets and is otherwise therefore so exempted, the Person shall at all times during the term of the Excavation Permit, and for ~~onefour~~ **(1)4** years thereafter,

maintain a performance and maintenance bond in a form approved by the City Attorney. The amount of the bond shall be ~~ten twenty-five~~ thousand dollars (~~\$2510,000.00~~) or the value of the restoration as determined by the Director, whichever is greater, conditioned upon the Person's faithful performance of the provisions, terms, and conditions conferred by this Chapter. Unless otherwise established in the Excavation Permit, an annual bond in an amount of one hundred thousand dollars (~~\$100,000.00~~) automatically renewed yearly during this period shall satisfy the requirement of this Section. The City shall be entitled to recover under the terms of such bond the full amount of any loss and damage occasioned from violation of the Excavation Permit or provisions of this Chapter. Copies of the performance bond and all other documentation demonstrating compliance with this requirement shall be provided to the City to be on file with the City Clerk.

- C. Indemnification. Every ROW User, as a condition of use of the Rights-of-Way, shall at its sole cost and expense fully indemnify, protect, defend (with counsel acceptable to the City) and hold harmless the City, its municipal officials, officers, employees and agents, from and against any and all claims, demands, suits, proceedings, and actions, liability and judgment by other Persons for damages, losses, costs, and expenses, including attorney fees, arising, directly or indirectly, in whole or in part, from the action or inaction of the ROW User, its agents, representatives, employees, contractors, subcontractors or any other Person for whose acts the ROW User may be liable, in constructing, operating, maintaining, repairing, restoring or removing Facilities, or use of the Rights-of-Way or the activities performed, or failed to be performed, by the ROW User under this Chapter or applicable law, or otherwise, except to the extent arising from or caused by the sole or gross negligence or willful misconduct of the City, its elected officials, officers, employees, agents or contractors. Nothing herein shall be deemed to prevent the City, or any agent from participating in the defense of any litigation by their own counsel at their own expense. Such participation shall not, under any circumstances, relieve the Person from the duty to defend against liability or its duty to pay any judgment entered against the City or its agents. This indemnification shall survive the expiration or termination of any ROW Use Agreement, Franchise, License, Permit, or other authorization for a period of five (5) years after the effective date of expiration or termination.
- D. ROW User Responsible For Costs. The ROW User shall be responsible for all reasonable costs borne by the City that are directly associated with ROW User's installation, Maintenance, repair, operation, use, and replacement of its Facilities in the Rights-of-Way that are not otherwise accounted for as part of the Permit fee established pursuant to this Chapter, to the extent permitted by law. All such costs shall be itemized and the City's books and records related to these costs shall be made available upon request of the ROW User.
- E. Maintenance Of Facilities. Each Row User shall maintain its Facilities in good and safe condition and in a manner that complies with all applicable Federal, State, and local requirements.
- F. Tree And Landscape Protection. Unless otherwise approved in writing by the City, a ROW User shall neither remove, cut, nor damage any trees or other landscaping, or their roots, in and along the ROW and public places of the City. Tree trimming and landscape pruning may be permitted to occur only after prior written notice to the City of the extent of trimming and pruning to be performed and the prior written approval thereof by the City. The type and extent of trimming and pruning shall be in accordance with the requirements of the City. In the event the Person severely disturbs or damages any tree or other landscaping in the Rights-of-Way to the detriment of its health and safety, the Person shall be required to remove and replace such of like size at the Person's cost. The location, size, and species of any replacement landscaping shall

be as approved by the Director, unless the Director approves an equivalent monetary payment in lieu of replanting. In reviewing any Permit application, the City may require the Applicant to directionally bore around or otherwise avoid disturbance to any tree or landscaping, existing Facility, or other protected area in the Rights-of-Way.

- G. Zoning, Safety, And Building Code Compliance. ROW Users shall at all times be subject to the lawful exercise of the police powers of the City, including but not limited to all police powers regarding zoning, supervision of the restoration of the Rights-of-Way, building and safety regulations, and control of the Rights-of-Way. Installation of all Facilities in the Rights-of-Way are subject to and must be in compliance with all zoning and safety and building code requirements. For applications for installation of any Facility in the Rights-of-Way: (1) the most restrictive adjacent underlying zoning district classification shall apply unless otherwise specifically zoned and designated on the official zoning map, and (2) no application shall be submitted for approval without attaching the City's consent to use the Rights-of-Way for the specific construction application in accordance with Chapter 67, RSMo. No action or omission of the City shall operate as a future waiver of any rights of the City under this Chapter. Except where rights are expressly granted or waived by a Permit, they are reserved, whether or not expressly enumerated.
- H. Law Compliance. Each ROW User shall comply with all applicable Federal and State laws and regulations and rules as well as all City ordinances, resolutions, rules, and regulations heretofore and hereafter adopted or established.
- I. No Cause Of Action Against The City. A ROW User shall have no damages remedy or monetary recourse whatsoever against the City for any loss, cost, expense, or damage arising from any of the provisions or requirements of any ROW Use Agreement or Franchise, or because of the enforcement thereof by said City, or from the use of the Rights-of-Way. Nothing herein shall preclude the ROW User from seeking injunctive or declaratory judgment relief against the City where such relief is otherwise available and the requirements therefor are otherwise satisfied.
- J. Responsible For Subcontractors. If Excavation or Facilities Maintenance is being done for the ROW User by another Person, a subcontractor or otherwise, the ROW User shall be responsible for ensuring that the Excavation or Facilities Maintenance of said Person is performed consistent with its Permit and applicable law (including that the contractor shall be properly licensed under the State of Missouri and local ordinances) and shall be responsible for promptly correcting acts or omissions by said Person.
- K. **All earth, materials, sidewalks, paving, crossings, utilities, other public improvements, public facilities 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 City. Upon determination by the Director, that such repair or replacement is a public safety matter, all such repair or replacement shall be corrected within twenty-four (24) hours of notice from the City. The Director may direct the City, or the City's contractors or authorized agents, to make such repair or replacement and bill the ROW user for the City's costs incurred in connection with the repair or replacement. The Director has the authority to inspect the repair or replacement upon completion, and if necessary, to require the ROW user to perform any additional repairs or work as deemed necessary by the Director.**

#### **515.110 Inspections, Stop Work Orders, Appeals, And Penalties**

- A. Inspections. All ROW work and Facilities shall be subject to inspection by the City and the supervision of all Federal, State, and local authorities having jurisdiction in such matters to

ensure compliance with all applicable laws, ordinances, departmental rules and regulations, and the ROW Permit.

- B. Stop Work Orders. The Director shall have full access to all portions of the ROW work and may issue stop work orders and corrective orders to prevent unauthorized work or substandard work as established herein. Except in cases of an emergency or with approval of the Director, no ROW work may be done in violation of a stop work order issued by the Director. Such orders:
  - 1. May be delivered in person to the ROW User or person in charge of construction site. ~~personally or by~~ If ROW user is not on site, notification shall be sent via certified mail to the address(es) listed on the application for the ROW Permit or the Person in charge of the construction site at the time of delivery;
  - ~~2. Shall state that substandard work or work not authorized by the ROW Permit is being carried out, summarize the substandard or unauthorized work, and provide notice that no additional work may be done except to rectify substandard work, or damage resulting from work a period of no longer than thirty (30) days to cure the problem, which cure period may be immediate if certain activities must be stopped to protect the public safety; and~~
  - 2. ~~3.~~ May be enforced by equitable action in Circuit Court and in such case the Person responsible for the substandard or unauthorized work shall be liable for all costs and expenses incurred by the City in enforcing such orders, including reasonable attorneys' fees, in addition to any and all penalties established in this Chapter.
- C. Appeals. Unless otherwise required by law, the review procedures set forth in Chapter **430** shall govern appeals by an aggrieved Person of a final action of the Director or any other City official, officer, Council, Board, or commission that are claimed by an aggrieved Person to be unlawful or an unconstitutional taking of property without compensation. To the fullest extent permitted by law, the review procedures of Article VIII shall be exhausted before any action may be filed in any court against the City or its officers, employees, boards, officials or commissions.
- D. Violations; Penalties. In addition to any other penalties and remedies for violations that may exist in law or equity, any Person that violates any provision of this Chapter shall be subject to such penalties as set forth in Section **100.220** of the City Code per day for each and every day the violation exists or continues.

EXPLANATION(S) - Matter in underlined type in the above is added language. Matter in ~~strikethrough~~ in the above is deleted.

- Section 2:** 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 3:** The City Administrator or his/her designee, on behalf of the City, is authorized to take the necessary steps to execute this Ordinance.
- Section 4:** The WHEREAS clauses above are specifically incorporated herein by reference.

**Section 5:** The provisions of this Ordinance are severable, and if any provisions hereof are declared invalid, unconstitutional, or unenforceable, such determination shall not affect the validity of the remainder of this Ordinance.

**Section 6:** 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 \_\_\_\_\_, 2023.

**Attest:**

\_\_\_\_\_  
Matt Russell, Mayor

\_\_\_\_\_  
Laura Burbridge, City Clerk

**Approved as to Form:**

  
\_\_\_\_\_

Megan McCullough, City Attorney

**Final Passage and Vote:**