

## **CHAPTER 10. PUBLIC WAYS AND PLACES**

### **Article I. Street Naming and Numbering**

#### **Section 10.010. Street Naming.**

When a plat of a new subdivision is presented for approval, containing the name of a new street which is a duplicate of the name of an existing street, or where similar names which sound alike exist in the City, the City Council may require that such new street be renamed, and may withhold approval of the plat pending compliance.

#### **Section 10.020. Street Numbering System.**

The number of every building fronting on a public street in Webster Groves shall conform with the following rules:

- a. The odd numbers shall apply to the north and west sides of the streets and the even numbers shall apply to the south and east sides of the streets.
- b. On all streets running north and south, the numbering shall commence with number one, at Lockwood Avenue, and shall increase north and south at the rate of one hundred for each block.
- c. On all streets, running east and west, the numbering shall commence with number one, at Elm Avenue, and shall increase east and west at the rate of one hundred numbers for each block, except that this requirement shall not apply to any property facing United States Highway #66 or Big Bend Boulevard, the numbering thereon to be in accordance with the numbers adopted by the United States Post Office Department.
- d. One number shall be allowed for each twenty-five (25) feet of ground.
- e. The owner or occupant of every structure situated within the City limits shall display the officially designated street number in such manner as to make said number clearly observable from the street on which the structure fronts.

#### **Section 10.030. Certification of Street Numbers.**

The Director of Public Works shall make plats showing the numbers for all property in this City, and shall file same with the City Clerk. The City Clerk shall furnish any person owning or occupying a house with the information necessary for placing a number on his house, giving in each a certificate of the number properly applicable to it. All numbering shall be done strictly in conformity with the directions of the City Clerk.

#### **Section 10.040. Penalty for Violation.**

Every person owning or occupying a house shall number his house in conformity with the provisions of this article, and any person who numbers or attempts to number a house otherwise, or who fails to change his number, if wrong, upon notification by the City Clerk, will be subject to a fine of not less than One Dollar (\$1.00) or more than Ten Dollars (\$10.00).

**Article II. Excavations**

**Section 10.110. Permit Required.**

No person shall make or cause to be made any excavation in any public way or place without first obtaining a permit from the City Engineer as hereinafter provided, except public work done under the authority of the Council by the employees of the City, and except as otherwise provided in emergency cases. All work done by the employees of the Metropolitan St. Louis Sewer District shall be immune from the requirements of this article regarding the payment of fees and submission of approved insurance policies. Each excavation shall require a separate permit for which a fee of Fifty Dollars (\$50.00) shall be paid. If excavation is commenced prior to obtaining a permit as required above, the fee for obtaining a permit shall be One Hundred Dollars (\$100.00). All excavation work shall cease unless and until a permit is issued. Permits shall expire without further action by the City at 12:00 a.m. midnight of the ninetieth (90th) day after the date of issuance.

**Section 10.120. Application for Permit.**

- a. Application for an excavation permit shall be made in person to the City and application shall provide information regarding the purpose, location and size of the proposed excavation and the approximate time when the excavation work will be commenced. Before any permit is issued, the applicant shall furnish proof of adequate insurance and protection to the City against all claims for damage arising from the performance of the work, and shall deposit with the City an estimate of the cost to repay the City for its cost of backfilling and pavement restoration or inspection.
- b. The deposit will be as follows:
  - 1. Excavation through sod and sidewalks - \$150.00
  - 2. Excavation through asphalt street-small (150 cubic feet or less) - \$600.00
  - 3. Excavation through asphalt street-large (more than 150 cubic feet) - \$1,000.00
  - 4. Excavation through concrete street - \$1,400.00 per slab
  - 5. The deposit will be based upon the above guidelines, or based upon the location, purpose, extent of work, and/or previous experience with the contractor. The minimum deposit shall be One Hundred and Fifty Dollars (\$150.00). At the discretion of the Director of Public Works, or his authorized representative, a maximum deposit not to exceed Five Thousand Dollars (\$5,000.00) shall be collected.

The security deposit, or the balance thereof, if any, shall be refunded upon certification that the applicant has not and no longer intends to engage in any activity related to excavation in a public way or place in the City or has completed the excavation work to the satisfaction of the City Engineer, and after payment of all amounts due to the City for

permits issued or services performed by the City in securing compliance by the applicant with the provisions of this article.

Any public utility company that is regulated by the Missouri Public Service Commission having occasion to make frequent excavations in any public place, street, highway, walkway, alley, right-of-way or easement in the City of Webster Groves, who shall make any such excavation using their own employees may elect to not pay the required permit fee each time application for the same is made, nor the estimated cost for the backfilling and inspection, but may be billed on a monthly basis for such fees and costs. (Ord. No. 8791, § 1, 3-19-13).

**Section 10.130. Safety Precautions.**

In the making of excavations in any public way or place, the excavated material from the trenches must be placed where they will cause the least possible inconvenience to the public. In such locations excavated materials are to be removed from the site of the work as soon as practicable after the excavation is made and no such material unduly allowed to accumulate on the site. The width of excavation must be no greater than is necessary for doing the work, and sheathing and bracing must be used as necessary, to keep the sides of the trench vertical and to prevent caving. Adequate provision for proper drainage of the areas surrounding the work must be maintained at all times and provisions must be incorporated to prevent erosion of the excavation site.

All excavations must be made in such manner as not to inconvenience or interfere with the public use or travel upon the public ways or places when possible. When such use is unavoidably obstructed, the person making such excavation must exercise all reasonable dispatch in progressing the work so that the public use will not be obstructed beyond a reasonable time. Where an excavation is made entirely across a public highway, and adequate detour for traffic is not available, substantial driveway must be maintained across such excavation until such excavation is refilled. Any excavation left open overnight on any arterial or collector type street shall be securely covered. The permittee assumes the sole responsibility for maintaining proper barricades, plates, safety fencing and/or lights as required from the time of opening of the excavation until the excavation is surfaced and opened for travel. Detours may not be established except on special permit from the City Engineer, and then only after notice to the Fire Department and Police Department of the City. Any public ways or place disturbed, interfered with or injured in making any excavation must be restored, replaced and repaired to as good condition as it was before such excavation was made.

In the event the permittee severely disturbs or damages the root structure of any tree in the right-of-way to the detriment of the health or safety of the tree, the permittee will be required to remove and replace the tree at the permittee's expense. Further, in review of the permittee's plan, the City Engineer, at his discretion, may require the permittee to directionally bore around any tree in the public right-of-way.

Every person who makes or causes to be made any excavation in or adjoining any public way or place shall provide, erect and maintain at all times along the line of work all such barricades, signs, lights, and warning signals in accordance with the Manual on Uniform Traffic Control Devices, Part 6, Temporary Traffic Control; and as may be necessary to protect the public from the hazards arising from the operation.

**Section 10.135. Pavement Removal and Excavation.**

The initial cut in a street pavement shall be equal to the width of the trench with the option of being jack hammered or saw cut. The final cut in an asphaltic concrete street pavement shall be one (1) foot wider than the trench width and shall be made only by saw cutting of the pavement.

For cuts in concrete paved streets, concrete pavement replacement shall be full slab length (joint-to-joint) and full slab width (curb or gutter to street centerline) unless specifically authorized otherwise by the City Engineer.

Utilities installed in the public right-of-way shall be located to a depth such that the minimum distance from the top surface of the installed pipe, conduit, or duct to the finished surface grade shall not be less than the following, unless specifically authorized by the City Engineer:

- a. Thirty-six (36) inches under paved streets and alleys; or
- b. Twenty-four (24) inches under sidewalks and other public rights-of-way.

**Section 10.140. Granular Backfilling Required.**

Excavations made in or under the street, walk or driveway pavements shall be backfilled with granular material thoroughly compacted into place, and the pavement surface restored to its original condition.

Substitution may be made for granular backfill only with specified approval of the City Engineer in each instance.

**Section 10.145. Composition of Granular Materials.**

Approved granular backfill material shall conform to Type I aggregate base material as per St. Louis County Standard Specifications for Highway Construction. Other materials may be used only with the approval of the City Engineer. The maximum size of aggregate used shall not exceed one inch. Backfill shall be placed in horizontal layers no greater in final thickness than twelve (12) inches and shall be densified by mechanical tamping in accordance with City standards.

Compaction tests of the backfill may be required at the discretion of the City Engineer. All costs related to these tests shall be borne by the permittee when such tests are required. If the results of these tests indicate that compaction of the backfill does not meet the specified requirements, the backfill shall be excavated, replaced, compacted and retested at the expense of the permittee.

**Section 10.150. Earth Backfill for Parkways.**

Excavations in parkways, outside of the paved area of streets, driveways or walks, may be backfilled with earth and all grassed areas returned to their original condition. Earth backfill is to be placed and compacted in lifts not over six (6) inches in initial thickness with pneumatic tamping at air pressure of at least eighty (80) p.s.i. on the surface of

each lift a minimum of ten (10) seconds per square foot of area on all portions of the lift. As soon as the excavation has been backfilled, all excess excavated materials shall be removed from the area and disposed of. If granular fill is used, the granular fill shall not come closer to the surface than twelve (12) inches and shall be placed in accord with Section 10.145 above. The top twelve (12) inches of the fill shall be made as outlined above, with the shallower soil removed from the excavation.

**Section 10.160. Performance of Backfilling and Repaving; Inspection.**

The work of placing and compacting granular backfill and repaving excavated areas in paved streets and walks is to be performed by the Street Division of the City of Webster Groves at the sole cost of the person, firm or corporation making the excavation. Authorized contractors, subcontractors, and utility companies engaged in the construction, replacement, or repair of utility lines in paved areas shall be required to perform granular backfill and repaving operations as part of the construction or placement project.

In the restoration of paved areas (including any street constructed with a soil-cement base), the paved surface shall be the same as those which were removed, and such replacement shall be accomplished in compliance with the requirements of the City Engineer or his authorized representative.

In concrete paved streets, concrete pavement replacement shall be twelve (12) inches thick for streets classified as arterials and collector streets and eight (8) inches thick for streets classified as local (residential) streets or alleys. In asphalt paved streets, a concrete cap, of thickness as stated above, shall be installed on top of the granular backfill and shelved a minimum of six (6) inches into undisturbed soil on each side of the excavation and topped with a two (2) inch thick course of asphaltic concrete overlay.

Utility companies, their contractors, and other contractors allowed by the City to backfill and repave their excavations shall guarantee their work and shall maintain it for twenty-four (24) months following its completion. During the twenty-four (24) month period, should the backfill and final paving settle in excess of one-half (1/2) inch over any one (1) square foot segment of paved area, upon notification by the City Engineer, the utility company or contractor shall repair the defect to the satisfaction of the City Engineer at no cost to the City.

**Section 10.165. Notification for Backfilling.**

Any person who desires backfill to be made by the City must notify the City Engineer not later than 3:00 p.m. of the day before the work is to be done in order to properly coordinate the work.

**Section 10.170. Computation of Costs.**

The approximate cost of granular backfill and repaving operations to be performed by the street division of the City for the person desiring to make an excavation under or through any public way or place will be determined by a schedule of reimbursement rates prepared and periodically updated by the City Manager or his designee and based primarily on the costs to the City to complete the work.

Upon completion of the backfilling and repaving by the Street Division a final estimate of the actual quantities of work done will be prepared by the City Engineer based on the schedule of reimbursement rates; if such final estimate is less than the original deposit, refund will be made; if it is greater, a charge will be made for the balance and no subsequent excavation permit will be issued to any permittee who has payments due and owing the City until such balance has been paid.

**Section 10.180. Liability Insurance Required.**

Every applicant for an excavation permit shall provide to the City proof that the applicant is maintaining liability insurance in the sum stated below, insuring against any injuries or damages received or sustained by any person, persons, or property on account of the excavation work or on account of or in consequence of any neglect in safeguarding the work. Such insurance must be carried in a firm or corporation that has been licensed or permitted to carry on such business in the State of Missouri, and must be kept continuously in force as long as the excavation work is in process. An Insurance Certificate must be filed with the City, along with the Certificate of the Insurer that the policy is in full force and effect and that said insurance will not be altered, amended, terminated or ended without notice having been given to the City.

If the applicant is a commercial contractor, the required insurance shall be in at least the amount of Five Hundred Thousand Dollars (\$500,000.00) general liability per occurrence.

In lieu of such insurance, the applicant may deposit a corporate or other surety bond in the sum of the amount of liability insurance required under this Section 10.180, conditioned that he/she will pay any judgment recovered by any person or persons injured or any property damage incurred, on account of the excavation work or on account of or in consequence of any neglect in safeguarding the work. In the event any such insurance policy lapses and is not immediately renewed or any such bond terminates in any manner whatsoever and a substitute in lieu thereof is not deposited, the permit for the excavation shall be revoked immediately. (Ord. No. 7421, § 10, 3-3-87).

If the applicant is the owner or occupant of the property intending to do the excavation himself/herself, proof of insurance is not required.

**Section 10.185. Emergency Excavations.**

In case of an emergency where the public health or safety is endangered and the office of the City Engineer is not open, the provisions of this Chapter relating to the issuance of permits prior to commencement of work of excavation shall not apply. In such case, the person making the excavation shall notify the Police Department of the City that emergency work is being commenced and the location thereof, and the work may proceed immediately following the procedures hereinabove provided for backfilling; provided however, final surfacing or temporary patches shall not be applied to the excavation until such time as the City Engineer has inspected and approved the backfill and issued a permit therefor. Application for the permit shall be made on the first day on which the office of the City Engineer is open after the work is commenced.

**Section 10.190. Penalty for Violation.**

Any person violating any of the provisions of this article shall be subject to a fine of not less than Two Hundred Dollars (\$200.00) or more than One Thousand Dollars (\$1,000.00) for each offense. (Ord. No. 8316, § 1, 12-3-02)

**Article III. Obstruction of Streets and Public Ways**

**Section 10.210. Obstructions Prohibited.**

No person may stand or walk upon, or congregate with others upon or put, place, or throw, or cause to be put, placed, or thrown upon any public way or place any article whatever so as to obstruct or impede travel, or interfere with the full and free use by the public thereof, provided that any merchant, mechanic or other person may receive upon the streets, avenues, alleys, or sidewalks his goods, wares, and merchandise or other articles and things necessary for his use, if in so doing he interferes as little and for as short a time as is possible, under the circumstances with the use of the streets, avenues, alleys and sidewalks; provided further, the Director of Public Works may grant the right to use and occupy not more than one-half (1/2) of any sidewalk, street, avenue or alley for a reasonable time for building purposes.

**Section 10.215. Overhanging Branches, Dangerous Trees.**

Every owner of property shall remove every branch of a tree or shrub overhanging the sidewalk or street to a height of nine feet above the sidewalk or street, and shall remove any tree or other object which is a source of danger to persons using the sidewalk or public highway, and shall remove all dead limbs of trees that overhang the property of others.

**Section 10.220. Overhanging Structures; Permit Required.**

No person may erect or cause to be erected any structure, except a canvas awning, which projects over a public way or attach or cause to be attached any stationary awning, canopy, marquise, bridge, or overhead passageway to any building which shall project over a public way, unless a permit therefor has been issued by the Building Commissioner in accordance with the Building Code. No permit may be issued for a structure of which any part or any attachment is less than eleven (11) feet above the surface of the roadway part of the public highway or less than nine (9) feet above the sidewalk area of such highway, or of which any part or any attachment extends closer than two (2) feet to the curb line, or for a structure of which any support, pier or pillar rests in or upon any part of the public way, or for a structure erected of any material other than fireproof material.

**Section 10.225. Hoisting Over Public Ways.**

No person may hoist on the outside of any building or over any public way or place any merchandise, grain, building material, machinery, or other article, the fall of which would endanger the safety of passers-by.

**Section 10.230. Barbed Wire Fences.**

No person may erect or maintain, or permit to be erected or maintained, along the line of any sidewalk upon any street or highway, bounding any lot or premises owned or occupied by him, any fence composed wholly or in part of barbed wire.

**Section 10.235. Warning of Obstruction.**

Any person who occupies or causes to be occupied any portion of any public street, alley, highway or public place with building materials, wagons, rock, steam rollers, plows or any other obstruction of any character whatever, shall cause one red light to be securely and conspicuously placed on or near such obstruction, and for any obstruction extending more than ten (10) feet and less than fifty (50) feet, shall place two (2) red lights, one (1) at each end, and one (1) red light for each additional fifty (50) feet, or part thereof, and shall keep all such lights burning during the entire night.

**Section 10.250. Removal of Obstruction.**

When any obstruction or other matter is found contrary to any provision hereof, the Director of Public Works shall cause the City Marshal to notify the person or persons by whom the same was placed or is maintained forthwith to remove it. Upon receiving such a notice, the person notified shall remove forthwith the obstruction, and in default of such removal, the Marshal may remove the obstruction and report the expense to the City Attorney, who shall thereupon bring suit against such person or persons, in the name of the City as plaintiff, for the recovery of such sum and a reasonable attorney's fee and costs. Any offender will be liable for the expense of such removal, in addition to the penalties otherwise provided.

**Section 10.255. Penalty for Violation.**

Any person who causes or permits any damage to or obstruction of, or interferes with the use of, any public way or place in violation of any provision of this article will be subject to a fine of not less than five (5) or more than One Hundred Dollars (\$100.00).

**Article IV. Tree and Landscape Ordinance**

**Section 10.300. Title.**

This ordinance shall be known and may be cited as the "Webster Groves Tree Preservation and Landscape Ordinance" of the City of Webster Groves, Missouri.

**Section 10.305. Purpose and Intent.**

- a. **Purpose.** It is the purpose of this Ordinance to promote and protect the public health, safety, and general welfare by providing for the regulation of the planting, protection, maintenance, and removal of trees, shrubs, and other plants within the City of Webster Groves, Missouri.



- b. **Intent.** It is the intent of the City Council of the City of Webster Groves that the terms of this Ordinance shall be construed so as to promote:
1. The planting, maintenance, restoration, protection, preservation, and survival of desirable trees, shrubs, and other plants within the City, and
  2. The protection of community residents from personal injury and property damage, and the protection of the City of Webster Groves from property damage, caused or threatened by the improper planting, pruning, maintenance, or removal of trees, shrubs, or other plants located within the community, and
  3. Establish minimum standards for the provision, installation, maintenance, and removal of landscape plantings in order to achieve a healthy, visually pleasing, and safe community.

**Section 10.310. Definitions.**

In the following list of terms, the definitions provided shall be used throughout this ordinance:

**“Adjusted Diameter”** The actual diameter of a tree measured at 4 feet above ground multiplied by the tree’s condition factor. For example, if a tree has a diameter of 32 inches in diameter and is in relatively poor health with a condition rating of 40%, its adjusted diameter is 12.8 inches.

**“Annual License”** A license required by commercial tree companies that plan to prune, remove, or apply pesticides to trees over 8” in diameter on private property or prune or apply pesticides to trees on public property in the City of Webster Groves. An Annual License shall be obtained from the Department of Finance, for a fee, upon showing proof of liability insurance in the amount of \$500,000 and worker’s compensation insurance as required by state law.

**“Buffer, perimeter landscape”** A continuous area of land set aside along the perimeter of a lot in which plant materials may be used to provide a transition between, and to reduce the environmental, aesthetic, and other impacts of one (1) type of land use upon another.

**“Canopy tree”** A self-supporting woody plant or species normally growing in the St. Louis metropolitan area to a mature height of not less than twenty (20) feet and a mature spread of not less than fifteen (15) feet.

**“Cultivar”** An assemblage of cultivated plants which is clearly distinguished by any characters (morphological, physiological, cytological or chemical) and which, when reproduced (sexually or asexually), retains its distinguishing characteristics.

**“Cultivated landscape area”** Planted areas that receive routine maintenance, such as mowing, irrigating, pruning, fertilizing, and similar routine maintenance, so as to ensure healthy plants and a well-kept appearance.

**“Caliper”** The diameter of a tree measured at four feet (4’) above ground.

**“City Council”** The City Council of the City of Webster Groves, Missouri.

**“City right-of-way”** Property within the City limits of the City of Webster Groves, Missouri impliedly or expressly dedicated to the public for present or future use for purposes of vehicular or pedestrian traffic.

**“Clearcut”** A practice in which most or all trees on a parcel or development area are cut down regardless of tree size, condition, or development plans for the site.

**“Condition Factor”** A numerical expression of a tree’s condition. Typically expressed as a percentage from zero (a dead tree) to 100 (a perfectly healthy tree). The International Society of Arboriculture describes the condition rating process in the manual “Guide for Plant Appraisal”, published.

**“Construction Site”** Any portion of property, including the public rights-of-way, within the City of Webster Groves where demolition, construction, grading, or excavation activity of any kind occurs for work performed under a building, excavation, grading, or demolition permit related to construction or expansion of a primary or accessory building. The Construction Site is defined by a Limit of Disturbance line shown on a Tree Preservation Plan and corresponding fencing placed on the construction site. The Limit of Disturbance line shall also be shown on the Site Plan for a set of construction drawings for the project.

**“Container”** A planting container that shall be of sufficient size to support and sustain plant material and shall be not less than twenty-four (24) inches in depth and thirty (30) inches in diameter, inside dimensions.

**“Deciduous tree”** Canopy deciduous trees planted to satisfy the standards of this Section shall have a minimum diameter of three (3) inches, measured at a point that is at least four feet (4’) above ground level.

**“Diameter (DBH)”** The diameter of a tree at breast height, which shall be measured at 4 feet above ground.

**“Directional Pruning”** Directional, or target pruning, involves removing only those limbs that will come in contact with energized conductors. This reduces the number of times the tree must be pruned and directs growth away from the power lines, thus allowing the tree to achieve its natural height and shape.

**“Director of Planning and Development”** The Director of the Department of Planning and Development of the City of Webster Groves, Missouri, or his or her designee.

**“Director of Public Works”** The Director of the Department of Public Works of the City of Webster Groves or the director’s designated representatives.

**“Evergreen tree”** A tree that retains some or most of its leaves or needles throughout the year.

**“Frontage”** Plantings along the streets or within any open space directly accessible from the street.

**“Green Space Advisory Commission”** A City Council appointed group of citizen volunteers that provides advice and consultation to the City on any matter pertaining to the Webster Groves Tree Preservation and Landscape Ordinance and to its enforcement (see Section 10.315 of this ordinance.)

**“Ground cover”** Plants, other than turf grass, normally reaching an average maximum height of not more than twenty-four (24) inches at maturity.

**“Irrigation system”** A permanent, artificial watering system installed below grade designed to transport and distribute controlled amounts of water to plants.

**“Landmark Trees”** A tree in fair or better condition, which equals or exceeds the diameter sizes as follows:

Large hardwoods (oaks, hickories, etc.) – 24” DBH;

Large softwoods (pines, spruces, etc.) – 20” DBH;

A tree in “fair or better” condition is defined as a tree having a normal life expectancy, a relatively sound and solid trunk with no extensive decay, no more than one major and several minor dead limb (hardwoods only), and no major insect or disease problems. A lesser-sized tree can be considered a landmark tree if it is a rare or unusual species, of exceptional quality, or of historical significance.

**“Landscape plantings”** Any combination of cultivated and planned living plants (excluding turf grass), such as ground cover, shrubs, vines, hedges, or trees.

**“Landscape Permit”** A permit issued by the Director of Public Works to plant, remove, excavate, or otherwise disturb any tree, shrub, or landscaping on any public right-of-way. No person shall be required to obtain a Landscape Permit from the City for the routine mowing of grass on public right-of-way. Only the City may remove any tree or shrub within the public rights-of-way without a Landscape Permit as provided in Section 10.325.

**“Limit of Disturbance”** A line as shown on the site plan and Tree Preservation Plan that identifies the limit of construction, demolition, grading, or excavation activity of any kind. This line will typically delineate the Tree Preservation Area.

**“Maintenance”** Any measure considered vital or beneficial to the proper care and cultivation of any tree, shrub, or other plant material, or considered necessary to abate nuisances. This includes pruning, irrigating, fertilizing, spraying or otherwise applying pesticides, staking, bracing, guying, cabling, wrapping, mulching, and insect and disease control, and any other horticultural practices performed as seen necessary to promote the general health of plant material.

**“Mulch”** Nonliving organic materials customarily used in landscaping designed to retain moisture, stabilize soil temperatures, control weed growth, and retard erosion. Rubber mulch and rock are not an acceptable mulching material.

**“Ornamental tree”** Trees that grow to a mature height of 25 feet or less, and are characterized by a defining feature such as flowers, unique foliage, notable bark, or a form of branching. Ornamental trees planted to satisfy the standards of this Section shall have a minimum diameter of two inches (2”), measured at a point that is at four feet (4’) above ground level.

**“Parks and Recreation Director”** The Director of the Parks and Recreation Department of the City of Webster Groves, Missouri, or his or her designee, assigned to enforce the provisions of this ordinance that relate to City parks.

**“Park Manager”** The Park Manager of the City of Webster Groves or the manager’s designated representative assigned to enforce this ordinance and advise the Director of Public Works and the Director of Planning and Development related to City-owned and private property

**“Park Trees”** Any tree on city-owned property within parks, green spaces, and /or City-owned property to which the public has free access.

**“Perennials”** Flowering herbaceous plant or ornamental grass that lives for over two years.

**“Property Owner”** The record owner or contract purchaser of any parcel of land.

**“Shrub”** A self-supporting woody perennial plant of low to medium height characterized by multiple stems and branches continuous from the base, usually not more than ten (10) feet in height at its maturity.

**“Sight-Distance Triangle”** An area where nothing shall be erected, placed, planted, or allowed to grow between a height of two (2) feet and ten (10) feet above the grades at the back of the curb (or edge of pavement where no curb exists) of the intersecting streets, within the triangular area formed by the right-of-way lines and a line connecting them at points thirty (30) feet from their point of intersection, at equivalent points on private streets, as specified by St. Louis County Highways and Traffic regulations or as determined necessary by the Director of Public Works.

**“Species”** A unit or group of individual plants which bear a close resemblance to one another, -- so much that this particular group will not be mistaken for another group combined with it in the same genus.

**“Street Trees”** Trees on City-owned property within the right-of-way of all streets, avenues, or ways within the City.

**“Topping”** The drastic removal, or cutting back, of large branches in mature trees leaving large, open wounds, which subjects the tree to disease and decay. Topping causes immediate injury to the tree and may ultimately result in its early failure or death. Other names for topping include “heading”, “tipping”, “hat-racking”, and “rounding-over”.

**“Tree”** A woody plant typically growing as a single stem (rarely a multiple stem) in an upright form that will attain a mature height of at least fifteen feet and a DBH of at least two inches. Arborvitaes or junipers will not be allowed for tree replacement species in a Tree Protection Plan.

**“Tree Canopy Coverage”** The area of ground taken up when measuring the branch spread of a tree from branch tip to branch tip, or the area covered by a group or cluster of trees with contiguous (or nearly contiguous) canopies.

**“Tree Lawn Garden”** Any planting or architectural enhancements, including turf grass, placed or planted in the City right of way.

**“Tree and Landscape Manual”** A manual that contains the technical information necessary to perform the work outlined in this ordinance.

**“Tree Permit”** A permit obtained from the City of Webster Groves as follows:

Private Property - Application must be made and the appropriate fee paid (as determined by a fee schedule approved from time to time by the City Council) by property owner or developer to the City of Webster Groves to remove any Valued Tree on private property when the removal is associated with any activity requiring a site plan approval or construction permit as further delineated in Section 10.330 below.

Public Right-of-Way - Application must be made and the appropriate fee paid (as determined by a fee schedule approved from time to time by the City Council) by a property owner or contractor to the Director of Public Works to plant, remove, or excavate within the tree canopy coverage. No person shall be required to obtain a Tree Permit from the City for the routine mowing of grass on public rights-of-way. Also, no person shall be required to obtain a Tree Permit for the routine pruning or maintenance of trees or plants upon public rights-of-way, so long as the right of way adjoins the person's real property and the property owner performs the work. “Topping” as defined herein is specifically prohibited. Only the City may remove any tree within the public rights-of-way without a Tree Permit as provided in Section 10.325.

**“Tree Permit Waiver”** A waiver issued upon determination by the Parks Manager that a Tree Permit is not required for a construction project otherwise requiring a permit under the provisions of this Code.

**“Tree Preservation Area”** The tree canopy coverage on a site proposed for development that will not be disturbed by grading or storage of materials or disturbance of any kind. Tree preservation area is a “no-violation” zone that is typically bordered by the limit of disturbance line.

**“Tree Preservation Plan (TPP)”** A map-based plan prepared by a person who has demonstrated the knowledge and ability to evaluate tree condition and value, who is familiar with construction methods and techniques to protect trees from damage during construction, and who has paid a one-time registration fee of twenty-five dollars (\$25) to

the City to prepare such plans. The TPP shall be submitted as part of the construction documents for a project that provides:

1. Detailed information about the species, diameter (DBH), condition, value, and location, of all existing trees of a caliper of eight inches (DBH) and larger that are on a Construction Site or within ten feet of the boundary of the Construction Site. Trees meeting the definition of "Landmark Trees" shall be so identified. The dollar value of each Valued Tree shall be calculated using methodology developed by the International Society of Arboriculture and described in their guidebook "Guide to Plant Appraisal" (available at [www.isa-arbor.com](http://www.isa-arbor.com)).
2. A professional opinion regarding the survivability of trees on the site.
3. Detailed information about which trees are planned for protection and which trees are to be removed.
4. Proposed protective measures, including the use of root pruning, retaining walls, etc.
5. A "Limit of Disturbance Line" to indicate the border of areas where no grading is to occur and to delineate the Tree Preservation Area(s). An aerial photo of the site at a scale similar to or equal to the TPP map may be included. In areas where large groupings (>10,000 square feet of contiguous tree canopy coverage) of trees greater than a caliper of eight inches (DBH) exist, individual trees within the interior of the grouping need not be plotted if no grading or other tree disturbance is planned. Trees located within twenty feet of the edge of the grouping, adjacent to areas planned for grading, shall be mapped and identified.
6. When tree replacement is required or proposed, the new plantings shall be shown and identified as to species, location and size.
7. A table shall be provided that lists the quantity and size, by species, of each tree to be planted.
8. Tabulation of the total number of caliper inches required and the total number of caliper inches provided by replanting.

**"Turf grass"** Any of various grasses (as Kentucky bluegrass, zoysia, or perennial ryegrass) grown to form turf, which must be maintained by mowing or similar means to preclude a height in excess of 10 inches.

**"Variety"** A term used in the botanical sense to constitute a group or class of plants subordinate to a species (e.g., subspecies).

**"Valued Tree"** Any Park Tree or any tree of a caliper of 8 inches or greater.

**Section 10.315. The Green Space Advisory Commission.**

- a. **Duties.** The Green Space Advisory Commission shall advise and consult with the Director of Public Works, Director of Planning and Development and the Parks and Recreation Director on any matter pertaining to the Webster Groves Tree Preservation and Landscape Ordinance and to its enforcement. The topics under which this advice and consultation may be given may include, but are not limited to, any of the following:
1. Amendments to the Webster Groves Tree Preservation and Landscape Ordinance, and alterations or revisions to the Tree and Landscape Manual.
  2. Policies concerning selection, planting, maintenance, and removal of trees, shrubs, and other plants within the City.
  3. Establishment of educational and informational programs whereby the public may be notified of any matters pertaining to the Webster Groves Tree Preservation and Landscape Ordinance and to the Tree and Landscape Manual.
  4. Development of a program for optimizing the tree, shrub, and other plant resources within the City of Webster Groves.

**Section 10.317. Department Head Duties.**

- a. **Combined Duties.** The Director of Public Works, the Director of Planning and Development and the Park Manager shall collaborate to perform the following duties relative to this Ordinance:
1. Administer, enforce and carry out the provisions of the Webster Groves Tree Preservation and Landscape Ordinance and the provisions of the Tree and Landscape Manual with collaboration and any needed assistance from other City staff.
  2. Develop and periodically review and revise or amend, if necessary, the Tree and Landscape Manual, which shall contain regulations and standards for the planting, protection, maintenance, and removal of trees, shrubs, and other plants upon City right-of-way.
- b. **Director of Public Works.**
1. Administer and enforce the planting, protection, and maintenance of trees and landscaping, including the removal of undesirable trees, shrubs, and other plants located on City right-of-way to insure that all trees, shrubs, and other plants located on City right-of-way conform with the comprehensive, long-range program for the optimization of the tree, shrub, and other plant resources of the City of Webster Groves and the regulations and standards of the Tree and Landscape Manual, and with the requirements of this Ordinance. Pursuant to this duty, the Director of

Public Works, in accordance with normal City procedures regarding contracts, may arrange contractual agreements with any property owner.

2. Prevent actions or operations that could cause harm to trees, shrubs, and other plant material on City right-of-way.
3. Prevent the topping of any tree on City right-of-way, and to prevent any person working for hire within the corporate limits of the City of Webster Groves from topping any tree on City right-of-way.
4. Order the removal or other abatement of any plant material on public right of way that has been declared a nuisance or endangers public health or well-being.

c. **Director of Planning and Development Duties.**

1. Order the removal or other abatement of any plant material on private or City-owned property that has been declared a nuisance or endangers public health or well-being.
2. Issue warnings to property owners not complying with clear sight standards at intersections, and issue citations in cases of noncompliance.

d. **Parks and Recreation Director Duties.**

1. Administer the planting, protection, and maintenance of trees, including the removal of undesirable trees, shrubs, and other plants located in City parks in order to insure that all trees, shrubs, and other plants located in City parks conform with the comprehensive, long-range program for the optimization of the tree, shrub, and other plant resources of the City of Webster Groves and the regulations and standards of the Tree and Landscape Manual, and with the requirements of this Ordinance.

e. **Park Manager Duties.**

1. Issue Tree Permits for the removal of trees on private property when required by the provisions of this ordinance.
2. Approve and enforce Landscape plans and maintenance of those plans as required by the provisions of this ordinance.
3. Enforce the regulations and standards of the Tree and Landscape Manual, and the requirements of this Ordinance.
4. Provide technical expertise to the Director of Public Works and the Director of Planning and Development when needed.
5. Establish qualifications for persons who may prepare and submit tree preservation plans, and maintain a list of persons meeting said qualifications.



**Section 10.320. Licensing.**

- a. **Annual License – When Required.** An annually renewable license is required by commercial tree companies that plan to prune, remove, or apply pesticides to trees over 8” in diameter (DBH) on private property within the City of Webster Groves; or prune or apply pesticides on trees on public property in the City of Webster Groves.
- b. **Application.** An Annual License may be obtained from the Department of Finance, for the fee then in effect as determined from time to time by the City Council, upon showing proof of liability insurance in the amount of \$500,000 and worker’s compensation insurance as required by state law.
- c. **Standards of Issuance.** The Director of Finance shall issue the Annual License to an individual or firm meeting the criteria specified above. The tree license shall be valid from September 1st to August 31<sup>st</sup> of the following year.

**Section 10.325. Planting, Maintenance, or Removal of Trees and Landscaping on or Impacting Public Right-of-Way.**

- a. **Protection of Public Utilities and Improvements; Felling of Trees Along Streets, Tree Permits on City Right-of-Way.**
  - 1. A Tree Permit or Landscape permit issued by the Director of Public Works is required for any person other than City work crews in order to plant, perform maintenance on, spray, fertilize, cut above or below ground, excavate near, remove or otherwise disturb any tree or shrub on any City right-of-way. The permittee shall abide by all conditions stated on the permit and by the standards outlined in the Tree and Landscape Manual.

**Exceptions:**

- A. No person shall be required to obtain a Landscape Permit from the City for the routine mowing or maintenance of turf grass, or routine maintenance of approved tree lawn gardens on City right-of-way.
- B. No property owner shall be required to obtain a Tree Permit for the routine pruning or maintenance of trees or plants upon public rights-of-way, so long as the right of way adjoins that property owner’s real property and the property owner performs the work, and so long as the routine pruning does not include “topping”, as defined herein.
- 2. Contractors must obtain a Tree Permit or Landscape Permit for any planting or pruning of trees or landscaping for hire on City right-of-way. Contractors can apply for and receive an Annual License that permits them to prune City-owned trees or landscaping when contracted by the adjacent property owner.

3. If, as the result of the violation of any provision of this Section, the injury, mutilation, or death of a tree, shrub, or other plant located within a public right-of-way is caused, or if a declared nuisance continues to exist, the cost of repair or replacement of such tree, shrub, or other plant, or the correction and abatement of said nuisance, shall be borne by the person or persons in violation in accordance with the Webster Groves Tree Preservation and Landscape Ordinance.
- b. **Application** for Tree Permits or Landscape Permits for work on City owned trees or landscaping must be made not less than two (2) weeks in advance of the time the work is to be done, unless otherwise permitted by the Director of Public Works.
- c. **Standards of Issuance.** The Director of Public Works shall issue a Tree Permit or Landscape Permit as provided for herein if, in his/her judgment, the proposed work is desirable and the proposed method and workmanship thereof are of a satisfactory nature. The Director of Public Works will issue a Tree Permit or Landscape Permit to Contractors retained by a property owner that is adjacent to the proposed work in the City right-of-way. If the contractor is working on trees he must currently hold a valid Annual License issued by the City. Any Tree Permit or Landscape Permit granted shall contain a date of expiration and the work shall be completed in the time allowed on the permit and only in the manner as therein described. Any Permit shall be void if its items are violated.
- d. **Street Trees and Landscaping Planted in the Public Right-of-Way.**

The following arboricultural specifications and standards of practice for street trees to be planted in the public right-of-way are hereby adopted by the City.

1. **Size.**
  - A. Unless specified by the Director of Public Works, all medium to large deciduous tree species and their cultivars and varieties, shall conform to both International Society of Arboriculture and the regulations and standards of the Tree and Landscape Manual and have a caliper of at least 2" inches when planted. The crown shall be in good balance with the trunk.
  - B. All small deciduous trees species and their cultivars or varieties, shall be at least five (5) to six (6) feet in height when planted.

2. **Grade.**

Unless other wise allow for substantial reasons, all standard sized trees shall have comparatively straight trunks, well-developed leaders, and top and root characteristics of the species or variety showing evidence of proper nursery pruning. All trees must be free of insects, disease, mechanical injuries and other objectionable features at the time of planting.

3. **Species and Location.**

Trees may be planted in the public right-of-way provided a Tree Permit has been issued by the Director of Public Works and the following conditions are met:

- A. **Acceptable Street Trees.** The tree to be planted shall be selected from a list of acceptable street trees maintained by the Director of Public Works as an approved species, cultivars or variety of street tree;
- B. **Sight-distance Triangle.** No tree may be planted within the Sight-distance Triangle of the intersection of the right-of-way of public streets; within fifteen (15) feet from driveways and alleys; or within (10) feet from any fire hydrant, and no landscape plantings exceeding two (2) feet in height at maturity shall be planted in the sight-distance triangle, except that the sight-distance triangle may be increased, when deemed necessary for traffic safety, by the Director of Public Works;
- C. **Spacing.** Trees planted within the right-of-way are spaced so as to be no closer than forty (40) feet on center for all large trees; thirty-five (35) feet on center for all medium trees; and twenty-five (25) feet on center for all small trees;
- D. **Utility Poles.** No tree shall be closer than ten (10) feet of a utility pole;
- E. **Minimum distance between street and sidewalk.** In no event shall a tree be planted where the clear space between the curb and a sidewalk is less than four (4) feet, except where authorized by the Director of Public Works. Such street trees shall be placed midway between the curb, or edge of pavement, and sidewalk wherever practical;
- F. **Street trees between street and sidewalk-medium canopy.** Where the planting area between the curb or edge of the roadway pavement and the edge of a sidewalk is limited to a width of between four (4) and five (5) feet, only medium canopy trees may be planted;
- G. **Street trees between street and sidewalk – medium or large canopy.** Where the planting area between the curb or edge of the roadway pavement and the edge of the sidewalk is greater than five (5) feet, medium and/or large canopy trees may be planted;
- H. **Street trees where no sidewalk exists.** On parcels of land where no sidewalk exists, the required deciduous trees may be

planted no closer than 30 inches to the back of the curb or the edge of street pavement;

- I. **Interference with overhead utility wires.** In instances where canopy trees of either medium or large size are likely to cause interference with overhead utility wires (as determined by the Director of Public Works), under story trees may be acceptable for planting;
- J. **Avoiding utilities.** Trees are placed after determining location of utilities so as to avoid interference with utilities;
- K. **Plantings near fire hydrants.** Except for turf grass or mulch, no landscape plantings shall be located within five (5) feet of a fire hydrant; and
- L. **Level to grade.** Tree lawns shall be planted and maintained to match the elevation of adjacent sidewalks and curbs so as not to create a safety or tripping hazard for the public utilizing the sidewalks.

e. **Container Planting and Tree Lawn Gardens.**

- 1. **Generally.** No person shall establish a container or tree lawn garden either above or below ground for plants in the public right-of-way without written approval of the Director of Public Works.
- 2. **Application Procedure.** The petitioner shall submit a request complete with detailed design to the Director of Public Works. The provisions outlined in "Planting, Maintenance, Removal" (Section 10.325) of this ordinance shall apply.
- 3. **Installation Requirements.** Installation requirements for containers or tree lawn garden for plants on public right-of-way area are as follows:
  - A. No container shall be placed within the "Sight-distance Triangle" of a street intersection or within fifteen (15) feet of driveways and alleys.
  - B. The planting medium shall be of sufficient size to support and sustain plant material and the container shall be not less than twenty-four (24) inches in depth and thirty (30) inches in diameter, inside dimensions.
  - C. The tree lawn garden shall be maintained such that it shall not impede access to vehicles parked on public streets, or create a hazard or nuisance.
- 4. **Maintenance.** Containers or tree lawn gardens and their complete maintenance become the responsibility of the abutting property owner.

- A. All costs arising from the establishment, maintenance or removal of plants or plant containers are to be borne by the abutting property owner.
  - B. Containers, plants, and their contents must be maintained in the condition specified by original design at all times. Any planter or tree lawn garden not serving its designed aesthetical function shall be replanted or removed.
  - C. The provisions of Section 10.322 "Obstruction- Plant Material" shall apply to container planting and tree lawn gardens.
5. **Notice to Replant or Remove.** Any container or tree lawn garden and plant material not maintained to quality and design standards as required by the Director of Public Works is hereby declared a nuisance and it shall be lawful for the Director of Public Works to remove or cause removal of the same according to the procedures set forth herein and at the property owner's expense.
6. **Freedom from Liability.** Any person granted the right to place or establish containers on public property pursuant to this section shall execute an indemnification agreement approved by the City Attorney wherein the applicant agrees to indemnify and save the City harmless from any and all liability which may be incurred as a result of the placement of such containers and their contents.
- f. **Notice of completion.** The applicant or property owner shall notify the Director of Public Works within five (5) days of completion for his/her inspection.
- g. **Improper Planting.** Whenever any tree or landscaping shall be planted or set out in conflict with the provisions of this section, it shall be deemed a public nuisance and it shall be lawful for the Director of Public Works to remove or cause removal of the same according to the procedures set forth herein, and the exact cost thereof shall be assessed to the violator as provided by law.
- h. **City's Rights.** The City shall have the right to plant, prune, maintain, and remove trees, plants, and shrubs within the lines of all streets, alleys, avenues, lanes, squares, as may be necessary to insure public safety or to preserve or enhance the symmetry and beauty of such public grounds. Additionally, the Director of Public Works may remove or cause or order to be removed, any tree or landscaping or part thereof which is in an unsafe condition or which by reason of its nature is injurious to sewers, electric power lines, gas lines, water lines, curbs, sidewalks or other existing or proposed public improvements, or is infected with any injurious disease, fungus, insect or other pest. This Section does not prohibit the planting of street trees within the public right-of-way by adjacent property owners providing that a Tree Permit or Landscape Permit has been obtained and the selection and location of said trees is in accordance with the Tree and Landscape Manual.
- i. **Property Owner Responsibilities.**

1. **Pruning to Abate Obstructions.** It shall be the duty of any person or persons owning or occupying real property bordering on any street upon which property there may be trees, to prune such trees located on their private property in such manner that they will not obstruct the passage of pedestrians on sidewalks, obstruct vision of traffic signs, or obstruct view of any street or alley intersection. The minimum clearance of any overhanging portion thereof shall be eight (8) feet over sidewalks and ten (10) feet over all streets except arterial streets, which shall have a clearance of twelve (12) feet.
  2. **Notice to Prune.** Should any person or persons owning real property bordering on any street fail to prune trees as herein above provided, the Director of Planning and Development shall deem the offending limbs, trees, or shrubs as a public nuisance and order such person or persons, within ten (10) days after receipt of written notice to so prune such trees.
  3. **Order Required.** The order required herein shall be served by mailing a copy of the order to the last known address of the property owner.
  4. **Failure to Comply.** When a person to whom an order is directed shall fail to comply within the specified time, it shall be lawful for the City to prune such trees, and the exact cost thereof plus reasonable administrative costs shall be assessed to the owner as provided by law.
- j. **Felling of Trees on Streets.** The Director of Public Works shall be, for the purpose of this article, notified prior to the time that any tree is to be trimmed or removed if such tree or any portion thereof will fall on a street, sidewalk, or alley. All current City ordinances and agreements shall be observed. No person shall close any street, alley, sidewalk, roadway, or traveled way in the City without first obtaining approval for such closing from the Director of Public Works.
1. The person to whom the permit is issued shall be responsible for placing such signs, flags, flares, and barricades as are needed to warn persons of the danger of using the street, sidewalk, or alley.
  2. No trees shall be felled onto any street without having persons stationed in the streets to stop traffic from both directions at the time the tree is being dropped.
  3. Trees or branches which are felled or trimmed onto public property must be removed immediately unless an extension of time is granted by the Director of Public Works in writing.
  4. Stump removal cavities shall be cleared and refilled with soil in the same operation. At no time shall a cavity remain unfilled overnight without adequate pedestrian and/or vehicular protection.
  5. Insurance. Before any tree or branch is felled onto public right-of-way, the applicant must provide to the Director of Public Works a Certificate of Insurance in the amounts as required for the issuance of an Excavation

Permit. The insurance certificate shall also name the City of Webster Groves as an Additional Insured and Certificate Holder in all liability insurance.

- k. **Stump removal.** The stumps of all trees removed from public right of way shall be ground out to at least three (3) inches below the ground level, the chips removed, the soil cavity filled with soil, and the area leveled. If the area where the tree is removed is to be paved, the top of the stump shall be ground out to at least six (6) inches below the ground level.
- l. **Utilities and Telecommunications Companies** shall use directional pruning unless the City otherwise consents in writing.

**Section 10.326. Reserved.**

**Section 10.327. Reserved.**

**Section 10.330. Tree Preservation Requirements Associated with Private Construction or Development Activities.**

a. **Tree Permit – When Required.**

- 1. **Generally.** A Tree Permit is required from the Park Manager for the removal or disturbance of any Valued Tree when such removal or disturbance is associated with a development that requires:
  - A. site plan approval,
  - B. a demolition permit for removal of an existing primary structure, or
  - C. a building permit for the construction of a new primary structure.
- 2. **Permit Review.** The Park Manager shall review all Tree Permits requesting tree preservation and/or removal for compliance with these regulations and either approve, approve with conditions, or disapprove within 30 days of receipt. Approval shall be based upon the reasonable efforts to preserve trees on the site as determined by the Park Manager. If approved with conditions, the applicant shall submit a revised TPP reflecting that the TPP has been modified to include the conditions before a Tree Permit may be issued. Any application not acted upon within 30 days of acceptance as a complete application shall be deemed approved.
- 3. **Appeals.** Any applicant whose Tree Permit Application has been disapproved, or whose TPP has been approved with conditions and the applicant declines to comply with those conditions may appeal the determination to the Board of Adjustment, as provided for in Section 10.355.

b. **Required Tree Protection.**

1. Each Valued Tree shall be protected during development. Each Valued Tree removed during development is subject to the replacement provisions outlined below in Required Tree Replacement.
  2. On tracts of land equal to or greater than three acres in size, no more than 70% of the existing tree canopy coverage may be cleared or developed. The remaining 30% shall be maintained without disturbing the roots of trees in the protected area.
- c. **Required Tree Replacement.** Replacement of Valued Trees is required when the tree protection requirements in Subsection B above cannot be met. Tree replacement shall occur in such amounts so that the total caliper measurement of all replacement trees must equal one-half the total adjusted diameter measurement of removed Valued Trees. If sufficient space on-site is not available for replanting the required number of trees, the owner/developer may provide replacement trees for planting on City property where the City permits or, in lieu thereof, may make a payment to the City of Webster Groves at a monetary value of:
1. For non-residential property -- \$120 per replacement caliper inch with the total required payment not to exceed \$5,000 per acre.
  2. For single-family residential property -- \$120 per replacement caliper inch with the total required payment not to exceed \$800.00 per lot.
- d. **Replacement Standards.** All replacement plantings shall be performed according to the latest standards set forth by the International Society of Arboriculture, ANSI Standards and by utilizing species found on the plant lists in the Tree and Landscape Manual unless the desired species is approved by the Park Manager. In a case where all replacement trees cannot be planted on site, the trees can be planted on other sites in the City of Webster Groves that are approved by the Director of Planning and Development, Parks and Recreation Director, or Director of Public Works. Alternatively, the owner/developer may make a payment to the City of Webster Groves equal in value to the value of the replacement trees required. The City shall use all such payments for the planting of trees on City-owned property.

**Section 10.335. Landscape Plan Requirement.**

a. **Landscape Plan – When Required.**

A landscape plan reflecting the Landscape Design Standards contained in Section 10.340 shall be filed and approved prior to issuance of a Building Permit for new construction and changes to existing development and use as follows:

1. Parcels of land less than one acre in size upon which there is proposed construction of a new primary structure, or any development involving an increase in the building footprint of an existing primary structure by 25% or more;



2. Parcels of land one acre or larger in size where there is proposed construction, that portion of the parcel which is the construction site for a new primary structure or an increase in the building footprint of an existing primary structure by 25% or more.
3. Construction of any parking lot for more than 6 vehicles.
4. A substantial change in land use.
5. Installation or replacement of Ground Mounted Mechanical equipment or trash enclosures.
6. Development within a planned commercial or planned multiple-family zoning district, a planned environmental unit, or a conditional use permit.

**Exception** – Single-family and two-family land uses shall be exempt from the requirements of this Section. (See Section 10.340.C)

**b. Landscape Plan Content.**

A landscape plan for each lot or parcel involved in the proposed development shall contain the following elements:

1. Be prepared and sealed by a licensed landscape architect. (**Exception:** Single-family residential development.);
2. Be drawn to scale, including dimensions and distances. Elevations and plan views of proposed landscaping shall be provided as requested by the City of Webster Groves;
3. The landscape plan shall show the location of any easements or utilities;
4. Delineate the existing and proposed location of all buildings, structures, storm water requirements, parking spaces, or other vehicular areas, access aisles, driveways and similar features;
5. Designate by name, size and location the plant material to be installed or preserved in accordance with the requirements of this division;
6. Identify and describe the location and characteristics of all other landscape materials, signs, walls, fences, berms, lights, fountains or sculptures to be used;
7. Show all landscape features, including areas of vegetation to be preserved, in context with the location and outline of existing and proposed buildings and other improvements on the site, if any;
8. Include a tabulation clearly displaying the relevant statistical information necessary for the City staff to evaluate compliance with the provisions of this division, including:

- A. The tabulation of the minimum landscaped area as required by these regulations, including impervious site coverage calculations.
  - B. The tabulation of the minimum number of plant material and planting units as required by these regulations.
  - C. A plant list that includes the botanical and common names, quantity of plants, plant size, and selective characteristics of the plants provided. Label which landscape requirement the plant material satisfies, i.e. buffer, frontage, etc.
  - D. Gross acreage; open space available, percentage of area landscaped, percentage of area sodded or where ground cover is used.
9. An irrigation plan indicating the location of sprinklers or water outlets;
  10. Landscape installation cost;
  11. Contain such other information that may be required that is reasonable and necessary to determine that the landscape plan meets the requirements of this division; and
  12. Delineate separately any storm water management requirements and list plant material separately.
- c. **Plan Review.** The Park Manager shall review all Landscape Plans for compliance with these regulations and either approve, approve with conditions, or disapprove within 30 days of receipt. Approval shall be based upon the reasonable efforts to comply with the intent of this ordinance. If approved with conditions, the applicant shall submit a revised Landscape Plan that reflects modifications to include those conditions before a Building Permit may be issued. Any application not acted upon within 30 days of acceptance as a complete application shall be deemed approved.
- d. **Appeals.** Any applicant whose Landscape Plan has been disapproved, or whose Landscape Plan has been approved with conditions and the applicant declines to comply with those conditions may appeal the determination to the Board of Adjustment, as provided for in Section 10.355.

**Section 10.340. Landscape Design Standards.**

The following standards shall be considered the minimum requirements for the installation of all plant materials in accordance with an approved Landscape Plan, or within public rights-of-way:

- a. **Size; Digging.**
  1. **Size Specifications.** Unless otherwise stated in this division, all size specifications for plant materials shall be based upon the American

Standards for Nursery Stock specifications. When minimum caliper is specified for tree plantings, the caliper of the tree trunk shall be taken at four feet (4') above the ground level.

2. **Digging in Street Rights-of-Way or Easements.** It shall be the responsibility of the person planning to install plant materials within a street right-of-way or a utility easement, to notify the Director of Public Works, and any utility company or public agency having any underground utilities within such right-of-way or easement.

b. **Minimum Tree and Shrub Planting or Preservation Requirements.**

1. **Existing Landscaping.** Existing landscaping to be retained in new developments or redevelopments may be credited as satisfying all or portion of the requirements listed herein, provided they are determined by the Park Manager to be acceptable species and in good condition.
2. **Interference.** Trees shall not be placed where they interfere with site drainage or where they shall require frequent pruning in order to avoid interference with overhead utility lines.
3. **Acceptable Tree Species, Cultivars, or Varieties.** Trees planted on existing developed sites, in conjunction with new developments and within public rights-of-way within all zoning districts, shall be of the species, cultivars, or varieties listed in the City of Webster Groves Tree List, except as otherwise provided herein. The Director of Public Works and the Park Manager may, from time to time, modify, delete or add to the species, cultivars or varieties listed in such tables.
4. **Native Plant Materials.** The use and maintenance of native plant materials shall be encouraged in meeting or exceeding all landscaping requirements within the Code.
5. **Undesirable Tree, Shrub, and Herbaceous Perennial Species, Cultivars, or Varieties.** In order to protect the city's existing trees from disease, to ensure that the species and varieties of trees which are planted will grow and be healthy, will be resistant to storms, and do not present other undesirable effects, the undesirable trees listed on file with the city, shall not be planted on existing development sites, in conjunction with new developments or within public rights-of-way in any zoning district, except upon the approval of the Park Manager or assigned employee. The Park Manager may allow for such exceptions where it is demonstrated that such plantings will not be a detriment to adjoining streets, other nearby property or the trees thereon.
6. **Landscape Materials.**
  - A. **Design Objective.** The landscape material standards have the design objective of complimenting well designed sites and buildings, providing seasonal color and interest along

streetscapes, and screening intensive elements of sites from public view where better site design is not possible.

B. **Frontage.** One (1) canopy deciduous trees for every fifty (50) feet of lot frontage and planted within fifteen (15) feet of the curb.

C. **Building Grounds.**

(i) One (1) ornamental tree and twenty (20) shrubs, perennials, ground cover or ornamental grasses shall be planted for every twenty (20) feet of linear building wall frontage that faces any area that is viewed from either a sidewalk, parking lot, drive area or street. If groundcover or perennials are used they will be computed at .25.

(ii) Perennials and Ground covers can make up no more than 50% of the plant material meeting this requirement without approval of the Park Manager.

(iii) If there is not enough open space available to meet this requirement the Director of Planning and Development, in consultation with the Park Manager, will determine the minimum landscape requirement based on available open space.

D. **Parking Areas.** All surface exterior parking shall meet the following landscape requirements:

(i) One (1) to six (6) spaces: No requirement.

(ii) Seven (7) to twenty (20) spaces: At least five (5) feet of landscape planting buffer depth around the perimeter of the parking area; five (5) shrubs and one (1) ornamental tree for every (4) spaces.

(iii) Twenty-one (21) or more spaces: At least five (5) feet of buffer around the perimeter; a minimum of ten (10%) of the surface area matched in internal islands; five (5) shrubs and one (1) ornamental tree for every four (4) spaces plus five (5) shrubs and one (1) ornamental tree for every 200 square feet of internal islands. Large deciduous trees may be substituted one-for-one for ornamental trees. This requirement may be waived if it is determined that there is not sufficient space to meet such a requirement while satisfying minimum parking requirements of the Zoning Code.

(iv) There shall be a minimum of one planting island, within and up to every one hundred (100) linear feet of parking for each parking row. This requirement may be waived if it

is determined that there is not sufficient space to meet such a requirement while satisfying minimum parking requirements of the Zoning Code. Such islands shall be spaced evenly wherever possible and the ends of parking rows abutting a circulation aisle shall be defined by a planting island wherever feasible. These planting island areas shall be protected from vehicular encroachment by vertical, reinforced concrete curbing of a type specified by the Director of Planning. Rain Garden inlets shall be an exception. The use of unreinforced extruded curbing of asphalt or other materials is prohibited.

- (v) Planting islands shall generally not be less than ninety (90) square feet in area and eight (8) feet wide, as measured from back of curb to back of curb.
- (vi) In instances where vehicle parking occurs perpendicular or parallel to parking islands, only low profile ground cover (grass, ivy, creeping juniper, wood mulch, or similar materials), shall be installed within forty-two (42) inches of the back of the curb.
- (vii) No landscape hedge, bushes, shrubs, or other low-growing plant material, wall or berm shall exceed three (3) feet in height within five (5) feet of any driveway opening.

E. **Tree planting.** All required trees shall conform to the American Standard for Nursery Stock, published by the American Association of Nurserymen, Inc., and the Webster Groves Tree Manual and Standards of Practice as revised from time to time, and have the following characteristics:

- (i) Canopy trees shall be a minimum caliper of three (3) inches and all evergreen trees shall be a minimum of eight (8) feet in height.
- (ii) Ornamental trees shall have a minimum caliper of two (2) inches.

F. **Tree Species Mix.** When more than ten (10) trees are to be planted to meet the requirements of this division, at least three (3) different species shall be provided. If more than 20 trees are planted at least four (4) different species shall be planted.

G. **Shrub Planting.** Immediately upon planting, all shrubs shall conform to the American Standard for Nursery Stock, published by the American Association of Nurserymen, Inc., and the Webster Groves Tree Manual and Standards of Practice as revised from time to time, and installed in a good sound, workman-like manner and according to accepted good planting procedures for the St.

Louis region. All shrubs planted must be a 24" minimum height or spread and or of a 5 gallon pot size.

- H. **Perennial and Ground Cover Plantings.** Immediately upon planting, all perennials and ground covers shall conform to the American Standard for Nursery Stock, published by the American Association of Nurserymen, Inc., as revised from time to time, and installed in a good sound, workman-like manner and according to accepted good planting procedures for the St. Louis region. All perennial or ground cover planting must be a minimum of 1 gallon pot size.
- I. **Planting Materials.** Planting materials shall be ornamented types found to be hardy in USDA Zones 5 and 6.
  - (i) Plant material that is required to meet Storm Water Regulations may or may not be counted as part of the landscape plan requirements.

7. **Requirements for Areas Adjacent to Streets.**

- A. Where a building is set back from a public street or sidewalk, at least ten (10) feet, a landscape planting strip between five (5) feet and ten (10) feet in width shall be provided and maintained, the strip shall separate any off-street parking and drive areas from any public or private street.
- B. Turf grass and/or ground cover is allowed for only 50% of this area unless the Park Manager gives a variance.

8. **Required Screening of Mechanical Equipment, Trash, and Loading Areas.**

- A. **Ground-mounted equipment and loading areas.** All mechanical equipment, trash receptacles, storage of materials and equipment shall be within a fully enclosed building or in a side or rear yard so screened by berms, dense vegetative plantings, wooden fences, or brick walls, or combinations of these materials at least six (6) feet in height so that such materials and equipment are not visible at five (5) feet above the grade of the adjacent street(s) and adjoining property lines.
- B. **Trash enclosures.** Outside rubbish, garbage, and dumpster enclosures if visible from normal public traffic ways or residential areas shall be permanently screened from view, from all four (4) sides, one side to include a workable gate or door, with wood or masonry walls. The walls shall have a minimum height of six (6) feet and a maximum height of eight (8) feet. All screening required by this section shall be comprised of a color and composition similar to that of the main structure of the premises.

9. **Buffer Requirements.** Where any parcel abuts “A1” through “A4” residential district or development, a ten-foot perimeter landscape buffer and a solid fence six (6) feet in height shall be provided and maintained along all rear and side property lines where it abuts the residential district or development. The buffer area shall contain plant material with a minimum height of eight (8) feet, planted in such a manner to act as a vegetative screen. Additional plant material shall be installed in front of the screening plants. The height of such fence and evergreen plant material may be reduced if used in conjunction with a berm whose height in combination with the fence will achieve the standard specified herein. The berm shall not exceed a slope of thirty (30) degrees and shall be completely covered with shrubs, grass, or other living ground cover, in addition to the screening plant material specified herein.
10. **Sodding Requirements.** All soil on the site which is not to be covered by buildings, parking and loading areas, and driveways, and which is not subject to other landscape treatment in accord with an approved site plan, shall be graded in accord with such site plan and covered with sod. The planting shall be consistent with the Turfgrass Producers International “Guideline Specifications to Turfgrass Sodding.”
11. **Irrigation.** Landscaped areas shall be provided with adequate irrigation for the maintenance of grass, shrubs, ground cover and other plant materials by utilizing a sprinkler system, hose bibs, and/or such other method of providing water. Irrigation plan should be provided.

c. **Requirements for new Single-Family Dwellings.**

1. **Street Trees Between Street and Sidewalk.** For each residential lot which is developed with a new single-family dwelling after June 21, 2011, at least one (1) canopy tree for each fifty (50) feet of frontage on a public or private street shall be planted in the frontage area between the sidewalk and the street edge or curb and shall be planted in accordance with the standards provided for in this division. If space is not available, the tree(s) should be planted within fifteen (15) feet of the curb.
2. **Credit for Existing Trees.** Existing trees within (15) fifteen feet of the curb or street edge on the development site may satisfy the requirement for planting street trees.
3. **Sodding requirements.** New single-family dwellings shall comply with the requirements of Subsection B.10 above.

**Section 10.345. Alternative Compliance.**

Applicants shall be entitled to demonstrate that the intent of this Section can be more effectively met, in whole or in part, through alternative means. If approved, an Alternative Compliance Landscape Plan shall be substituted, in whole or in part, for a landscape plan meeting the express terms of this Section.

- a. **Procedure.** Alternative Compliance Landscape Plans shall be prepared and submitted in accordance with the Landscape Design Standards in Section 10.350 and Landscape Plan required in Section 10.335. The plan shall be clearly labeled as an "Alternative Compliance Landscape Plan", and the plan shall clearly delineate and identify the modifications and alternatives proposed.
- b. **Review criteria.** In reviewing proposed Alternative Compliance Landscape Plans, favorable consideration shall be given to exceptional landscape designs prepared by a licensed landscape architect that attempt to preserve and incorporate existing vegetation in excess of minimum standards, and plans that demonstrate innovative design and use of plant materials. Alternative Compliance Landscape Plans may be approved upon a finding that any of the following circumstances exist on the proposed building site or surrounding properties:
  1. Natural land characteristics or existing vegetation on the proposed development site would achieve the intent of this Zoning Code;
  2. Innovative landscaping or architectural design is employed on the proposed development site to achieve a buffering effect that is equivalent to the buffer standards of this Zoning Code;
  3. The required landscaping or buffering would be ineffective at maturity due to topography or the location of improvements on the site; or
  4. The proposed alternative represents a plan that is as good as or better than a plan prepared in strict compliance with the other standards of this Section.

**Section 10.346. Reserved.**

**Section 10.350. Maintenance Standards for Trees and Cultivated Landscape Areas.**

The following standards shall apply to the maintenance of cultivated landscape areas which are part of a Landscape Plan as required by Section 10.335, as defined in this division:

- a. **Maintenance responsibility.** The owner of land shall be responsible for the maintenance of all landscape plantings located on his/her land and within the right-of-way to which the land abuts, except for trees planted by the city within a public right-of-way. Trees planted by the city and located within public rights-of-way shall be maintained by the city. All required landscape plantings shall be maintained in a healthy and neat condition. The Tree and Landscape Manual and Standards of Practice shall be followed at all times.
- b. **Stump Removal.** The stumps of all removed trees shall be ground out to at least three (3) inches below the ground level, the chips removed, the soil cavity filled with soil, and the area leveled. If the area where the tree is removed is to be paved, the top of the stump shall be ground out to at least six (6) inches below the ground level.



- c. **Required replacement of trees and landscaping.** If any trees or vegetation that satisfy the requirements of this code die or are removed, they shall be replaced with plantings which are of acceptable type, size and species and in locations which comply with the provisions of this ordinance and any previously approved site and landscape plan. Such replacement shall take place within six (6) weeks of notification from the Park Manager. A landscape plan shall not be required if the replacement plantings match a previously approved landscape plan. If replacement will significantly vary from an approved landscape plan, a new plan may be required.
- d. **Pruning.** All pruning shall follow the Webster Groves Tree and Landscape Manual and Standards of Practice. Trees severely damaged by storms or other causes, or trees under utility wires or other obstructions where standard horticultural pruning practices are impractical, may be exempted from this prohibition at the determination of the Park Manager.

**Section 10.355. Disapproval of Tree Permit of Landscape Plan.**

- a. **Right of Appeal.** In the event the Park Manager disapproves a Landscape Plan application or Tree Permit associated with development activities, the applicant may appeal such decision to the Board of Adjustment. Appeals to the Board of Adjustment shall be as prescribed in the Webster Groves Zoning Code, Chapter 53. Appeals shall be based upon the assertion by the applicant that the City:
  - 1. Failed to accurately apply the requirements and standards of the Tree and Landscape Ordinance to his/her specific application.
  - 2. Conditions unique to the applicant's property which the City has not fully considered create a hardship with respect to compliance with the requirements and standards of the Tree and Landscape Ordinance.
  - 3. Prevailing conditions of the immediate neighborhood around the applicant's project site justify a modification of the requirements and standards of the Tree and Landscape Ordinance as they apply to his/her specific application.

**Section 10.360. Escrow or Cash Deposit Requirements.**

- a. **Tree Preservation.** The applicant shall post a surety or cash escrow for the benefit of the City of Webster Groves to account for trees preserved under a TPP that die or are damaged beyond repair as a result of grading or construction damage within a two-year period after the issuance of the final occupancy permits. The amount of the surety required shall be in the amount of \$2,000 for single-family residential development, and \$2,000 for each acre of the tree preservation area or \$5,000, whichever is greater, for non-residential development sites.

**Exception –** The escrow shall not be required for applicants building additions to, or accessory structures for, single-family dwellings.

**b. Landscaping.**

1. In order to ensure the installation, maintenance, and proper growth of the proposed landscape plan, an escrow or cash deposit in the amount equal to 125% of the cost for materials and labor to install the minimum landscaping required by this ordinance shall be submitted to the City prior to the issuance of a conditional or regular occupancy permit. Landscaping that has been delayed due to seasonal limitations must be installed by April 30 of the following year. Proposed landscaping in excess of the minimum required by this ordinance shall not require an escrow deposit. The escrow or cash deposit shall be refunded to the payee after two (2) years from the date of installation of all landscaping, upon determination that the landscaping has survived and is healthy.
2. For new single-family homes, an escrow or cash deposit in the amount of \$300 per street tree required by Section 10.340.C shall be submitted to the City prior to issuance of a conditional or regular occupancy permit. Plantings which have been delayed must be installed by April 30 of the following year. The escrow or cash deposit shall be refunded to the payee after two years from the date of installation of street tree(s).

**Section 10.365. Tree and Landscaping Replacement.**

- a. **Tree Preservation Plan-** Should any Valued Tree noted as protected on the Tree Preservation Plan die or become damaged as a result of grading or construction activities within the two-year period after issuance of an occupancy permit, the owner/developer shall pay an assessment equal to the value of the tree(s) that die, are damaged beyond repair, or are removed, based upon the appraised value of the Valued Tree(s) as reflected in the Tree Preservation Plan.
  1. Assessments shall be paid from any existing sureties or escrows.
  2. The total property owner liability for Valued Trees that die or are damaged beyond repair within the prescribed time frame due to grading or construction shall not exceed \$800.00 for Single-family Dwellings, and \$5,000 per acre for non-residential developments.
- b. **Landscape Plan.** Within a twenty-four (24) month period after the occupancy permit is issued, the owner/developer shall replace landscaping that dies, or is damaged beyond repair. Failure to plant successfully in accordance with an approved landscape plan shall constitute a default and the City of Webster Groves shall be entitled to proceed against the surety or escrow. Funds so collected shall be used for landscape improvements within public rights-of-way, or upon City-owned property.

**Section 10.370. Interference with City Officials.**

No person shall unreasonably hinder, prevent, delay, or interfere with Parks and Recreation Director any City official, officer or designee engaged in the execution or enforcement of this Ordinance.

**Section 10.375. Prohibited Acts.**

It shall be unlawful and a violation of this Ordinance for any person or contractor to:

- a. "Clearcut" a site, occupied or vacant, including the removal of any trees over 8" in diameter, except for trees damaged by act of God (i.e. wind or ice) or trees which are judged by the City to be diseased or hazardous.

**Exemptions:**

- 1. Residential property that has been continuously occupied by the owner for at least 12 months as a principal place of residence, or
- 2. Any property for which a Tree Preservation Plan has been approved for the property and a building permit issued.
- b. Damage, cut, carve, prune, or transplant any tree or shrub on public property without a Tree Permit issued by the Director of Public Works.
- c. Prune trees by Tree Topping - It shall be unlawful for any person for hire to top any tree, whether on private or City-owned property or public right-of-way, within the corporate limits of the City of Webster Groves. Contractors that prune trees for hire on public or private property and top trees in the performance of their work shall have their Tree Permit and Annual License revoked immediately.
- d. Attach any rope, wire, nails, posters, or other contrivance to any tree on City owned property or public right-of-way unless protective measures approved by the Director of Public Works after consultation with the Parks and Recreation Director are taken.
- e. Attach any electrical insulation to any public tree or shrub.
- f. Use tree spurs or climbing spikes on trees located on City owned property or public right-of-way except with specific written permission of the Director of Public Works after consultation with the Parks and Recreation Director.
- g. Deposit, store, or maintain on City-owned property or public right-of-way any stone, brick, sand, concrete, lumber, tile, pipe, equipment, or other material which reasonably may be expected to impede the free passage of water, air or fertilizer to the roots of any tree, shrub, or other plant.
- h. Cause any gaseous, liquid, or solid substance which because of the nature or amount reasonably may be expected to be toxic or otherwise harmful to trees, shrubs, or other plants to be located where such substances reasonably may be expected to affect trees, shrubs, or other plants on City-owned property or public right-of-way.
- i. Cause any fire to burn on City-owned property or public right-of-way or private property if such fire, or the heat, smoke, or ash there from reasonably may be

expected to injure any portion of any tree, shrub, or other plant located on City-owned property or public right-of-way, provided, however, this subsection shall not be construed to exempt any person from complying with State laws or Ordinances of the City of Webster Groves respecting burning.

- j. Remove any tree within the public right-of-way.

**Section 10.380. Violation and Penalty.**

Any person who violates any provision of this Ordinance or who fails to comply with any notice issued pursuant to the provisions of this Ordinance, upon being found guilty of violation, shall be subject to a fine not to exceed Two Hundred Fifty Dollars (\$250.00) for each separate offense. Each day during which any violation of this provision of this Ordinance shall occur or continue shall be a separate offense. If, as the result of the violation of any provision of this Ordinance, the injury, mutilation, or death of a tree, shrub, or other plant located on City-owned property is caused, the cost of repair or replacement of such tree, shrub, or other plant shall be borne by the party in violation. The replacement value of trees and shrubs shall be determined by City staff using the latest revision of A Guide to the Professional Evaluation of Landscape Trees, Specimen Shrubs and Evergreens, as published by the International society of Arboriculture.

**Section 10.385. Severability.**

If any provision of this Ordinance or application thereof to any person or circumstance is held invalid by any court, other provisions or applications of the Ordinance which can be given effect without the invalid provision or applications shall not be affected, and to this end the provisions of the Ordinance.

(Ord. No. 8719, § 1, 6-21-11)

**Article V. Littering**

**Section 10.410. Litter Defined.**

As used in this article, the term “**litter**” is any organic or inorganic waste material including, but not by way of limitation, putrescible animal and vegetable waste resulting from the handling, preparation or consumption of food; rubbish; refuse; garbage; trash; hulls; peelings; debris; sand; gravel; slag; ashes; glass; plastic; paper, rock; metal; wood; boxes; cans; cardboard; cartons; dirt; leaves; grass; weeds; sidewalk sweepings; sticks; and dead animals or intentionally or unintentionally discarded materials of every kind and description which, if thrown or deposited as herein prohibited, tends to create a danger to public health, safety and welfare.

**Section 10.415. Littering Prohibited.**

Except as in compliance with the City’s provisions for solid waste removal, no person, firm, or corporation shall throw or deposit litter or debris in or upon any sidewalk, parkway, gutter, street, alley, body of water or water course, park, playground, recreation area or other public or private premises in such manner or to such an extent as to render said premises unsightly or unsanitary unless:

- a. The litter is placed into a receptacle or container installed on such property; or
- b. The person is the owner or tenant in lawful possession of such property, or has first obtained consent of the owner or tenant in lawful possession, or unless the act is done under the personal direction of the owner or tenant, all in a manner consistent with the public welfare.

**Section 10.420. Merchants' Duty to Keep Sidewalks Free of Litter.**

No person owning or occupying a place of business shall sweep into or deposit in any sidewalk, parkway, gutter, street, alley, or other public place within the City, litter from any building or lot or from any public or private sidewalk or driveway. Persons owning or occupying places of business within the City shall keep the sidewalk in front of their business premises free of litter. (Ord. No. 7242, § 3, 11-16-82)

**Section 10.425. Litter Thrown by Persons in Vehicles.**

No person while a driver or passenger in a vehicle shall throw or deposit litter upon any street or other public place within the City, or upon private property.

**Section 10.427. Handbills. Repealed. (Ord. No. 8707, § 1, 3-1-11)**

**Section 10.428. Evidence.**

- a. Whenever litter is thrown, deposited, dropped or dumped from any motor vehicle, airplane, or other conveyance in violation of this ordinance, it shall be prima facie evidence that the operator of the conveyance has violated this ordinance.
- b. Except as provided in subsection (a), whenever any litter is dumped, deposited, thrown or left on public or private property in violation of this ordinance is discovered to contain any article or articles, including but not limited to letters, bills, publications or other writing which display the name of the person thereon in such a manner as to indicate that the article belongs or belonged to such person, it shall be a rebuttable presumption that such person has violated this ordinance.

**Section 10.430. Penalties for Violation.**

Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished as follows:

- a. By a fine in an amount not exceeding One Hundred Dollars (\$100.00); and
  - 1. In addition to the fine set out in subsection (a) above, the violator shall reimburse the City for the reasonable cost of removing the litter when the litter is or is ordered removed by the City; and
- b. In the sound discretion of the court, the person may be directed to pick up and remove from any public street or highway or public right-of-way for a distance not to exceed one (1) mile any litter that the person has deposited and any and all litter deposited thereon by anyone else prior to the date of execution of sentence;

or

- c. In the sound discretion of the court, the person may be directed to pick up and remove any and all litter from any public property, private right-of-way, or with prior permission of the legal owner or tenant in lawful possession of such property, any private property upon which it can be established by competent evidence that the person has deposited litter. Pick up and removal shall include any and all litter deposited thereon by anyone prior to the date of execution of sentence.

Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder. (Ord. No. 8494, § 1, 3-21-06)

### **Article VI. Sidewalks**

#### **Section 10.510. Removal of or Injury to Pavement.**

No person may remove, injure or destroy any pavement, sidewalk or board walk without being authorized by the Director of Public Works. Any person desiring to remove temporarily any pavement or sidewalk may apply to the Director of Public Works for permission. Such removal will be upon such conditions and subject to such restrictions as he prescribes, and every permit for such removal must be conditioned for the replacing of the pavement or sidewalk in as good condition as when taken up, within a time to be fixed by the permit.

#### **Section 10.520. Dangerous Sidewalks.**

The owner and occupant of any premises are jointly responsible for maintenance of any sidewalk in front of the premises. No such person may permit any such sidewalk to become out of repair, so as to endanger the life or limb of persons walking thereon, or may fail properly to repair the same after being notified by the Director of Public Works to do so within a time to be fixed in the notice.

#### **Section 10.525. Dangerous Condition Not Corrected; Repair or Replacement by City; Special Tax Bill.**

After the expiration of the time for repair or replacement set forth in the notice, if the sidewalk is not repaired or replaced as directed, a Code Enforcement Officer shall have repairs or replacement completed as necessary, keeping an accurate record of the expense of all labor and material used in such repair or replacement as to each lot, and shall issue a bill to the property owner(s) for the expenses plus an administrative fee of \$35. If such bill remains unpaid for 30 days, the Inspector shall report such expense to the City Council, certifying to the correctness thereof, showing the lot by lot and block numbers or other legal description, and the date or dates on which the repair or replacement occurred, and the name and address of the owner, lessee, occupant or other person exercising control of the lot. Upon receipt by the City Council of that report, the City Council shall assess against each lot concerned a special assessment or tax equivalent to the expense incurred in repairing or replacing the sidewalk thereon, including administrative costs in the amount of Thirty-five Dollars (\$35.00), and shall direct the

City Clerk to issue a special tax bill therefor, against each such lot. Such special tax bill shall be due and payable thirty (30) days after its date, shall bear interest at the rate of eight percent (8%) per annum from and after thirty (30) days after its date, and shall be a lien against the lot against which it is issued until paid. (Ord. No. 8139, § 1, 2-15-00; Ord. No. 8713, § 2, 3-15-11)

**Section 10.530. Ice, Snow and Dirt Removal.**

No person may permit any ice, snow, dirt, mud or filth of any character to remain longer than forty-eight (48) hours on any sidewalk fronting or adjacent to any lot or premises occupied or owned by him.

**Section 10.540. Draining on Sidewalk.**

No person may permit any spout or pipe, conducting water from the eaves of a building owned or occupied by him, to cause overflow over or on any sidewalk.

**Section 10.550. Penalty for Violation.**

Any person violating any of the provisions of this article will be subject to a fine of not less than Five Dollars (\$5.00) or more than One Hundred Dollars (\$100.00).

**Article VII. Sewers and Drainage**

**Section 10.610. Definitions.**

For the purpose of this article, the meaning of terms used hereinafter shall be as follows:

- a. **“Drainage Channel”** shall mean any artificially constructed open channel, ditch, swale, or flume, whether lined or unlined, for the drainage of storm water and ground water.
- b. **“Garbage”** shall mean every refuse accumulation of animal, fruit and vegetable matter that attends the preparation, use, cooking, dealing or in storing of meat, fish, fowl, fruit, grains and vegetables, and condemned foods found within the City except frozen or decayed fruits, meats, fish or fowl shipped into the City in unusable condition. The term garbage shall be held to also include refuse and offal from slaughterhouses, pork houses and poultry houses.
- c. **“Industrial Waste”** shall mean any industrial liquid, waste water, or toxic substance from any industrial process.
- d. **“Person”** shall mean any individual, firm, company, association, society, corporation, or group.
- e. **“Sanitary Sewer”** shall mean a sewer designed and intended to receive and convey only sewage as defined herein, together with such infiltration as cannot be avoided.
- f. **“Sewage”** shall mean the water carrying wastes from residences including the

backwash or discharge from swimming pool, business buildings, institutions and industrial establishments, singular or in any combination, together with such ground surface and storm waters as cannot be avoided.

- g. **“Sewer”** shall mean any public, semi-private or private lateral or main sewer, pipe, or enclosed conduit constructed in a street, alley, place, easement or right-of-way, exclusive of a building or industrial connection sewer for the conveyance of sewage, water carried wastes, or storm water.
- h. **“Storm Sewer”** shall mean a sewer designed and intended to receive and convey only storm or unpolluted waters.
- i. **“Storm Water”** shall mean any water resulting from precipitation mixed with the accumulation of dirt, soil, and other debris or substances collected from the surfaces on which such precipitation falls or flows.
- j. **“Watercourse”** shall mean a natural surface drainage channel for storm water and ground water in which a flow of water occurs, either continuously or intermittently.

**Section 10.615. Discharge of Sewage and Waste Prohibited.**

It shall be unlawful to discharge or deposit into any natural outlet, drainage channel, or watercourse or otherwise above or below the ground within the City any sewage, industrial wastes, garbage, polluted water or any other substance which constitutes a nuisance or hazard to the public health or welfare. (Ord. No. 7474, § 1, 12-15-87)

**Section 10.620. Cesspools and Septic Tanks Prohibited.**

Except as herein provided, it shall be unlawful to install any cesspool, septic tank or other facility intended for the disposal of sewage.

**Section 10.625. Connection to Public Sewer Required.**

At such time as a sanitary or combined public sewer becomes available to a property served by a private or semi-private sewage disposal system or treatment facility, a direct connection shall be made to the public sewer in compliance with this ordinance, and any septic tank, cesspool, or similar private or semi-public sewage disposal or treatment facilities shall be abandoned and filled with suitable material. A sewer shall be considered available if it is within one hundred fifty (150) feet of any part of the property to be connected to the sewer.

The owner or occupant of the property connected to the sewer shall be responsible for the proper maintenance of the lateral sewer line running from the structure to the public sanitary sewer line. This responsibility includes the spur portion of the wye connection to the public sanitary sewer line. (Ord. No. 7474, § 2, 12-5-87)

**Section 10.630. Discharge of Certain Waters Into Sanitary Sewer Prohibited.**

No person shall discharge or cause to be discharged any storm water, surface water,



ground water, roof runoff, subsurface drainage, uncontaminated cooling water or unpolluted industrial process waters into any sanitary sewer. Any connection, drain or arrangement which will permit any such waters to enter any sanitary sewer shall be deemed to be a violation of this section and this ordinance.

**Section 10.635. Open Sewer Connections Prohibited.**

It shall be unlawful for any plumber, drainlayer, contractor, or any other person constructing a sewer, a house or building connection, or industrial connection sewer connected to a sanitary sewer to leave such connection open, unsealed, or incomplete in such manner that will permit storm or surface water to enter into any sanitary sewer within the City. All such openings shall be tightly sealed at all points whenever work is not actually in progress on such sewer or connection.

**Section 10.640. Discharge of Storm Waters.**

Storm water and all other unpolluted drainage shall be discharged into such sewers as are specifically designated as combined sewers or storm sewers, or to a drainage channel or natural outlet approved by the Executive Director of the Metropolitan Sewer District.

**Section 10.645. Deposit of Certain Materials in Sewers Prohibited.**

No person shall deposit or throw into any sewer, sewer inlet or privy vault, or into any private drain connecting with a public sewer any straw, hay, shavings, tinnings, waste, produce or material of manufacture, rags, or garbage which has not been properly shredded, or any substance which may choke up or cause a nuisance; nor shall any dam or other obstruction be placed in any sewers.

**Section 10.650. Injuring or Damaging Sewers or Equipment Prohibited.**

It shall be unlawful for any unauthorized person to maliciously, willfully, or negligently break, damage, destroy, uncover, deface, alter, or tamper with any structure, appurtenance, or equipment which is a part of any public or private sewer.

**Section 10.655. Responsibility for Observance.**

The owner or occupant of any establishment which discharges any substance into any public sewer or into any private sewer which discharges directly or indirectly into any public sewer not in accordance with the preceding sections shall be deemed guilty of a misdemeanor.

**Section 10.660. Notice of Violation.**

Any person found to be violating any of the provisions of this ordinance shall be given by the City Manager or his duly authorized agent, a written notice stating the nature of the violation and providing a reasonable time limit for the unsatisfactory correction thereof. The offender shall, within the period of time stated in such notice satisfactorily correct said violation.

**Section 10.670. Penalties for Violation.**

Violations beyond the time limit provided for in Section 10.660 shall constitute a misdemeanor, and any person found guilty and convicted thereof, shall be fined not less than Ten Dollars (\$10.00) nor more than One Hundred Dollars (\$100.00) or be imprisoned in the City Jail or other duly authorized place of confinement for not less than one (1) nor more than ninety (90) days or by both such fine and imprisonment for each violation. Each day in which any such violation shall continue shall be deemed to be a separate offense. The City Manager or his duly authorized representative may further order the work of correcting any violations of this article to be done by the City and shall make a charge against the owner or occupier of said premises for the reasonable cost of such work. If the bill is unpaid after thirty (30) days, notice may be filed in the Office of the Recorder of Deeds of St. Louis County, whereupon such bill shall become a lien upon the property involved.

**Article VIII. Littering of Streets by Contractors and Haulers**

**Section 10.710. Littering Prohibited.**

All building contractors, contract haulers and other haulers of refuse, debris and waste, and all operators of vehicles hauling any such matter shall be required to remove any waste, debris, dirt, mud or other material, whatever, deposited by any vehicles owned, controlled or operated by any such person, firm or corporation, from all public and private streets and ways within the City of Webster Groves, whether such littering is caused by spillage from the vehicles, or from the tires or wheels of such vehicles, as soon as practicable.

**Section 10.715. Penalty for Littering.**

Any such building contractor, contract hauler or operator of any such vehicle, above-described, who shall fail or refuse to perform the removal of matter as required in Section 10.710, shall be guilty of a misdemeanor and, upon conviction, fined not less than Ten Dollars (\$10.00) nor more than Fifty Dollars (\$50.00) and each violation shall be a separate offense.

**Section 10.720. Penalty for Refusal to Remove Litter.**

Any such contractor, hauler or operator as set out in Section 10.710 hereof, who shall fail or refuse to remove such material, after being notified by any police officer or other duly authorized agent of the City of Webster Groves so to do, shall be guilty of a misdemeanor and upon conviction shall be fined not less than Fifty Dollars (\$50.00) nor more than One Hundred Dollars (\$100.00) and each violation hereof shall be a separate offense.

**Article IX. Public Facilities**

**Section 10.810. Authority to Establish Regulations.**

The City Manager is hereby authorized to establish and enforce reasonable regulations for the operation, maintenance and use by the public of all property and improvement thereon owned or leased by the City of Webster Groves.

**Section 10.815. Publication of Regulations.**

Regulations established under this article shall be in written form, shall be available to the public at the City Hall, and shall be adequately posted in summary form on or near the public property affected by such regulations.

**Section 10.820. Penalty for Violation.**

Any person violating any regulations established in accordance with the provisions of this article shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than Ten Dollars (\$10.00) nor more than Five Hundred Dollars (\$500.00) and each violation hereof shall be a separate offense.

**Article X. Vacation of Public Streets, Roads and Easements**

**Section 10.910. Vacation Procedure.**

Whenever the public necessity, convenience and general welfare require, the City Council may, subject to the procedure provided in this section, vacate all or any part of any public easement, right-of-way, street, alley, public road or highway dedicated or conveyed to the City of Webster Groves, or title to which or authority over which is vested in the City of Webster Groves by operation of law. A vacation may be initiated by the City Council, by the verified petition of an interested party, or by recommendation of the Department of Public Works. (Ord. No. 7902, § 1, 2-6-96)

**Section 10.920. Definition.**

For the purpose of this section, an “**interested party**” includes any owner of property abutting or touching on the proposed vacation and any owner of property that would be denied reasonable access to the general system of public roads and streets by the proposed vacation of a street, alley, public road or highway. “**Owner**” shall include the owner or owners of record indicated upon the records of the St. Louis County Assessor’s Office on the date of the filing of the petition for vacation with the Department of Public Works. (Ord. No. 7902, § 1, 2-6-96)

**Section 10.930. Petition for Vacation.**

A petition for vacation shall be on forms approved by the City Attorney and shall be addressed to the City Council and filed, together with a filing fee of Two Hundred Dollars (\$200.00), with the Department of Public Works. Each petition shall include an accurate description of the public easement, right-of-way, street, alley, public road or highway sought to be vacated, its location and the names of all interested parties. (Ord. No. 7902, § 1, 2-6-96)

**Section 10.940. Notice of Interested Parties.**

Notice of the proposed vacation shall be given to all interested parties at least fifteen (15) days before the City Council shall act upon the petition or resolution. Notice shall be in accord with R.S.Mo 506.150-506.170, except that it may be made by any person authorized to make service under R.S.Mo 491.110. An interested party may in writing waive notice or affirmatively consent to the proposed vacation. Proof of proper notice, waiver of notice, or consent shall be filed with the City Clerk before the Council shall act upon the proposed vacation. Interested parties not knowledgeable after reasonable inquiry may be considered to have been given notice by the public notice of paragraph (5), if the Council finds the same to be the best practicable notice under the circumstances. (Ord. No. 7902, § 1, 2-6-96)

**Section 10.950. Public Notice.**

At least fifteen (15) days before the City Council shall act upon the proposed vacation, the City Clerk shall give notice of pendency in a public newspaper. (Ord. No. 7902, § 1, 2-6-96)

**Section 10.960. Comments from Utilities Companies.**

Before the City Council shall act upon the proposed vacation, comments of each concerned utility as to whether each objects to or approves of the proposed vacation shall be filed with the Department of Public Works. (Ord. No. 7902, § 1, 2-6-96)

**Section 10.970. Action by City Council.**

After receiving reports on the proposed vacation from the Department of Public Works, the Department of Planning and Development and the City Attorney, the City Council may by ordinance vacate the concerned public easement, right-of-way, street, alley, public road or highway with such conditions and restrictions as it may deem for the public good. (Ord. No. 7902, § 1, 2-6-96)

**Article XI: Rights-Of-Way Usage Code**

**Section 10.1000 — Title, Definitions and Word Usage.**

**A. Title.** This Article shall be known and may be cited as the "Rights-of-Way Usage Code".

**B. Definitions and Word Usage — General.** For the purposes of this Code, the following terms, phrases, words and abbreviations shall have the meanings given herein, unless otherwise expressly stated. When not inconsistent with the context, words used in the present tense include the future tense and vice versa, words in the plural number include the singular number and vice versa and the masculine gender includes the feminine gender and vice versa. The words "*shall*" and "*will*" are mandatory and "*may*" is permissive. For convenience, the first (1st) letter of terms, phrases, words and abbreviations defined in this Code have been capitalized, but an inadvertent failure to capitalize such letter shall not affect meaning.

C. *Definitions.* As used in this Article, the following terms shall have these prescribed meanings:

**ANTENNA**

Facilities consisting of any device, array or antenna of any kind, including, but not limited to, a whip antenna, panel antenna or satellite antenna, that transmits or receives electromagnetic signals to deliver microwave, cellular, broadcast or other non-wire voice, data or video communications service through the airwaves above the rights-of-way and which attach to either pre-existing or subsequently approved facilities.

**ANTENNA FEE**

A compensation fee approved by the City Council established in the City's pertinent schedule of fees from time to time for the rent of a portion of the rights-of-way by a person having facilities within the rights-of-way. The antenna fee shall be calculated on the number of antennas located within the ROW and shall not include any linear foot fee, but a ROW user may be subject to both an antenna fee and a linear foot fee.

**APPLICANT**

The person applying for and receiving a ROW permit for ROW work.

**APPLICATION**

That form which an applicant must use to obtain a ROW permit to conduct ROW work.

**CITY**

The City of Webster Groves, Missouri, and its agencies, departments, agents and employees acting within their respective areas of authority.

**CITY MANAGER**

The City Manager of the City of Webster Groves, Missouri.

**CITY COUNCIL OR COUNCIL**

The Governing Body of the City.

**CITY FACILITIES**

Any facilities, street light poles, lighting fixtures or other structures or equipment located within the rights-of-way and owned by the City.

**DIRECTOR**

The City's Public Works Director or such other person designated by the City Manager to administer and enforce this Code.

**EMERGENCY RIGHTS-OF-WAY (OR "ROW") WORK**

Includes, but is not limited to, ROW work made necessary by exigent circumstances to repair, control, stabilize, rectify or correct the following:

1. An unexpected or unplanned outage, cut, rupture, leak or any other failure of facilities that prevents or significantly jeopardizes the ability of a ROW user to provide service to customers;
2. An unexpected or unplanned outage, cut, rupture, leak or any other failure of facilities 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 other such failure is not immediately repaired, controlled, stabilized, rectified or corrected; or
3. Any occurrence involving facilities that a reasonable person would conclude under the circumstances that immediate action was necessary and warranted.

**FACILITIES**

A network or system or any part thereof used for providing or delivering a service and consisting of one (1) or more lines, pipes, irrigation systems, wires, cables, fibers, conduit facilities, poles, vaults, pedestals, boxes, appliances, antennas, transmitters, towers, gates, meters, appurtenances or other equipment.

**GOVERNMENTAL ENTITY**

Any County, township, City, Town, Village, school district, library district, road district, drainage or levee district, sewer district, water district, fire district or other municipal corporation, quasi-municipal corporation or political subdivision of the State of Missouri or any other State, any agency or instrumentality of the State of Missouri or any other State or the United States and any cooperative district allowed by law acting in a governmental rather than a proprietary capacity.

**LINEAR FOOT FEE**

A compensation fee approved by the City Council and established in the City's pertinent schedule of fees from time to time for the rent of a portion of the rights-of-way by a person having facilities within the rights-of-way. The linear foot fee shall be calculated on the length, in linear feet, of the rights-of-way in or on which facilities are located and shall not

include any antenna fee, but a ROW user may be subject to both a linear foot fee and an antenna fee.

**PERSON**

An individual, partnership, limited liability corporation or partnership, association, joint stock company, trust, organization, corporation or other entity or any lawful successor thereto or transferee thereof.

**PERSON(S) HAVING FACILITIES WITHIN THE RIGHTS-OF-WAY**

Any person having ownership or control of facilities located within the rights-of-way.

**RIGHTS-OF-WAY OR ROW**

Unless otherwise restricted herein, the surface, the air space above the surface and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, parkway, waterway, public easement or sidewalk in which the City now or hereafter holds any property interest which, consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining facilities. No reference herein to "rights-of-way" shall be deemed to be a representation or guarantee by the City that its interest or other right to control the use of such property is sufficient to permit its use for the purpose of providing service. "*Rights-of-way*" shall not include:

1. The City's proprietary property, such as City owned or operated buildings, parks, street lights or other similar property,
2. Airwaves used for cellular, non-wire telecommunications or broadcast services,
3. Easements obtained by ROW users,
4. Railroad rights-of-way or ground used or acquired for railroads, or
5. Facilities owned and used by the City for the transmission of one (1) or more services.

**RIGHTS-OF-WAY (OR "ROW") PERMIT**

A permit granted by the City to a ROW user for ROW work.

**RIGHTS-OF-WAY (OR "ROW") USER**

A person having facilities within the ROW. A ROW user shall not include ordinary vehicular or pedestrian use.

**RIGHTS-OF-WAY (OR "ROW") WORK**

Action by a ROW user to (i) install, change, replace, relocate, remove, maintain or repair facilities within the rights-of-way, or (ii) to conduct work of any kind within or adjacent to the rights-of-way that results in an excavation, obstruction, disruption, damage or physical invasion or impact of any kind to the rights-of-way or the use thereof. The routine inspection of facilities shall not be considered ROW work unless the inspection requires the conduct of any of the activities or actions noted herein.

**SERVICE**

Providing or delivering an economic good or an article of commerce, including, but not limited to, gas, telephone, cable television, Internet, open video systems, video services, alarm systems, steam, electricity, water, telegraph, data transmission, petroleum pipelines, sanitary or stormwater sewerage or any similar or related service, to one (1) or more persons located within or outside of the City by use of facilities located within the rights-of-way.

**WIRELESS TRANSMISSION PROVIDER**

A person having facilities within the rights-of-way, which such facilities consist primarily of antennas, transmitters, towers or other appliances or equipment used to deliver a cellular, broadcast, data transmission or other non-wire communications service through the airwaves above the rights-of-way and which attach to either pre-existing or subsequently approved facilities.

**WITHIN**

In, along, under, over or across rights-of-way.

Section 10.1001      **Registration of Person(s) Having Facilities within the ROW.**

***A. Registration Required.***

1. Any person desiring to become a person having facilities within the ROW and any person having facilities within the ROW must register with the City.
  
2. Any person having or applying for a cable franchise from the City under the Cable Communications Regulatory Code or a Video Service Provider Authorization from the Missouri Public Service Commission must register hereunder. To the extent that any term of such person's cable franchise or video service authority conflicts with the Rights-of-Way Usage Code, the terms of the cable franchise or video service authority shall prevail. To the



extent that the Cable Communications Regulatory Code conflicts with the Rights-of-Way Usage Code, the more stringent shall prevail.

3. Any person that provides or intends to provide video programming by means of an open video system pursuant to certification approved by the Federal Communications Commission must register hereunder but shall also remain subject to the applicable provisions of the Cable Communications Regulatory Code. To the extent that the Cable Communications Regulatory Code conflicts with the Rights-of-Way Usage Code, the more stringent shall prevail.

4. As of the effective date of this Code, any person having facilities within the ROW pursuant to a duly-issued, lawful and applicable license or franchise shall register hereunder. Such person maintains all rights, privileges and obligations established by its license or franchise. To the extent that any terms of such person's license or franchise conflicts with the Rights-of-Way Usage Code, the terms of the license or franchise shall prevail.

**B. *Effectiveness Of Registration.*** Registration hereunder by an eligible person shall remain effective for so long as that person remains eligible, unless terminated by the person or the City hereunder. Any registration of an ineligible person shall be void from the date of ineligibility.

**C. *Registration Characteristics.***

1. A valid registration hereunder authorizes the issuance of ROW permits to the registered person in accordance with this Code. It does not expressly or implicitly authorize ROW work without an ROW permit or work on private property without owner consent through eminent domain or otherwise (except for use of compatible easements pursuant to Federal law) or to use publicly or privately owned facilities without a separate agreement with the owners.

2. A valid registration hereunder shall not eliminate the need to obtain any franchise, license or permit for the privilege of transacting and carrying on a business within the City as may be generally required by the ordinances and laws of the City other than this Code or for attaching devices to poles or other structures, whether owned by the City or other person.

3. A valid registration grants no exclusive or vested rights to occupancy within the rights-of-way other than those granted by this Code or the administration thereof.

4. The right to obtain ROW permits shall be subordinate to any prior lawful occupancy of the rights-of-way and the City reserves the right to designate where facilities are to be placed within the rights-of-way as provided herein to the extent allowed by law.

**D. *Registered Person Subject To Other Laws.***

1. A person required to register shall at all times be subject to and shall comply with all applicable Federal, State and local laws and shall at all times be subject to all lawful exercise of the Police power of the City including, but not limited to, all powers regarding planning, zoning, supervision of construction, assurance of equal employment opportunities, control of rights-of-way and consumer protection.

2. Registration hereunder shall not deprive any person of any rights or obligations imposed by any previously existing franchise, license or contract, nor shall it impose any obligations on any such person in addition to those included in any previously existing franchise, license or contract, except to the extent allowed by law.

3. Nothing in this Code shall be construed to prohibit the grant or renewal of any franchise by the City as may be allowed or required by State or Federal law.

4. Nothing in this Code shall be construed or deemed to supersede any applicable State or Federal law or any applicable regulation issued by a State or Federal agency including, but not limited to, the Missouri Public Service Commission and the Federal Communications Commission. In the event of any conflict between such laws or regulations and this Code, the applicable State or Federal law or regulation shall apply.

**E. *Failure to Register.*** Any person who has not registered within ninety (90) days of the effective date of this Code shall nonetheless be subject to all requirements of this Code including, but not limited to, its provisions regarding ROW permits, construction and technical standards and fees, except as otherwise provided herein. In its discretion and to the extent allowed by law, the City at any time may:

1. Require such person to register within thirty (30) days of receipt of a written notice to such person from the City that registration is required;

2. Require such person to remove its facilities from the rights-of-way and restore the affected area to a condition satisfactory to the City within a specific time period;

3. Direct municipal personnel to remove the facilities from the rights-of-way and restore the affected area to a condition satisfactory to the City and charge the person the costs thereof, including by placing a lien on the person's property as provided in connection with abating nuisances; or

4. Take any other action it is entitled to take under applicable law, including but not limited to seeking to impose penalties as provided herein.

**F. *Registration Exemption.*** Governmental entities having facilities within the ROW need not register hereunder, but such entities shall be subject to Sections **10.1004** and **10.1005** of this Code and such other Sections or provisions as may be appropriate to their presence in the ROW.

**Section 10.1002      Registration Procedures.**

**A. *Requirements and Processing.***

1. Registration shall be accomplished in the form of a letter to the City filed with the Director.

2. To be valid, the registration letter must be signed by an authorized representative of the registering person, contain all required information and be accompanied by a filing fee established in the City's pertinent schedule of fees.

3. At any time the Director determines a registration letter does not comply with this Code, the Director may return it to a point of contact identified therein with a written explanation of the reason(s) for such return. Filing fees shall not be refunded. Failure to return a registration letter shall not validate an incomplete or otherwise invalid or void registration letter.

**B. *Contents of Registration Letter.*** A registration letter shall contain or be accompanied by the information required herein. All such information received by the City shall be public, unless confidentiality is requested and permitted by the Missouri Open Meetings Law and other applicable State and Federal law. The information required shall include:

1. Name, address and legal status of the registering person;

2. Name, title, address, telephone number, e-mail address and fax number of individual(s) authorized to serve as the point of contact between the City and the registering person so as to make contact possible at any time (i.e., twenty-four (24) hours per day, seven (7) days per week);

3. Description of the general uses made or to be made of the facilities located within the rights-of-way by the registering person, e.g., provision of service(s), transfer or lease of facilities (or portion thereof, including bandwidth) to another person, use of the facilities to transverse the City, construction of facilities to be used at a later date, etc.;

4. Description of all services provided or to be provided by the registering person to any person located in the City through facilities located within the rights-of-way and an explanation of the registering person's legal qualifications to provide such services, including copies of supporting documentation such as relevant certificates or orders from the Federal Communications Commission, Missouri Secretary of State and/or Missouri Public Service Commission or pertinent rules or Statutes;

5. Name and address of any and all other persons providing service(s) to any person located in the City through the registering person's facilities located within the rights-of-way and a general description of such service(s); and

6. Current certificates of insurance in accordance with this Code.

**C. *Notice of Change.*** Within thirty (30) days of any changes in the information set forth in or accompanying its registration letter, a registered person shall notify the City of any such change. Such notices shall be submitted and processed in the same manner as an initial registration, except the filing fee shall not be required.

**D. *Registration Index.*** The Director shall maintain an index of all registered persons and their point(s) of contact.

**E. *Termination of Registration.***

1. The City shall have the right to terminate a registration for a substantial and ongoing failure to comply with this Code or other applicable law or for defrauding or attempting to defraud the City. To invoke the provisions of this Section, the Director shall give the person written notice of such intent. If within thirty (30) calendar days following such written notice from the City, the person has not completed corrective action or corrective action is not being

actively and expeditiously pursued to the satisfaction of the Director, the Director may commence a proceeding to consider terminating the person's registration, giving written notice of the reasons therefor.

2. Prior to terminating a registration, the Director shall hold a hearing, after giving at least ten (10) calendar days' notice to the person, at which time the person shall be given an opportunity to be heard. Following the hearing, the Director may determine whether to terminate the registration based on the information presented at the hearing and other information of record. If the Director determines to terminate a registration, the decision shall be in writing setting forth the reasons therefor. The Director may make such decision conditional on a person's failure to resolve outstanding problems or take appropriate steps to resolve such problems within a specific period of time. A copy of such decision shall be provided to the person.

3. Once a registration has been terminated by the Director, the person may not register again except upon express written approval by the City Manager, which approval shall be withheld absent clear and convincing evidence that the person has remedied all previous violations and is in full compliance with all laws and will not in the future violate this Code or defraud the City.

4. Registration of a public utility that has been legally granted access to the right-of-way shall not be terminated.

**Section 10.1003 Rights-Of-Way ("ROW") Permits.**

**A. ROW Permit Requirements.**

1. Any person desiring to perform ROW work must first apply for and obtain a ROW permit, in addition to any other building permit, license, easement, franchise or authorization required by law. In the event of a need for emergency ROW work, the person conducting the work shall as soon as practicable notify the City of the location of the work and shall apply for the required ROW permit as soon as practicable following the commencement of the work, not to exceed the third (3rd) business day thereafter. The Director may design and issue general permits for emergency ROW work for several different locations or throughout the City.

2. No person having facilities within the ROW who has failed to register with the City shall be granted a ROW permit, except as otherwise provided or allowed by ordinance, franchise, license or written contract with the City.

3. All applications for ROW permits shall be submitted to the Director. The Director may design and make available standard forms for such applications, requiring such information as allowed by law and as the Director determines in his or her discretion to be necessary and consistent with the provisions of this Code and to accomplish the purposes of this Code. Each application shall at minimum contain the following information for the proposed ROW work, unless otherwise waived by the Director:

a. The name, address and telephone number of a representative whom the City may notify or contact at any time (i.e., twenty-four (24) hours per day, seven (7) days per week) concerning the work;

b. If different from the applicant, the name of the person on whose behalf the proposed work is to be performed;

c. A description of the proposed work including a conceptual master plan and, when applicable, an engineering site plan or other technical drawing showing the nature, dimensions and location of the applicant's proposed work or facilities, their proximity to other facilities that may be affected by the proposed work and the number of street crossings and their locations and dimensions;

d. Projected commencement and termination dates and anticipated duration of the work or, if such dates are unknown, a representation that the applicant shall provide the Director with reasonable advance notice of such dates once they are determined;

e. If the applicant is, or is acting on behalf of, a person having facilities within the ROW or a person desiring to become a person having facilities within the ROW, verification that the applicant or such person has registered with the City and that the information included in that registration is accurate as of the date of the application; and

f. Copies of any required certificates of insurance or performance and maintenance bonds.

4. The information required by the application may be submitted in the form maintained by the applicant, provided it is responsive to these requirements and the applicant shall be

allowed a reasonable amount of time to complete the application based on the amount of data or information requested or required.

5. Each such application shall be accompanied by the following payments:

- a. An application fee, as approved by the City Council and established in the City's pertinent schedule of fees, to cover the cost of processing the application;
- b. Any other amounts otherwise due to the City from the applicant including, but not limited to, prior delinquent permit fees and costs, delinquent rental fees and any loss, damage or expense suffered by the City because of the applicant's prior excavations of the rights-of-way or for any emergency actions taken by the City, but the Director may modify this requirement to the extent the Director determines any such fees to be in good-faith dispute.

**B. ROW Permit Application Review and Determination.**

1. The Director shall promptly review each completed application for a ROW permit and shall grant or deny all such applications as provided herein within thirty-one (31) days of receipt of a completed application. If the Director fails to act on an application for a ROW permit within thirty-one (31) days, the application shall be deemed approved. In order to avoid excessive processing and accounting costs to either the City or the applicant, the Director shall have authority to establish procedures for bulk processing of applications and periodic payment of fees. Unless the application is denied pursuant to Subsection **(B) (7)** hereof, the Director shall issue a ROW permit upon determining that the applicant:

- a. Has submitted all necessary information;
- b. Has paid the appropriate fees; and
- c. Is in full compliance with this Code and all other City ordinances.

2. It is the intention of the City that interference with, damage to, excavation or disruption of or the placement of facilities within the City's rights-of-way should be minimized and limited in scope to the extent allowed by law to achieve the purposes of this Code. When reasonable and necessary to accomplish such purposes, the Director shall justify to the applicant that the required alternative is reasonable and necessary and may require as alternatives to the proposed ROW work either less-disruptive methods or different locations for facilities, provided that any required alternative:

- a. Shall not increase expenses by more than ten percent (10%) of the applicant's costs for the work as proposed,
  - b. Shall not result in a decline of service quality, and
  - c. Shall be competitively neutral and non-discriminatory.
3. Upon receipt of an application, the Director shall determine whether any portion of the rights-of-way will be affected by the proposed work and whether the interference, disruption or placement of facilities will be more than minor in nature. In determining whether the proposed work is more than minor in nature, the Director shall consider the nature and scope of the work, its location and duration and its effect on the rights-of-way, the use thereof and neighboring properties.
  - a. If the applicant can show to the Director's reasonable satisfaction that the work involves no interference, disruption, excavation or damage to or only minor interference with the rights-of-way or that the work does not involve the placement of facilities or involves time-sensitive maintenance, then the Director shall promptly grant the ROW permit.
  - b. If the Director determines that the effect on the rights-of-way will be more than minor in nature and no exemption under Subsection **(B)(3)(a)** hereof or any other provision of this Code applies, the Director shall schedule and coordinate the work and grant the ROW permit accordingly. When reasonable and necessary to accomplish the purposes of this Code, the Director may postpone issuance of a ROW permit and may give public notice of the application in an attempt to identify whether other person(s) intend to do work in the same area within a reasonable period of time, so that all ROW work in the area can be coordinated. Due regard shall be accorded applicants that are required by any law, rule, regulation, license or franchise to provide service to the area defined in the application. The Director shall not impose any coordination or scheduling requirements that prevent or unreasonably delay an applicant's access to the ROW or that create a barrier to entry.
  - c. Applicants shall participate in any joint planning, construction and advance notification of such work, including coordination and consolidation of any excavation of or disturbance to the rights-of-way as directed by the Director. When deemed necessary to accomplish the goals of this Section and to the extent permitted by law, the City reserves the right, when feasible and reasonable, to require the sharing of facilities by ROW users. Applicants



shall cooperate with each other and ROW users and the City for the best, most efficient, least intrusive, most aesthetic and least obtrusive use of the rights-of-way.

d. The Director shall establish procedures allowing applicants to ascertain whether existing capacity may be available from other persons utilizing the rights-of-way along the intended path of any proposed work. The Director shall also maintain indexes of all ROW permits issued, both by the ROW user and by the affected rights-of-way.

4. In addition to the foregoing and in addition to any other standards or requirements imposed by this Code with regard to an application filed by a wireless transmission provider, the Director shall ensure compliance with the following provisions:

a. The design, location and nature of all facilities shall be subject to the review and approval of the Director as provided herein. Such review shall be non-discriminatory and competitively neutral and approvals shall not be unreasonably withheld.

b. The Director may designate certain locations or facilities in the ROW to be excluded from use by the applicant for its facilities including, but not limited to:

(1) Ornamental or similar specially designed street lights,

(2) Facilities, equipment, structures or locations that do not have electrical service adequate or appropriate for the proposed facilities or cannot safely bear the weight or wind loading thereof,

(3) Facilities, equipment, structures or locations that in the reasonable judgment of the Director are incompatible with the proposed facilities or would be rendered unsafe or unstable by the installation, and

(4) Facilities, equipment, structure or location that have been designated or planned for other use or are not otherwise available for use by the applicant due to engineering, technological, proprietary, legal or other limitations or restrictions.

c. If the application of this Subsection excludes locations for facilities to the extent that the exclusion conflicts with the reasonable requirements of the applicant, the Director shall cooperate in good faith with the application to attempt to find suitable alternatives, but such alternatives may exceed the cost increase limitation established by Subsection **(B)(2)** hereof

and the City shall not be required to incur any financial cost or to acquire new locations for the application.

**d.** The grant of a ROW permit shall not eliminate the need of a wireless transmission provider to have obtained a license, permit or other agreement for attaching facilities to other facilities, poles or other structures, whether owned by the City or other person.

**e.** Nothing in this Code shall be construed to require that the City grant wireless transmission providers access to any City facilities or the City's proprietary property, but the City may enter into separate agreements with wireless transmission providers to allow such access. Such agreements may include the payment of reasonable attachment fees for use of City facilities or other City property. All such agreements shall be non-discriminatory and competitively neutral among wireless transmission providers.

**5.** Each ROW permit shall include:

**a.** Projected commencement and termination dates or, if such dates are unknown at the time the ROW permit is issued, a provision requiring the ROW user to provide the Director with reasonable advance notice of such dates once they are determined;

**b.** Length of affected rights-of-way, number of road crossings and identification and description of any pavement or curb cuts included in the work;

**c.** Information regarding scheduling and coordination of work, if necessary;

**d.** The location of any of the applicant's facilities, both those proposed and existing, and the location of any known facilities owned by another person that may be affected by the proposed work;

**e.** An acknowledgment and representation by the applicant to comply with the terms and conditions of the ROW permit and this Code; and

**f.** Such conditions and requirements as are deemed reasonably necessary by the Director:

**(1)** To protect structures and other facilities in the rights-of-way from damage,

**(2)** For the proper restoration of such rights-of-way, structures and facilities,

- (3) For the protection of the public and the continuity of pedestrian and vehicular traffic,  
and
  - (4) For the protection of the public health, safety and welfare.
6. An applicant receiving a ROW permit shall promptly notify the Director of any material changes in the information submitted in the application. The Director may issue a revised ROW permit or require that the ROW user reapply for a ROW permit in accordance with all requirements of this Code.
7. ROW permits inure to the benefit of the applicant and the rights granted there under may not be assigned or transferred to any other person without the written consent of the Director.
8. The Director may deny an application, if denial is deemed to be in the public interest, for the following reasons:
- a. Delinquent fees, costs or expenses owed by the applicant;
  - b. Failure to provide information required by the application or this Code;
  - c. The applicant being in violation of the provisions of this Code or other pertinent and applicable City ordinances;
  - d. Failure to return the ROW to its previous condition under previously issued ROW permits or after prior excavations by the applicant;
  - e. The area is environmentally sensitive as defined by State Statute or Federal law or is a historic district as defined by local ordinance;
  - f. For an applicant's refusal to comply with alternative ROW work methods or locations required by the Director pursuant to this Code; and
  - g. For any other reason to protect the public health, safety and welfare, provided that:

    - (1) Such denial does not fall within the exclusive authority of the Missouri Public Service Commission,

(2) Such denial does not interfere with a ROW user's right of eminent domain of private property, and

(3) Such denial is imposed on a competitively neutral and non-discriminatory basis.

9. For the purposes of Subsection (B) (7) hereof, the term "*applicant*" shall also include, when applicable, the person on whose behalf the applicant is to perform the ROW work. The Director may consider good-faith disputes with, or circumstances beyond the control of, the applicant or such person in determining whether to grant or deny the application.

**C. ROW Permit Revocation and Code Violation Prosecution.**

1. The Director may revoke a ROW permit without fee refund after notice and an opportunity to cure, but only in the event of a substantial breach of the terms and conditions of the ROW permit. Prior to revocation the Director shall provide written notice to the ROW user identifying any substantial breach and allowing a reasonable period of time not 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. The cure period shall be extended by the Director on good cause shown by the ROW user. A substantial breach includes, but is not limited to, the following:

- a. A material violation of a provision of the ROW permit;
- b. An evasion or attempt to evade any material provision of the ROW permit or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its residents;
- c. A material misrepresentation of fact in the ROW permit application;
- d. A failure to complete ROW work by the date specified in the ROW permit, unless an extension is obtained or unless the failure to complete the work is due to reasons beyond the ROW user's control; and
- e. A failure to correct, upon reasonable notice and opportunity to cure as specified by the Director, work that does not conform to applicable national safety codes, industry construction standards or the City's pertinent and applicable ordinances, including, but not limited to, this Code, provided that City standards are no more stringent than those of a national safety code.

2. Any breach of the terms and conditions of a ROW permit shall also be deemed a violation of this Code and in lieu of revocation the Director may initiate prosecution of the ROW user for such violation as provided in Section **10.1007(H)** of this Article.

**Section 10.1004 Work in The Rights-Of-Way.**

**A. Jurisdiction, Inspection And Stop Work Orders.**

1. All facilities and ROW work 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.
2. 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, including work not meeting the standards established in Subsection **(F)** below. Such orders:
  - a. May be delivered personally or by certified mail to the address listed on the application for the ROW permit, the person in charge of the construction site at the time of delivery or the registered person's point of contact;
  - b. Shall state that work not authorized by the ROW permit is being carried out, summarize the unauthorized work and provide 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
  - c. May be enforced by equitable action in the Circuit Court of St. Louis County, Missouri, and in such case the person involved in the work shall be liable for all costs and expenses incurred by the City in enforcing such orders, including reasonable attorney's fees in addition to any and all penalties established in this Code.

**B. Installation of Facilities.**

1. In conjunction with the City's long-standing policy favoring underground construction, no person may erect, construct or install new poles or other facilities above the surface of the rights-of-way without the written permission of the City, unless the City's authority has been pre-empted. Such permission may be granted through a ROW permit when other similar facilities exist above ground or when physical conditions are such that underground construction is impossible, impractical or economically unfeasible, as determined by the City,

and when in the City's judgment the above ground construction has minimal aesthetic impact on the area where the construction is proposed.

2. During installation of facilities and to the extent authorized by law, existing underground conduits shall be used whenever feasible and permitted by the owner thereof.

3. In the case of new construction or property development, the developer or property owner shall give to all persons registered hereunder reasonable written advance notice of the particular date on which open trenching will be available for installation of facilities. Costs of trenching and easements required to bring facilities within the development shall be borne by the developer or property owner; except that if the facilities are not installed within five (5) working days of the date the trenches are available as designated in the notice given by the developer or property owner, then once the trenches are thereafter closed, the cost of new trenching shall be borne by the person installing the facilities.

*C. Relocation of Equipment and Facilities.*

1. In the event of an emergency or where construction equipment or facilities create or are contributing to an imminent danger to health, safety or property, the City may, to the extent allowed by law, remove, relay or relocate such construction equipment or the pertinent parts of such facilities without charge to the City for such action or for restoration or repair. The City shall attempt to notify the owner of the construction equipment or facilities prior to taking such action, but the inability to do so shall not prevent same. Thereafter, the City shall notify the owner of the construction equipment or facilities as soon as practicable.

2. Should the grades or boundaries of the rights-of-way be changed at any time, a ROW user shall, if necessary, at its own cost and expense, relocate or change its facilities so as to conform to the new grades or boundaries. This requirement shall not apply when the ROW user holds a valid easement that existed prior to the date when the area in question became rights-of-way. The ROW user shall bear the burden of establishing to the City's satisfaction the fact of the pre-existing easement.

3. At the City's direction, all facilities shall be moved underground and the cost shall be solely the obligation of the owners (or as otherwise allowed or required by law).

4. Any ROW user shall, on the request of the City or any person authorized by the City, temporarily relocate facilities to permit the moving of buildings or oversized vehicles.

5. Any ROW user shall, within a reasonable time specified by the City, protect, support, disconnect, relocate or remove, at its own expense, construction equipment or discrete portions of its facilities when required by the City by reason of traffic conditions; public safety; rights-of-way construction, maintenance or repair (including resurfacing or widening); change of rights-of-way grade; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks or any type of government-owned communications system, public work or improvement or any government-owned utility; rights-of-way vacation; or for any other purpose where the convenience of the City would be reasonably served thereby.

6. If any action under Subsections **(C)(4)** or **(5)** hereof is reasonably required of a ROW user to accommodate a person or another ROW user, the ROW user shall, after reasonable advance written notice, take action to effect the necessary actions requested and the actual cost, reasonably incurred, of such actions shall be paid by the person or ROW user upon whose behalf the action is requested. The ROW user taking such action shall have the authority to require such payment in advance.

7. Rather than relocate facilities as requested or directed, a ROW user may abandon the facilities if approved by the City as provided in Subsection **(E)** below.

8. No action hereunder shall be deemed a taking of property and no person shall be entitled to any compensation therefor. No location of any facilities within the rights-of-way shall be a vested interest.

**D. Property Repair and Alterations.**

1. During any ROW work, the person doing the work shall protect from damage any and all existing structures and property belonging to the City and any other person. Any and all rights-of-way, public property or private property disturbed or damaged during the work shall be repaired or replaced by the person doing the work or the person on whose behalf the work is being done and such person shall immediately notify the owner of the fact of the damaged property. Such repair or replacement shall be completed within a reasonable time specified by the Director and to the Director's satisfaction.

2. Any alteration to the existing water mains, sewerage or drainage system or to any City, State or other public structures or facilities in the rights-of-way required on account of the construction, installation, repair or maintenance of facilities within the rights-of-way shall be made at the sole cost and expense of the owner of such facilities.

**E. Removal, Abandonment and Transfer of Facilities.**

1. If a registration is terminated, the City may require that the person having facilities within the ROW remove its facilities from the rights-of-way at the person's expense. In removing its facilities the person shall obtain a ROW permit and restore any excavation that shall be made by it as required by this Code. The liability, indemnity, insurance and bonding requirements as provided herein shall continue in full force and effect during and after the period of removal and restoration and until full compliance by the person with the terms and conditions of this paragraph and the requirements of this Code.

2. If the person having facilities within the ROW fails to remove the facilities and restore the ROW within a reasonable period of time, the City may, to the extent permitted by law, have the removal done at the person's expense.

a. Alternatively, the City may permit the abandonment, without removal, of any facilities if the Director determines that abandonment will not result in interference with the use or maintenance of the rights-of-way or if ownership of the facilities is transferred as provided herein.

b. The City may decide that the ownership of the facilities shall revert to the City or to such person as directed by the City. In either case the owner of the facilities, if required by the City and permitted by law, shall submit a written instrument, satisfactory in form to City, transferring to the City, or to such person as directed by the City, ownership of the facilities. The City may sell, assign or transfer all or part of the facilities reverting to the City.

3. If a person having facilities within the ROW:

a. Has installed the facilities without complying with the requirements of this Code, or

b. Abandons such facilities under applicable law, the City may deem the facilities abandoned. If such abandonment occurs, the City may require the removal of the facilities, remove the facilities at the expense of the person having facilities within the ROW, allow the abandonment of the facilities without removal or require the transfer of the facilities, all as provided in this Subsection.

4. The City shall not remove any facilities unless the existence of such facilities prevents or significantly impairs the use, repair, excavation or construction of the ROW. The City shall not remove or seek to possess or transfer the facilities until thirty (30) days have passed



following written notice to the person having facilities within the ROW of the City's intent to so act. The City may choose not to act on good cause shown by the person having facilities within the ROW.

**F. Standards for ROW Work.**

1. Except for emergency ROW work as provided in Section 10.1003(A)(1), ROW work shall be performed only upon issuance and in accordance with the requirements of a ROW permit. At all times during the work, ROW permits shall be conspicuously displayed at the work site and shall be available for inspection by the Director.

2. If at any time it appears that the duration or scope of the ROW work shall differ from that allowed by the ROW permit, the ROW user shall inform the Director. The Director may issue a waiver, an extension or a revised ROW permit or require that the ROW user reapply for an ROW permit in accordance with all requirements of this Code.

3. ROW users shall not open or encumber more of the rights-of-way than is reasonably necessary to complete the ROW work in the most expeditious manner or allow excavations to remain open longer than is necessary to complete the work.

4. All ROW work that affects vehicular or pedestrian traffic shall be properly signed, barricaded and otherwise protected at the ROW user's expense. The ROW user shall be responsible for providing adequate traffic control to the area surrounding the work as determined by the Director.

5. The ROW user shall perform the ROW work at such times that will allow the least interference with the normal flow of traffic and the peace and quiet of the neighborhood as permitted by the Director. Unless otherwise provided by the Director in the permit, non-emergency ROW work on arterial and collector streets may not be accomplished during the hours of 7:00 A.M. to 8:30 A.M. and 4:00 P.M. to 6:00 P.M. in order to minimize disruption of traffic flow.

6. The ROW user shall notify the City no less than three (3) working days in advance of any ROW work that would require any street closure or would reduce traffic flow to less than two (2) lanes of moving traffic for more than four (4) hours. Except in the event of emergency ROW work, no such closure shall take place without notice and prior authorization from the City.

7. All ROW work shall be in accordance with all applicable Sections of the Occupational Safety and Health Act of 1970, the National Electrical Safety Code and other Federal, State or local laws and regulations that may apply including, without limitation, local health, safety, construction and zoning codes and laws and accepted industry practices, all as hereafter may be amended or adopted. In the event of a conflict among codes and standards, the most stringent code or standard shall apply (except insofar as that code or standard, if followed, would result in facilities that could not meet requirements of Federal, State or local law).

8. All facilities shall be installed and located to cause minimum interference with the rights and convenience of property owners, other ROW users and the City. Facilities shall not be placed where they will disrupt or interfere with other facilities or public improvements or obstruct or hinder in any manner the various utilities serving the residents and businesses in the City or public improvements.

9. All facilities shall be of good and durable quality.

10. All ROW work shall be conducted in accordance with good engineering practices, performed by experienced and properly trained personnel so as not to endanger any person or property or to unreasonably interfere in any manner with the rights-of-ways or legal rights of any property owner, including the City, or unnecessarily hinder or obstruct pedestrian or vehicular traffic.

11. All safety practices required by law shall be used during ROW work, including commonly accepted methods and devices to prevent failures and accidents that are likely to cause damage, injury or nuisance to the public.

12. Any contractor or subcontractor of a ROW user must be properly licensed under laws of the State and all applicable local ordinances and each contractor or subcontractor shall have the same obligations with respect to its work as a ROW user would have pursuant to this Code. A ROW user:

- a. Must ensure that contractors, subcontractors and all employees performing ROW work are trained and experienced,
- b. Shall be responsible for ensuring that all work is performed consistent with the ROW permit and applicable law,
- c. Shall be fully responsible for all acts or omissions of contractors or subcontractors,

d. Shall be responsible for promptly correcting acts or omissions by any contractor or subcontractor, and

e. Shall implement a quality control program to ensure that the work is properly performed.

**13.** It shall be the duty of any person making an excavation in the ROW to properly backfill such excavations and properly restore the surface to its proper condition.

a. In the event the excavations are made in the improved portion of the ROW, twelve (12) inches of granular backfill will be placed over an exposed utility and controlled low strength material (CLSM) will fill the hole within eight (8) inches of the finished surface for concrete pavements. There will be a plastic membrane placed between the rock base and the CLSM to prevent the material from bleeding into the rock base. The remaining eight (8) inches will be restored by placing a twenty-eight (28) day minimum strength, four thousand five hundred (4,500) psi concrete mix.

b. In the event the excavations in the ROW are made in the improved portion of an asphalt or combination street, twelve (12) inches of granular backfill will be placed over an exposed utility and controlled low strength material (CLSM) will fill the hole within nine (9) inches of the finished surface. There will be a plastic membrane placed between the rock base and the CLSM to prevent the material from bleeding into the rock base. The remaining nine (9) inches will be restored by placing a six (6) inch thick, twenty-eight (28) day minimum strength, four thousand five hundred (4,500) psi concrete mix under a three (3) inch asphalt concrete lift of Type C mix to meet existing grades.

c. Construction of asphalt driveway entrances in residential ROW will be constructed of six (6) inches of compacted rock base and three (3) inches of Type C asphalt concrete mix. Construction of asphalt driveway entrances in commercial ROW will be constructed of four (4) inches of compacted rock base, seven and one-half (7.5) inches of Type X and three (3) inches of Type C asphalt concrete mix. Concrete driveway approaches will consist of a four (4) inch compacted rock base and be a minimum of six (6) inches thick in residential ROW and eight (8) inches thick in commercial ROW.

d. Street crossings will be bored at the direction of the Director.

**14.** Above ground facilities shall be a neutral color and shall not be bright, reflective or metallic. Black, gray and tan shall be considered neutral colors, as shall any color that blends with the surrounding dominant color and helps to camouflage the facilities. Facilities shall be

located in such a manner as to reduce or eliminate their visibility. A sight-proof landscape screen may be required for any authorized above ground facilities taller than three (3) feet in height or covering in excess of four (4) square feet in size. Such screening shall be sufficient to reasonably conceal the facility. A landscape plan identifying the size and species of landscaping materials shall be approved by the Director prior to installation of any facility requiring landscape screening. The person having facilities within the ROW shall be responsible for the installation, repair or replacement of screening materials. Alternative screening or concealment may be approved by the Director to the extent it meets or exceeds the purposes of these requirements.

**15.** Above ground facilities shall be constructed and maintained in such a manner so as not to emit any unnecessary or intrusive noise and shall comply with all other applicable regulations and standards established by the City or State or Federal law.

**16.** If the application of this Subsection excludes locations for above ground facilities to the extent that the exclusion conflicts with the reasonable requirements of the applicant, the Director shall cooperate in good faith with the applicant to attempt to find suitable alternatives, but such alternatives may exceed the cost increase limitation established by Section **10.1003(B)(2)** and the City shall not be required to incur any financial cost or to acquire new locations for the applicant.

**G. *Restoring and Maintaining the Rights-Of-Way.***

**1.** To complete any ROW work the ROW user shall restore the ROW and surrounding areas, including, but not limited to, any pavement, foundation, concrete slabs or curbs, in accordance with the standards of Subsection **(F)** hereof and the reasonable conditions of the Director. Restoration of the ROW shall be completed within the dates specified in the ROW permit unless the Director issues a waiver, extension or a new or revised ROW permit.

**2.** If a ROW user fails to restore the ROW within the date specified either by the ROW permit or any extension thereof as granted by the Director, the City may perform its own restoration. The City may also opt to perform its own restoration regardless of any failure by the ROW user, in which case the ROW permit or any amendment or revision thereto shall note such option. In either event, if the City performs the restoration, the ROW user shall be responsible for reimbursing the City's reasonable actual restoration costs within thirty (30) days of invoice.

3. Every ROW user to whom a ROW permit has been granted shall guarantee for a period of four (4) years the restoration of the ROW in the area where the ROW user conducted excavation and performed the restoration. During this period the ROW user shall, upon notification from the Director, correct all restoration work to the extent necessary as required by the Director. Said work shall be completed within a reasonable time, not to exceed thirty (30) calendar days from receipt of the Director's notice unless otherwise permitted by the Director. If a ROW user fails to restore the ROW within the time specified, the City may perform the work and the ROW user shall be responsible for reimbursing the City's reasonable actual restoration costs within thirty (30) days of invoice. The Director may extend the cure period on good cause shown.

4. A ROW user shall not be relieved of the obligation to complete the necessary right-of-way restoration and maintenance because of the existence of a performance bond pursuant to Subsection **(I)**.

**H. Mapping Requirements.** After the completion of ROW work the ROW user shall provide to the City as-built drawings, maps or other comparable records as determined by the Director, drawn to scale and certified to the City as reasonably depicting the location of all facilities constructed pursuant to the ROW permit. Such records may be provided to the Director in the form maintained by the ROW user, but when available to the ROW user, shall be submitted in automated formats compatible with City systems, as determined by the Director, or in hard copy otherwise.

**I. Performance and Maintenance Bonds.**

1. Prior to any ROW work a ROW user shall establish in the City's favor a performance and maintenance bond in an amount to be determined by the Director to ensure the restoration of the rights-of-way. The bond shall continue in full force and effect for a period of twenty-four (24) months following completion of the work. The Director shall have the authority to extend the maintenance bond period for up to an additional twenty-four (24) months in the same manner as provided in Subsection **(G)(2)** hereof. The Director may waive this requirement when the work involves no disruption or damage or only minor disruption or damage to the rights-of-way. The Director shall waive this requirement when the ROW user has twenty-five million dollars (\$25,000,000.00) in net assets and does not have a history of non-compliance with the ordinances of the City.

2. In the event a ROW user fails to complete the ROW work in a safe, timely and competent manner or if the completed restorative work fails within the time period for the bond (as

determined by the Director), then after notice and a reasonable opportunity to cure there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the ROW user and the cost of completing work within or restoring the rights-of-way, plus a reasonable allowance for attorneys' fees, up to the full amount of the bond. The City may also recover against the bond any amount recoverable against a security fund or letter of credit where such amount exceeds that available under a security fund or letter of credit.

3. Upon completion of ROW work to the satisfaction of the Director and upon lapse of the bond period, including any extension by the Director, the City shall release the bond.

4. The bond shall be issued by a surety with an "A" or better rating of insurance in Best's Key Rating Guide, Property/Casualty Edition, shall be subject to the approval of the City Attorney and shall contain the following endorsement:

"This bond may not be canceled or allowed to lapse until sixty (60) days after receipt by the City, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."

5. In lieu of the bond required herein, the ROW user may establish in the City's favor such other security as the Director may determine to be commensurate with the noted bonding requirements including, but not limited to, an annual bond to be maintained in the minimum amount of twenty-five thousand dollars (\$25,000.00).

**J. Miscellaneous.**

1. Upon failure of a ROW user to commence, pursue or complete any ROW work required by law or by the provisions of this Code to be done in any street within the time prescribed and to the reasonable satisfaction of the City, the City may, at its option, after thirty (30) days' notice, cause such work to be done and the ROW user shall pay to the City the cost thereof in the itemized amounts reported by the City to the ROW user within thirty (30) days after receipt of such itemized report.

2. Upon ten (10) days' written notice and with the supervision of the City or as otherwise provided by law, a ROW user shall have the authority to trim trees that overhang rights-of-way of the City so as to prevent the branches of such trees from coming in contact with its facilities, at its own expense subject to the supervision and direction of the City. Nothing in this Subsection shall authorize the trimming of trees on private property without permission of the property owner. All cut materials shall be properly disposed.

3. During ROW work by a ROW user the City shall have the right to install and to thereafter maintain at its own cost in any excavation to or other applicable disturbance of the ROW any parallel facilities of its own that do not unreasonably interfere with the operations of other facilities.

4. Nothing in this Code shall be in preference or hindrance to the right of the City and any board, authority, commission or public service corporation of the City to use or occupy the rights-of-way or to perform or carry on any public works or public improvements of any description.

**Section 10.1005      Open Books and Records.**

A. Persons subject to rental fees as provided herein shall maintain sufficient records to document accurate payment of such rental fees including, but not limited to, such plans, records or maps showing the approximate location and length of all facilities located within the rights-of-way.

B. The City shall have the right to inspect at a location in the metropolitan St. Louis area all records that are reasonably necessary to monitor compliance with the terms of this Code. A person having facilities within the ROW shall be responsible for collecting and producing such information and by registering affirms that it will do so.

C. The Director may require provision or retention of additional information, records and documents from time to time as may be reasonably necessary or appropriate to the performance of any of the rights, functions or duties of the City in connection with this Code.

D. All records and information referenced herein shall be subject to inspection and copying by the City, at no cost to the City, to ensure code compliance. All records and information received by the City shall be public except to the extent confidentiality is requested and permitted by the Missouri Open Meetings Law and other applicable State and Federal laws. If any records cannot be copied for security or other reasons, the person having facilities within the ROW shall nonetheless make such records available for City inspection and shall reimburse the City for all reasonable costs incurred by the City in inspecting those records.

E. If any records are voluminous, then the person may request that the inspection take place at some other location outside the metropolitan St. Louis area, provided that such person must pay all reasonable travel expenses incurred by the City in inspecting those records.

**Section 10.1006 Rental Fees.**

**A. *Finding and Intent.*** The City finds that rights-of-way are valuable public property acquired and maintained at great expense to taxpayers. The City further finds that the grant of permission to locate facilities within the rights-of-way is a valuable property right and eliminates the need to invest substantial capital in the private location of such facilities. Any person that places facilities within the rights-of-way after the effective date of this Code and any person that leaves existing facilities within the rights-of-way more than ninety (90) days after the effective date of this Code shall be deemed to have agreed to pay compensation for such use of the rights-of-way as established herein. It is the intent of this Section that the rental fees provided for herein be applied to and be paid by only those persons having facilities within the rights-of-way. This Section codifies the City's long-established policy of imposing fees on rights-of-way users.

**B. *Payment to City.*** Any person having facilities within the ROW shall pay to the City annual rent consisting of, depending on the facility, linear foot fees and antenna fees for the use of the affected rights-of-way for the applicable facilities.

**C. *Not a Tax or In Lieu of Any Other Tax or Fee — Credit for Business License Taxes or Gross Receipts Taxes.***

1. The rental fees are not a tax, license or fee subject to any requirement of voter approval, but rather constitute a charge for special and individualized use of public property.
2. Rental fees are in addition to all other fees and all taxes and payments that a person may be required to pay under any Federal, State or local law, including any applicable property and amusement taxes.
3. To promote economic development, any person obligated to pay rental fees shall be granted a credit for all sums paid to the City by such person for applicable business license fees or gross receipts taxes or franchise fees, up to the amount of the rental fees. In no event shall such a credit result in a refund from the City.

**D. *Payments.***

1. The rental fees shall be paid quarterly to the City and shall commence as of the later of the effective date of this Code or the first (1st) day on which a person having facilities within the ROW places facilities within the rights-of-way. The City shall be furnished at the time of each payment with a statement certified by the payer's chief financial officer or comparable officer



or by an independent certified public accountant reflecting the calculation of the total amount of rental compensation for the payment period. Payments shall be made to the City no later than forty-five (45) days following the end of each calendar quarter.

2. In the event any rental fee or other payment due hereunder is not made on or before the date specified herein, interest charges shall also be due, computed from such due date, at an annual rate equal to the commercial prime interest rate of the City's primary depository bank during the period such unpaid amount is owed plus a penalty of two percent (2%) of the amount.

**E. *No Accord or Satisfaction.*** No acceptance of any payment by the City shall be construed as a release or an accord and satisfaction of any claim the City may have for further or additional sums payable as rental fees under this Code or for the performance of any other obligation.

**F. *Audit.*** The City shall have the right to inspect all reasonably necessary records and the right to audit and to recalculate any amounts determined to be payable under this Code. Persons subject to rental fees hereunder shall be responsible for providing the records to the City at an office located within the metropolitan St. Louis area except as provided in Section 10.1005(E). Such records shall be maintained for at least five (5) years. The City's audit expenses shall be borne by the person audited if the rental fees paid during the audit period are less than ninety-five percent (95%) of the amount owed according to the audit. Any additional amounts due to the City as a result of the audit shall be paid within thirty (30) days following written notice to the person by the City of the underpayment, which notice shall include a copy of the audit report. If recalculation results in an additional amount to be paid to the City, such amount shall be subject to interest and penalties as specified in Subsection **(D)(2)** above.

**G. *Exemption from Rental Fees.***

1. Persons having facilities within the ROW pursuant to a duly-issued, lawful and applicable license or franchise shall be exempt from this Section for the duration of such license or franchise, provided they continue to pay on a timely basis all fees due under such license and franchise.

2. Governmental entities having facilities within the ROW shall not be liable for rental fees.

**Section 10.1007 Insurance — Surety — Indemnification — Penalties.**

**A. Insurance Required.** These insurance requirements shall not be construed to limit the liability of any person or to impose any liability on the City. All ROW users shall maintain, for the duration of any ROW work and, when applicable, for as long as the ROW user has facilities within the rights-of-way, at least the following liability insurance coverage: Workers' Compensation and employer liability insurance to meet all requirements of Missouri law and commercial general liability insurance with respect to the construction, operation and maintenance of the facilities and the conduct of the ROW user's business in the City in the minimum amounts of:

1. Two million dollars (\$2,000,000.00) for property damage resulting from any one (1) accident;
2. Five million dollars (\$5,000,000.00) for personal bodily injury or death resulting from any one (1) accident; and
3. Two million dollars (\$2,000,000.00) for all other types of liability.

**B. Qualifications of Sureties.** All insurance policies shall be with sureties qualified to do business in the State with an "A" or better rating of insurance by A. M. Best's Key Rating Guide, Property/Casualty Edition and in a form approved by the City.

**C. Policies Available for Review.** All insurance policies shall be available for review by the City and a ROW user having facilities within the rights-of-way shall keep on file with the City current certificates of insurance.

**D. Additional Insureds — Prior Notice of Policy Cancellation.** All general liability insurance policies shall name the City, its officers, boards, board members, commissions, commissioners, agents and employees as additional insureds and shall further provide that any cancellation or reduction in coverage shall not be effective unless thirty (30) days' prior written notice thereof has been given to the City Clerk. A ROW user shall not cancel any required insurance policy without submission of proof that it has obtained alternative insurance that complies with this Code.

**E. Exemption from Insurance Requirements.** The Director may exempt in writing from the requirements of Subsections **(A)** through **(D)** hereof any self-insured ROW user, provided that the ROW user demonstrates to the Director's satisfaction that the ROW user's self-insurance plan is commensurate with said requirements and that the ROW user has sufficient resources to meet all potential risks, liabilities and obligations contemplated by the requirements of this Code.

The Director may require a security fund or letter of credit as a condition to a self-insured's exemption. The Director shall waive this requirement when the ROW user has twenty-five million dollars (\$25,000,000.00) in net assets and does not have a history of non-compliance with the ordinances of the City.

**F. Indemnification.**

1. Any ROW user granted a ROW permit and any person having facilities within the rights-of-way, as partial consideration for the privilege granted, shall, at its sole cost and expense, indemnify, hold harmless and defend the City, its officials, boards, board members, commissions, commissioners, agents and employees against any and all claims, suits, causes of action, proceedings and judgments for damages or equitable relief arising out of:

a. Any ROW work including, but not limited to, the construction, maintenance, repair or operation of facilities,

b. Failure to secure consents from landowners, or

c. Any actions taken or omissions made by the person pursuant to the authority of this Code.

2. The foregoing indemnity provisions include, but are not limited to, the City's reasonable attorneys' fees incurred in defending against any such claim, suit or proceeding prior to the person assuming such defense. The City shall notify a person of claims or suits within seven (7) business days of its actual knowledge of the existence of such claim, suit or proceeding. Once a person assumes such defense, the City may at its option continue to participate in the defense at its own expense.

3. Notwithstanding anything to the contrary contained in this Code, the City shall not be so indemnified or reimbursed in relation to any amounts:

a. Attributable to the City's own negligence, willful misconduct, intentional or criminal acts, or

b. Attributable to the City acting in a proprietary capacity to deliver service(s) within the City.

**G. *Relation to Insurance and Indemnity Requirements.*** Recovery by the City of any amounts under insurance, a performance bond or otherwise does not limit a person's duty to indemnify the City in any way; nor shall such recovery relieve a person of amounts owed to the City or in any respect prevent the City from exercising any other right or remedy it may have.

**H. *Penalties.*** Any person violating any provision of this Code shall, upon information and conviction in the City's Municipal Court, be punished by a fine not to exceed one thousand dollars (\$1,000.00) or by imprisonment not to exceed ninety (90) days, or by both such fine and imprisonment. Each day the violation continues may be charged as a separate offense. In addition, where any excavation for which a ROW permit is required by this Chapter is started prior to obtaining said permit, the total permit fee shall be doubled by the Director. Payment of the doubled fee shall not relieve any persons from fully complying with the requirements of this Chapter, nor from the penalties prescribed herein.

**Section 10.1008      *Dispute Resolutions and Appeals.***

**A. *Dispute Resolution by the Director.*** The Director shall make a final determination as to any matter concerning the grant, denial or revocation of a ROW permit as provided in this Code. On the request of an applicant or a ROW user and within a reasonable period of time, the Director also shall make a final determination as to any other issue relating to the use of the ROW, the imposition of any fee or the application of any provision of this Code; provided however, that this review shall not apply to matters being prosecuted in court pursuant to Section **10.1004(A)(2)(c)** or Section **10.1007(H)** hereof. Any final determination of the Director shall be subject to review as provided herein.

**B. *Chapter 536 Review.*** Any person aggrieved by the final determination of the Director may file a petition for review pursuant to Chapter 536, RSMo., as amended, in the Circuit Court of the County of St. Louis. Such petition shall be filed within thirty (30) days after the Director's final determination.

**Section 10.1009      *Miscellaneous Provisions.***

**A. *Captions.*** Captions throughout this Code are intended solely to facilitate reading and reference to the Sections and provisions. Such captions shall not affect the meaning or interpretation of this Code.

**B. *Interpretation of Code.*** The provisions of this Code shall be liberally construed to promote the public interest. This Article shall be interpreted in accordance with Sections 67.1830, RSMo., et seq., and 47 U.S.C. Section 332.

**C. Expense.** Any act that a person is required to perform by this Code or other law shall be done at the person's expense, without City reimbursement, unless expressly provided to the contrary by law.

**D. Eminent Domain.** Nothing herein shall be deemed or construed to impair or affect in any way or to any extent the power of eminent domain held by the City or any other person.

**E. Exclusive Contracts And Anticompetitive Acts Prohibited.**

1. Unless otherwise allowed by law, no person shall enter into or enforce an exclusive contract for the provision of services with any other person or demand the exclusive right to serve another person or location as a condition of extending service to that person or location or any other person or location.

2. No person shall engage in acts that have the purpose or effect of limiting competition for the provision of services in the City, except for such actions as are expressly authorized by law.

**F. No Recourse against the City.** Without limiting such immunities as the City or other persons may have under applicable law, no person shall have any recourse whatsoever against the City or its officials, members, boards, commissions, agents or employees for any loss, costs, expense, liability or damage arising out of any action undertaken or not undertaken pursuant to any provision or requirement of this Code or because of the enforcement of this Code or the City's exercise of its authority pursuant to this Code or other applicable law, unless such recourse is expressly authorized by law.

**G. Rights and Remedies.**

1. The rights and remedies reserved to the City by this Code are cumulative and shall be in addition to and not in derogation of any other rights and remedies which the City may have with respect to the subject matter of this Code.

2. The City hereby reserves to itself the right to intervene in any suit, action or proceeding involving any provision of this Code.

3. Specific mention of the materiality of any of the provisions herein is not intended to be exclusive of any others for the purpose of determining whether any failure of compliance hereunder is material and substantial.

4. No course of dealing between any person and the City or any delay on the part of the City in exercising any rights hereunder shall operate as a waiver of any such rights of the City or acquiescence in the actions of such person in contravention of such rights except to the extent expressly waived in writing. No person shall be relieved of its obligation to comply with any of the provisions of this Code by reason of any failure of the City to enforce prompt compliance nor shall any inaction by the City be deemed to waive a provision or render void any provision of this Code.

H. *Force Majeure*. A person shall not be deemed in violation of this Code where performance was hindered by war or riots, civil disturbances, floods or other natural catastrophes beyond the person's control and a registration shall not be terminated or a person penalized for such non-compliance, provided that the person takes prompt and diligent steps to bring itself back into compliance and to comply as soon as reasonably possible under the circumstances without unduly endangering the health, safety and integrity of employees or property or the health, safety and integrity of the public, rights-of-way, public property or private property.

I. *Public Emergency*. In the event of a public emergency or disaster as determined by the City, a ROW user immediately shall make facilities, employees and property, as may be reasonably necessary, available for use by the City or other civil defense or governmental agency designated by the City for the term of such emergency or disaster for emergency purposes. In the event of such use, the ROW user shall waive any claim that such use by the City constitutes a use of eminent domain, provided that the City shall return use of the facilities, employees and property to the ROW user promptly after the emergency or disaster has ended.

J. *Calculation of Time*. Unless otherwise indicated, when the performance or doing of any act, duty, matter or payment is required under this Code and a period of time is prescribed and is fixed herein, the time shall be computed so as to exclude the day of the act, event or default after which the designated period of time begins to run and include the last day of the prescribed or fixed period of time, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the next day which is neither a Saturday, Sunday or legal holiday. If the period is less than seven (7) days, intermediate Saturday, Sunday and legal holidays shall be excluded in the computation. This Subsection shall not apply in the context of obligations that continue on a daily basis.

**K. Severability.** If any term, condition, clause, sentence or provision of this Code shall to any extent be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by the City and shall thereafter be binding.

(Ord. No. 8946 § 1 10-4-2016)