

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, marquee, 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. Arborvitae 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).
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 31st 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, tanners scraps, 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 — Applicability; Preemption; Definitions and Word Usage

A. *Applicability.* Except as provided for herein and where limited by applicable law, this Article shall apply to all Excavations and use, construction, operation, and Maintenance of Facilities or structures, in the ROW of the City. No Person shall commence or continue with the operation of any Facilities or structures in the ROW except as provided and in compliance with this Article. Because numerous types of users and uses of the ROW may be subject to various changing regulatory schemes under federal or state law, any such limitation or qualification that may be applicable to less than all users and uses of the ROW are not duplicated herein, but are nevertheless incorporated herein, whenever application is so required by law, including but not limited to applicable provisions of Chapter 67 RSMo and other applicable state and federal law.

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furthermore, if any Section, Subsection, sentence, clause, phrase, or portion of this Article is now or in the future superseded or preempted by state or federal law or found by a court of competent jurisdiction to be unauthorized, such provision shall be automatically interpreted and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

C. *Definitions and Word Usage — General.* For the purposes of this Article, 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 Article have been capitalized, but an inadvertent failure to capitalize such letter shall not affect meaning.

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

"Abandoned Facilities" shall mean any equipment materials, apparatuses, devices, or Facilities that are: 1) declared abandoned by the owner of such equipment or Facilities, 2) no longer in active use for a period of six months or more, and the owner of such equipment or Facilities fails to respond within thirty (30) days to a written notice send by the City, 3) the owner allows a franchise agreement, or license to expire and fails to cure within thirty (20) days after notice to the extent not preempted by applicable law, or 4) as otherwise may be defined by applicable law.

"Antenna" shall mean any device that transmits and/or receives electromagnetic wireless radio waves or signals for voice, data or video communication including, but not limited to, television, text, AM/FM radio, microwave, cellular telephone, Communications Service, or otherwise.

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" shall mean any person who has applied for ROW Use Agreement, Franchise, License, ROW permit, or any permit or other authorization to install, maintain, repair, or otherwise physically access Facilities in the ROW.

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” shall mean any Facilities located within the Rights-of-Way and owned by the City.

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

“Director” shall mean the City’s Public Works Director or such other person designated by the City Manager to administer and enforce this Code.

“Emergency Work” shall mean ROW work made necessary by exigent circumstances to repair, control, stabilize, rectify or correct including but not limited to 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.

“Excavation Permit” shall mean a permit authorizing Excavation for the construction or installation of Facilities in the City’s Right’s-of-Way.

“Facilities” or “Facility” shall mean any equipment, installation, or structure located in the Rights-of-Way, including without limitation, cables, wires, lines, poles, towers, Antenna, conduit facilities, vaults, pedestals, transmitters, meters, fiber, foundations, and any other equipment,

infrastructure, structures, or obstruction. Facilities shall **not** include mailboxes, lawful vehicular parking or use of lawful minor incidental uses such as driveway aprons, private utility connections or other incidental Facilities which may be permitted by License issued by the Director as provided herein.

“Facilities Maintenance” or “Maintenance” shall mean the construction, installation, repair, upgrade, or other physical access to the Facility in the ROW that does not involve Excavation.

“Franchise” shall mean a binding and accepted ordinance for certain ROW Users occupy the Rights-of-Way for the purpose of providing, transporting, or distributing electricity, gas, water, steam, lighting, energy, or sewer service to any Person or area in the City’s limits and boundaries.

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.

“License” shall mean the executed agreement between the City and a Person to use and occupy Rights-of-Way for the purpose of installing incidental temporary Facilities within the Rights-of-Way or incidental uses such as ingress and egress Facilities, lateral utility lines, or driveway aprons.

“Linear foot” shall mean the length in feet of cable, wire, fiber, conduit, or other linear facilities. Facilities that are physically connected, wrapped or lashed as a single cable, conduit, or bundle of cables or conduit shall be considered a single facility for purposes of calculating each linear foot, provided that each conduit or bundle of conduit up to and including four (4) inches in exterior diameter shall constitute a separate Facility for calculating linear feet. Conduit having fiber optic or other cable or wire installed within it shall not be considered separate facilities but shall be considered part of the single “conduit” or bundle for purposes of calculating linear feet. Each provider shall be subject to a separate linear foot charge for facilities used by provider and subject to this article.

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**” shall mean any individual, partnership, limited liability corporation or partnership, association, joint stock company, trust, organization, corporation, or other entity or any lawful successor thereto.

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

“**ROW Permit**” shall mean an Excavation Permit or a Facilities Maintenance Permit.

“**Rights-of-Way Use Agreement**” or “**ROW Use Agreement**” shall mean a document granting consent by the City to use the ROW for the purpose of providing Communications Service or for such other use for which a Franchise or License is not applicable and obtained as provided for herein.

“**ROW User**” shall mean all Persons or entities, whether a PSC registered utility or otherwise, owning, controlling, leasing, maintaining, using, or installing Facilities within the ROW, not otherwise expressly exempted. To the extent permitted by law, a ROW User shall not include the City.

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.

(Ord. No. 9055, §1, 1/22/2019)

Section 10.1001 Rights-of-Way Use Agreement, License, Franchise or Registration Required; Requirements.

A. *ROW Use Agreement, License, Franchise Agreement or Registration Required.* Except where otherwise authorized or required by applicable law, no Person may own, control, lease, use or install Facilities or other structures in the Rights-of-Way without a Franchise, License, or ROW Use Agreement all subject to the requirements of this Article and issued by the City as provided herein and as follows:

1. *Franchise.* A Franchise shall be obtained in conformance with all applicable Franchise procedures for any ROW User seeking to use the Rights-of-Way for the purpose of providing, transporting, or distributing electricity, gas, water, steam, lighting, energy, or sewer service to any Person or area in the City's limits and boundaries.
2. *ROW Use Agreement.* A ROW Use Agreement shall require for all other ROW Users, except as provided herein or otherwise required by law. A ROW Use Agreement shall conform to all applicable laws and requirements, including as provided herein, but shall not be subject to procedures applicable to Franchises.
3. *License for Incidental Uses.* Persons desiring to install an incidental use, which includes installation of temporary structures or minor incidental uses in the Rights-of-Way, such as driveway aprons, ingress or egress facilities, and similar incidental uses, that utilize a small area of the Rights-of-Way Use Agreement pursuant to a

License issued by the Director. The Director shall have discretion to establish such application, requirements, and conditions applicable to such uses consistent with the purposes of this Article or as otherwise established by law. The Applicant shall be required to pay an application fee and an inspection fee as established by the City. Any Person granted a License hereunder shall be subject to the applicable requirements of this Article. Unless otherwise stated in the License, a License shall be for an indefinite term and shall be revocable at any time on written notice in the public interest by the City.

4. *Exempt Entity Registration.* Prior to providing service within the City, transmitting communications through Facilities in the City, or constructing in the Rights-of-Way, entities not required to obtain a Franchise, License, or Rights-of-Way Use Agreement due to superseding federal or state law, shall nevertheless be required to register with the City by providing the City the information required by the Rights-of-Way Permit in Section 10.1003. It shall be the duty of such exempt entity to report any changes to such registration information within thirty (30) days of such change.

B. *Grant and Nature of Approval; Terms and Compensation.* The authority granted by the City in any ROW Use Agreement, License, or Franchise shall be for non-exclusive use of the Rights-of-Way. Such grant does not in any way limit the continuing authority of the City through the proper exercise of its statutory powers to adopt and enforce ordinances necessary to provide for the health, safety, and welfare of the public. The City specifically reserves the right to grant, at any time, such additional agreements or other rights to use the Rights-of-Way for any purpose and to any other Person, including itself, as it deems appropriate, subject to all applicable laws. The granting of any ROW Use Agreement, License, or Franchise by the City shall not be deemed to create any property interest of any kind in favor of the ROW User nor shall it create any relationship of agency, partnership, joint venture, or employment between the parties. Licenses may be approved by the Director on a non-discriminatory basis provided that the Person is in compliance with all applicable requirements. Each Franchise, License, and ROW Use Agreement shall include terms of use and be deemed to incorporate the terms of this Article and other applicable laws of the City, except as may be expressly stated in such Use Agreement, License, or Franchise. The City may require compensation for use of the ROW or other public property as may be reasonably required by the City Council, subject to applicable law.

C. *Condition Precedent to ROW Permit.* Unless otherwise required by applicable law, no ROW Permit may be issued unless or until such Person has a valid Franchise, License, or Rights-of-Way Use Agreement with the City that authorizes that Person's use of the Rights-of-Way. Unless prohibited by applicable law, in addition to any other reason provided herein, the Director may

deny a ROW Permit to any person that does not have a valid Franchise, ROW Use Agreement, or License with the City.

D. *Transferability.* Except as provided in this Article or as otherwise required by law, no Franchise, ROW Use Agreement, or ROW Permit may be transferred or assigned without the written application to and consent of the City based on the requirements and policies of this Article. The City shall not unreasonably withhold its consent as provided herein, but any costs incurred shall be paid by the ROW User to the extent not prohibited by applicable law. In the case of the City granting consent to transfer, the transferee shall be subject to the terms and conditions of this Article.

E. *Use of City or Third-Party Facilities.* No ROW Use Agreement, Franchise, or License shall grant the right to use Facilities owned or controlled by the City or a third party, and no such use shall occur, nor shall any Franchise, ROW Use Agreement or License excuse such Person from first obtaining a pole attachment agreement or other express consent for such right or use before locating on the Facilities controlled or owned by the City or a third party.

F. *Lease Required for Public Lands.* Unless otherwise provided, use or installation of any Facilities in non-Rights-of-Way public property of the City shall be permitted only if a lease agreement or other separate written approval has been negotiated and approved by the City with such reasonable terms as the City may require.

G. *No Warranties.* The City makes no express or implied representation or warranty regarding its rights to authorize the installation or construction of Facilities on any particular segment of Rights-of-Way and shall not be liable for any damages therefrom. The burden and responsibility for making all such determinations in advance of construction or installation shall be entirely upon the ROW User. The ROW User shall be solely liable for any damages to Facilities or other property due to Excavation, Facilities Maintenance, or other work performed prior to obtaining the location of all Facilities that have been properly identified prior to such work. The ROW User shall not make or attempt to make repairs, relocation, or replacement of damaged or disturbed Facilities without the approval of the owner of the Facilities.

H. *Forfeiture of Agreement and Privilege.* In case of failure on the part of the ROW User, including its successors and assigns, to comply with any of the provisions of this Article or a ROW Use Agreement or Franchise or if the ROW User, its successors and assigns should do or cause to be done any act or thing prohibited by or in violation of this Article or the terms of the authorization of such use, or otherwise loses authority to provide its service in the City, ROW User, its successors and assigns shall forfeit all rights and privileges permitted by any ROW Use Agreement or Franchise and all rights hereunder shall cease, terminate and become null and

void, provided that said forfeiture shall not take effect until the City shall carry out the following proceedings: Before the City declares the forfeiture or revocation of a Rights-of-Way Use Agreement or Franchise, it shall first serve a written notice upon the Person setting forth in detail the neglect or failure complained of, and the Person shall have thirty (30) days thereafter, or such other reasonable period established by the Director, in which to cure the default by complying with the conditions of such ROW Use Agreement or Franchise and fully remedying any default or violation. If at the end of such period the City determines that the conditions have not been complied with and that the Person did not reasonably and in the public interest require more than the establish tie to cure the default, the City may take action by an affirmative vote of the City Council present at the meeting and voting to terminate the ROW Use Agreement or Franchise, setting out the grounds upon which said authorization is to be forfeited or revoked. Nothing herein shall prevent the City from invoking any other remedy or from declaring immediate forfeiture where the default is incapable of being cured by the ROW User, including where such defaults or violations have repeatedly occurred.

I. *No Waiver.* No action or mission of the City shall operate as a future waiver of any rights of the City under this Article. Except where rights are expressly granted or waived by a ROW Permit, ROW Use Agreement, Franchise, or License they are reserved, whether or not expressly enumerated.

(Ord. No. 9055, §1, 1-22-2019)

Section 10.1002 Application for Franchise or ROW Use Agreement Required.

A. *Application Form.* An application for a Franchise or ROW Use Agreement shall be provided to the City on City forms and shall include all such information as is required by this Article and as determined necessary by the Director. The ROW User shall be responsible for accurately maintaining the information in the application during the term of any Franchise or ROW Use Agreement and shall be responsible for all costs incurred by the City due to the failure to provide or maintain as accurate any application information required therein.

B. *Application Deposit Fee.* An application deposit of \$500, or such other amount determined to be required, shall be submitted with the application, which shall be utilized to at least partly offset the City's costs in reviewing and issuing an agreement, consistent with applicable law provided that no costs shall be included if such inclusion is prohibited by applicable law as to that Person; any amount not used by the City for its actual lawfully reimbursable costs will be refunded upon request after execution of a ROW Use Agreement or Franchise. If applicable, the applicant shall be obligated to reimburse the City for its reasonable expenses associated with the review,

negotiation, and adoption of an appropriate ROW Use Agreement or Franchise that may exceed the application deposit.

C. *Standard for Approval or Renewal.* In reviewing an application for a new or renewal ROW Use Agreement or Franchise, the City may consider prior conduct of the Person in performance of its obligations or compliance with the City's ordinances in the past, or the existence of any outstanding violations or deficiencies. The City may deny or condition any ROW Use Agreement or Franchise where the proposed use would interfere with the public use of the Rights-of-Way or otherwise conflict with the legitimate public interests of the City to fulfill the requirements and objectives of this Chapter or as otherwise provided by law. All ROW Use Agreements or Franchises shall be approved by ordinance or resolution of the City Council and applications shall be decided on a non-discriminatory basis and shall be approved, conditioned, or denied based on compliance with all applicable requirements herein, and conformance with applicable law and the public interest.

D. *Approval Process.* After submission by the Applicant of a duly executed and completed application, deposit fee, and executed Franchise or Rights-of-Way Use Agreement as may be provided by the Director or as modified by the Director in review of the specific circumstances of the application, all in conformity with the requirements of this Article and all applicable laws, the Director shall submit such Agreement to the City Council for approval. Upon determining compliance with this Article, the City Council may authorize execution of the Franchise or ROW Use Agreement (or a modified Agreement otherwise acceptable to the City consistent with the purposes of this Article) and such executed Franchise or ROW Use Agreement shall constitute consent to use the Rights-of-Way; provided that nothing herein shall preclude the rejection or modification of any executed Franchise or ROW Use Agreement submitted to the City to the extent applicable law does not prohibit such rejection or modification, including where necessary to reasonably and in a uniform or non-discriminatory manner reflect the distinct engineering, construction, operation, Maintenance, public work, or safety requirements applicable to the Person or use.

(Ord. No. 9055, §1, 1-22-2019)

Section 10.1003 ROW Permits Required; Requirements.

A. *Excavation Permit Required.* Except as otherwise provided herein, no ROW User or other Person shall perform Excavation work in the ROW without an Excavation Permit. Any Person desiring to Excavate in the ROW shall first apply for an Excavation Permit, on an application form provided by the City, and submit the application fee and pay all applicable fees to obtain an Excavation Permit, in addition to any other building permit, license, easement, or other authorization required by law, unless such Excavation must be performed on an emergency basis

as provided herein. The cost of said Permit shall be set out by the Director. The Director is authorized to draft an application form consistent with the requirements of this Article. An Excavation Permit should be obtained for each project unless otherwise provided for in this Article. A separate special permit or lease shall be required for Excavation in or use of any real property interest of the City that is not ROW. All Excavation Permits shall expire after sixty (60) days from the date of issuance, unless otherwise specified in the Excavation Permit. An Applicant whose Excavation Permit application has been withdrawn, abandoned, or denied for failure to comply with this Article shall not be refunded the application fee.

B. *Local Representative Designation.* Each ROW User shall designate a local person familiar with the Facilities that shall act as a local agent for the ROW User and shall be responsible for satisfying information requirements of this Article. The ROW User shall present to the City the agent's name, address, telephone number, and email address. The agent shall be the person to whom relocation notices and other such notices shall be sent, and with whom rests the responsibility to facilitate all necessary communications. The ROW User shall be responsible for all costs incurred by the City due to the failure to provide such information to the City.

C. *Facilities Maintenance Permit; Exemptions.* No Person shall perform Facilities Maintenance at a specified location in the Rights-of-Way without first obtaining a Facilities Maintenance Permit from the Director, except where such Facilities Maintenance is expressly authorized by an existing valid Excavation Permit for the applicable Facilities Maintenance location or is exempt herein. In addition to the applicable conditions and obligations set forth in this Article, conditions of a Facilities Maintenance Permit shall be as established in such Permit and shall include requirements of notice to and approval by the City whenever traffic lanes are to be obstructed, manhole covers or safety barriers removed or altered, temporary or other barricades installed, and other events set forth in the Facilities Maintenance Permit. All Facilities Maintenance Permits shall expire after sixty (60) days from the date of issuance, unless otherwise specified in such Permit. A Facilities Maintenance Permit shall not be required for:

1. ROW Users performing routine maintenance which does not require Excavation, does not disrupt traffic or pedestrians, and requires no more than four (4) hours to complete, provided that at minimum two (2) hours' notice is provided to the City during normal business hours;
2. Emergency situations as more fully described in Subsection E below;
3. Contractors working on the construction or reconstruction of public improvements and which are operating pursuant to a contract with the City for such construction; or

4. Routine maintenance on previously approved Small Wireless Facilities, as defined by Section 67.5111 RSMo., replacement of Small Wireless Facilities that are the same or smaller in size, weight, and height, or installation placement, maintenance, operation, or replacement of Micro Wireless Facilities, as defined by Section 67.5111 RSMo., that are strung on cables between Utility Poles, as defined by Chapter 53, in compliance with applicable safety and building codes, when such work will not involve Excavation, affect traffic patterns, obstruct traffic in the ROW, or materially impede the use of a sidewalk, and provided the ROW User submits as-builts of the new Small Wireless Facilities or Micro Wireless Facilities so the City may maintain an accurate inventory of Facilities installed in the ROW.

D. Bulk Permits. The Director shall have the authority to establish procedures for bulk processing of applications and periodic payment of fees.

E. Emergencies. In the event of an Emergency requiring immediate attention to remedy defects, and in order to avoid loss of damage to Person or property, it shall be sufficient that 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, or as otherwise directed by the City. In the event the City becomes aware of an Emergency requiring Facilities work, the City shall attempt to contact a representative of each ROW User affected, or potentially affected, by the Emergency work. If no response is received by a particular ROW User to whom contact is attempted, the Director may take whatever action he/she deems necessary to respond to the Emergency, the cost of which shall be borne by the Person whose action or inaction occasioned the Emergency or by the ROW User if the Emergency was occasioned by an act of nature.

F. ROW Permit Specific Conditions. The Director may, in accordance with applicable law, impose reasonable conditions upon the issuance of a ROW Permit and the performance of work in order to protect the public health, safety, and welfare, to ensure the structural integrity of the Rights-of-Way, to protect the property and safety of other users of the Rights-of-Way, and to minimize the disruption and inconvenience to the traveling public. Such reasonable conditions may include, but are not limited to:

1. The amount of Excavation or Facilities Maintenance which may occur at one (1) time and the amount of Rights-of-Way which may be obstructed during construction;
2. The number or size of conduits or other Facilities that may be installed by each ROW User based on the reasonable needs to ensure that no one (1) ROW User may unreasonably consume a disproportionate amount of the available Rights-of-Way to deter competition or deprive the public or others of the reasonable use of the Rights-of-Way;

3. Posting of an additional or larger performance and maintenance bond for additional Facilities, except as otherwise provided in Section 10.1004 (l) hereof, when the established amount is reasonably determined to be insufficient;

4. The design, location, and nature of all Facilities, based on a nondiscriminatory basis in ensuring the safe, efficient, and appropriate use of the ROW consistent with this Article and applicable law; and

5. Other reasonable conditions regarding the timing, safety precautions, space, or specific implementation of the specific work proposed.

G. Codes Incorporated. Every Permit issued hereunder shall incorporate the requirements and terms of this Article, agreements, and all applicable ordinances, to the extent permitted by law. The ROW User shall perform such work in accordance with the issued ROW Permit and applicable provisions of this Article and any subsequent ordinances or regulations that may be adopted by the City regarding Excavation or Facilities Maintenance work. In addition, all ROW Users shall be subject to all technical specifications, design criteria, policies, resolutions, and ordinances now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power relating to ROW Permits and fees, sidewalk and pavement cuts, Facility location, construction coordination, surface restoration, and other requirements on the use of the Rights-of-Way. A ROW User shall perform all Excavations or Facilities Maintenance in full compliance with all applicable engineering codes adopted or approved by the City, and in accordance with applicable statutes of the State of Missouri, and the rules and regulations of the Public Service Commission, Federal Communications Commission, and any other local, state or federal agency having jurisdiction over the parties. The ROW User shall comply with the Excavation requirements of Missouri One Call established by §§ 319.010 et. seq. RSMo., as amended. A ROW User shall be responsible for all Excavations or Facilities Maintenance done in the Rights-of-Way on its behalf, regardless of by whom the Excavation or Facilities Maintenance is done.

H. Subsurface Utility Engineering Survey. Unless determined by the Director as unnecessary, prior to the commencement of any construction or alteration of its Facilities located in the Rights-of-Way, the ROW User shall furnish to the Director a subsurface utility engineering study on the proposed route of construction, expansion, or alteration, which shall consist of the following tasks:

1. All available plans, plats, and other location data indicating the existence and approximate location of all Facilities along the proposed construction route;

2. Completion of a visual survey and written record of the location and dimensions of any above-ground features of any underground Facilities along the proposed construction route including,

but not limited to, manholes, pedestals, valve boxes, utility boxes, posts, and visible street cut repairs;

3. Plot and incorporate the data obtained from completion of tasks (1) and (2) above onto the provider's proposed Facilities route maps, plan sheets, and computer-aided drafting and design (CADD) files; and

4. Provide all such data collected into a CADD file (or other format as may be identified by the Director and in a format maintained by the ROW User) compatible with that used by the Director and deliver a copy to the Director.

(Ord. No. 9055, §1, 1-22-2019)

Section 10.1004 Work in The Rights-Of-Way.

A. Jurisdiction, Inspection and Stop Work Orders.

1. **Compliance with Laws.** Each ROW User shall comply with all applicable federal and state laws and regulations and rules as well as all City ordinances, resolutions, rules, and regulations heretofore and hereafter adopted or established. 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). 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. **Stop Work Orders.** The Director shall have full access to all portions of the ROW work and may issue stop work orders and corrective orders to prevent unauthorized work, including work not meeting the standards established in this Article. 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. In addition to any other remedy or penalty provided herein or by applicable law, 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. *Existing Underground.* 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.
2. *Notice of Construction.* In the case of new construction or property development, the developer or property owner shall give to all Persons with a valid License, Rights-of-Way Use Agreement, Franchise or registration 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. *City Required Relocation.* The ROW User shall promptly remove, relocate, or adjust any Facilities located in the Rights-of-Way as directed by the City when such is required by public necessity, or public convenience and security require it, or such other findings in the public interest that may require relocation, adjustment, or removal at the cost of the ROW User. Such removal, relocation, or adjustment shall be performed by the ROW User within the time frames established by the City and at the ROW User's sole expense without any expense to the City, its employees, agents, or authorized contractors and shall be specifically subject to rules, regulations, and schedules of the City pertaining to such.
2. *Emergency Exception.* 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 Person having Facilities in the Rights-of-Way 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.

3. *Third-Party Relocation.* A Person having Facilities in the Rights-of-Way shall, on the reasonable request of any Person, other than the City, holding a validly issued Permit, after reasonable advance written notice, protect, support, or temporarily disconnect or relocate Facilities to accommodate such Person and the actual cost, reasonably incurred, of such actions shall be paid by the Person requesting such action. The Person having Facilities in the Rights-of-Way taking such action may require such payment in advance.
4. *Grades or Boundary Changes.* 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.
5. *Underground Relocation.* 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).
6. *Abandonment Exception.* 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.
7. *ROW User Responsible for Damage.* Any damages suffered by the City, its agents or its contractors to the extent caused by the ROW User's failure to timely relocate, remove, or adjust its Facilities, or failure to properly relocate, remove, or adjust such Facilities, shall be borne by the ROW User. Where the ROW User shall fail to relocate Facilities as required by the City, the City may, but shall not be required to, upon notice to the ROW User remove the obstructing Facilities with or without further delay and the ROW User shall bear all responsibility and liability for the consequences therefrom, and the City shall bear no responsibility to the ROW User or others for damage resulting from such removal.
8. *No Vested Rights.* 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 or property right.

D. Property Repair and Alterations.

1. *No Damage.* 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. *Alterations.* 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. *Removal.* If a Franchise or ROW Use Agreement 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 Article. 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 Article.
2. *Abandoned Facilities; Removal Required.* A Person owning Abandoned Facilities in the Rights-of-Way must not later than thirty (30) days of notice or of abandonment remove its Facilities and replace or restore any damage or disturbance caused by the removal at its own expense. The Director may upon written application and written approval allow underground Facilities or portions thereof to remain in place if the Director determines that it is in the best interest of public health, safety, and general welfare to do so. The City shall be entitled to all costs of removal and enforcement for any violation of this provision.
3. *Failure to Remove.* 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.
4. *Abandonment.* If a person having Facilities within the ROW:
 - a. Has installed the Facilities without complying with the requirements of this Article, 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.
5. *Nuisance.* Facilities Abandoned or otherwise left unused in violation of this Article are deemed to be a nuisance. The City may exercise any remedies or rights it has at law or in equity, including, but not limited to, (a) abating the nuisance, (b) taking possession and ownership of the Facility and restoring it to a useable function, or (c) requiring the removal of the Facility by the ROW User.

F. Standards for ROW Work.

1. *Zoning, Safety, and Building Code Compliance.* ROW Users shall at all times be subject to the lawful exercise of the police powers of the City, including but not limited to all police powers regarding zoning, supervision of the restoration of the Rights-of-Way, building and safety regulations, and control of the Rights-of-Way currently in effect or as may be amended. Installation of all Facilities in the Rights-of-Way are subject to and must be in compliance with all zoning and safety and building code requirements. For applications for installation of any Facility in the Rights-of-Way, (1) the most restrictive adjacent underlying zoning district classification shall apply unless otherwise specifically

zoned and designated on the official Zoning District Map, and (2) no application shall be submitted for approval without attaching the owner's consent to use the Rights-of-Way for the specific construction application in accordance with Chapter 67 RSMo. and compliance with this Article, except where prohibited by applicable law.

2. *Display.* 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.
3. *Scope of Work.* 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 Article.
4. *Encumber.* 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.
5. *Barricades and Safety Devices.* The ROW User assumes the sole responsibility for maintaining proper barricades, plates, safety fencing, and/or lights as required from the time of opening of the ROW until the Excavation is surfaced and opened for travel. All Excavations and Facilities Maintenance that disturb traffic or pedestrian travel shall be barricaded in such a manner as to protect both pedestrians and vehicular traffic. Such Excavations, Facilities Maintenance, and barricades shall be lighted at night with danger signals in such a manner that all traffic may be warned of the existence and location of such Excavations, Facilities Maintenance, and barricades.
6. *Traffic Control.* Whenever there is an Excavation or Facilities Maintenance by the ROW User, the ROW User shall be responsible for providing adequate traffic control to the surrounding area as determined by the Director. All traffic control devices shall be in compliance with the current version of the standard specifications and the Manual on Uniform Traffic Control Devices (MUTCD), unless otherwise agreed to by the City. All surplus Excavation materials, tools, or supplies at the site of the Excavation or Facilities Maintenance shall be barricaded and lighted at night in the manner described in this Section. In the event the Excavation or Facilities Maintenance is not completed in a reasonable period of time, the ROW User may be liable for actual damages to the City for delay caused by the ROW User pursuant to this Article.

7. *Advertising, Signs, or Extraneous Markings.* ROW Users shall not place or cause to be placed any sort of signs, advertisements, or other extraneous markings, whether relating to the ROW User or any other Person on the Rights-of-Way, except such necessary minimal markings as approved by the City as are reasonably necessary to identify the Facilities for service, repair, maintenance, or Emergency purposes, or as may be otherwise required to be affixed by applicable law or regulation. All ROW work that affects vehicular or pedestrian traffic shall be properly signed, barricaded, and otherwise protected at the ROW user's expense.
8. *Hours.* 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 ROW 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. No work shall be performed during City holidays, except in the case of an emergency.
9. *Notification.* 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 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.
10. *Minimal Interference.* 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.
11. *Maintenance of Facilities.* Each ROW User shall maintain its Facilities in good and safe condition and in a manner that complies with all applicable federal, state, and local requirements.
12. *Trained Personnel.* 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.

13. *Safety Practices.* 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.
14. *Responsible for Contractors or Subcontractors.* 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.
15. *Backfill; Restoration.* 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.
16. *Above Ground Facilities Appearance.* 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 by the Director 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.
17. *Noise.* 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, State, or federal law.
18. *Cooperation.* 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.

19. *Indemnification.* Any Person performing Excavation or a ROW User as a condition of use of the Rights-of-Way shall at its sole cost and expense fully indemnify, protect, defend (with counsel acceptable to the City), and hold harmless the City, its municipal officials, officers, employees, and agents, from and against any and all claims, demands, suits, proceedings, and actions, liability, and judgment by other Persons for damages, losses, costs, and expenses, including attorney fees, arising, directly or indirectly, in whole or in part, from the action or inaction of the Person performing Excavation or ROW User, its agents, representatives, employees, contractors, subcontractors, or any other Person for whose acts the Person performing Excavation or ROW User may be liable, in constructing, operating, maintaining, repairing, restoring, or removing Facilities or other structures, or use of the Rights-or-Way or the activities performed, or failed to be performed, by the Person performing Excavation or ROW User under this Article or applicable law, or otherwise, except to the extent arising from or caused by the sole or gross negligence or willful misconduct of the City, its elected officials, officers, employees, agents, or contractors. Nothing herein shall be deemed to prevent the City, or any agent from participating in the defense of any litigation by their own counsel at their own expense. Such participation shall not under any circumstances relieve the Person from the duty to defend against liability or its duty to pay any judgment entered against the City, or its agents. This indemnification shall survive the expiration or termination of any ROW Use Agreement, License, or Permit. Provided however, that in accordance with § 67.5121(2), a ROW User solely to the extent a ROW User is operating "Small Wireless Facility" as defined in the Uniform Small Wireless Facility Deployment Act within the ROW shall only indemnify and hold the City, its officers and employees, harmless against any damage or personal injury caused by the negligence of the ROW User, its employees, agents, or contractors. This exception shall only apply to the ROW User's "Small Wireless Facilities" and shall not otherwise alter the obligations of a ROW User to provide indemnification to the City for any other activities or operations.

20. *ROW User Responsible for Costs.* The ROW User shall be responsible for all reasonable costs borne by the City that are directly associated with ROW User's installation, maintenance, repair, operation, use, and replacement of its Facilities in the Rights-of-Way that are not otherwise accounted for as part of the ROW Permit fee established pursuant to this Article, to the extent permitted by law. All such costs shall be itemized and the City's books and records related to these costs shall be made available upon request of the ROW User

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

1. *Specifications and Restoration.* All work and maintenance shall comply with all such specifications as may be established by the Director. The ROW User shall restore the Rights-of-Way and surrounding areas and shall comply with other 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. *Failure to Restore.* If a ROW user fails to restore the ROW to its reasonable before condition (including placement of sod to restore any grassy areas unless such requirement is waived by the Director in his/her sole discretion based on area disturbed and weather conditions) 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. 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. The City may use the required performance bond to repair the same, if necessary. The ROW User shall not be relieved of the obligation to complete the necessary Rights-of-Way restoration and Maintenance because of the existence of any performance bond required by this Article.
3. *Inspection.* When an Excavation has been made in the ROW, and after the same has been properly backfilled, the Person making the Excavation shall notify the Director that the same is ready for final repair. The Director or his duly authorized agent shall inspect the same. The judgment of the Director or his authorized agent as to when an Excavation has been properly backfilled to permit final repair shall be conclusive. If any Person fails to contact the Director for an inspection within a reasonable time, as determined by the Excavation Permit issued for the Excavation, after completion of the work, to ensure that the Rights-of-Way or other public place has been restored to as good a condition as it was previous to such Excavation being made, the Excavation shall not be deemed complete and the ROW User shall be in violation of this Article.
4. *Notice of Completion.* The ROW User shall notify the Director upon completion of the Excavation or Facilities Maintenance authorized by the Excavation Permit.
5. *Guarantee of Work.* Every ROW user in restoring the Rights-of-Way, shall guarantee its work and shall maintain it for four (4) years following its completion and in accordance with § 67.1834 RSMo. During this period the ROW User shall, upon notification from the Director, correct all restoration work to the extent necessary using any method as required by the Director. Said work shall be completed within a reasonable time, not to exceed thirty (30) calendar days of the receipt of notice from the Director. (not including

days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable as reasonable determined by the Director). In the event the ROW User is required to perform new restoration pursuant to the foregoing guarantee, the Director shall have the authority to extend the guarantee period for such new restoration for up to an additional forty-eight (48) months, or other greater period allowed by law, from the date of the new restoration requirements. The guarantee period shall be applicable to failure of the pavement surface as well as failure below the pavement surface. The Director may extend the cure period on good cause shown.

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. As a condition of continued ROW use, all ROW Users shall, on an annual basis, provide the City with as-builts or other detailed maps of the ROW User's current Facilities. Such annual requirement may be waived by the Director upon written request.

I. Performance and Maintenance Bonds.

1. *Bond Required.* 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 as more fully provided in Section 10.1004 (G). The bond shall continue in full force and effect for a period of forty-eight (48) months following completion of the work. The Director may waive this requirement when the work involves, as determined in the sole discretion of the Director, no disruption or damage or only minor disruption or damage to the Rights-of-Way. The City may waive any and all requirements under this subsection when deemed to be lawful and in the public interest.
2. *Failure to Satisfactorily Complete Restoration.* 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 to the extent not prohibited by applicable law. 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. Bond Release. 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. Bond Terms. 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. Exceptions. 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). The bond requirements in this Section or otherwise shall not apply to a ROW User to the extent and for such period as the ROW User is exempted from such requirements pursuant to § 67.1830(6)(a) RSMo. and has on file with the City Clerk an affidavit certifying that ROW User has twenty-five million dollars (\$25,000,000.00) in net assets and is otherwise therefore so exempted, unless otherwise provided by a ROW Use Agreement or Franchise or the City determines such exemption has not been adequately shown. Additionally, in accordance with § 67.5121(4), the bonds required for "Small Wireless Facilities" as defined in the Uniform Small Wireless Facility Deployment Act shall not exceed one thousand five hundred dollars (\$1,500.00) per "Small Wireless Facility" or more seventy-five thousand dollars (\$75,000.00) for all "Small Wireless Facilities" within the ROW of a ROW User. This exception to the City's bonding requirements shall only apply as related to such "Small Wireless Facilities" and shall not otherwise alter the obligations of a ROW User to provide appropriate bonds to the City for any other activities or operations.

J. Miscellaneous.

1. *City Completion.* Upon failure of a ROW user to commence, pursue, or complete any ROW work required by law or by the provisions of this Article 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. *Tree Trimming.* 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. *City Facilities Installation.* To the extent not prohibited by applicable law, 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. *Reservation.* Nothing in this Article 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.

(Ord. No. 9055, §1, 1-22-2019)

Section 10.1005 ROW Permit Denial.

- A. The Director may deny an application for a ROW Permit if:
 1. To the extent permitted by law, the Person does not have a current Franchise, License, or Rights-of-Way Use Agreement, or other authorization with the City.
 2. The ROW User, or any Persons acting on the behalf of the ROW User, fails to provide all the necessary information requested by the City for managing the Rights-of-Way.
 3. The ROW User, or any Persons acting on the behalf of the ROW User, including contractors or subcontractors, has a history of noncompliance or permitting noncompliance within the City. For purposes of this Section, "history of noncompliance

or permitting noncompliance within the City" shall include where the ROW User, or any Persons acting on the behalf of the ROW User, including contractors or subcontractors, has failed to return the Rights-of-Way to its previous condition under a previous Permit, or has violated terms, or is in violation of terms of the ROW Users' Franchise, Rights-of-Way Use Agreement, License, or other authorization with the City.

4. The City has provided the ROW User with a reasonable, competitively neutral, and nondiscriminatory justification for requiring an alternative method for performing the Excavation or Facilities Maintenance identified in the Permit application, or a reasonable alternative route that will not result in additional installation expense of more than ten (10) percent to the ROW User or a declination of service quality.
5. Any other violations or noncompliance caused by or through the ROW User of any applicable City, state, or federal law or regulation, except where such violation is prohibited by applicable law for being a basis for denial.
6. The City determines that the denial is necessary to protect the public health and safety, provided that the authority of the City does not extend to those items under the jurisdiction of the PSC, such denial shall not interfere with a ROW User's right of eminent domain of private property, and such denials shall only be imposed on a competitively neutral and nondiscriminatory basis. In determining whether denial of a Permit application is necessary to protect the public health and safety, the Director may consider one (1) or more of the following factors:
 - a. The extent to which the Rights-of-Way space where the Permit is sought is available, including the consideration of competing demands for the particular space in the Rights-of-Way, or other general conditions of the Rights-of-Way;
 - b. The applicability of any ordinance, code provision, or other regulations that affect the location of Facilities in the Rights-of-Way;
 - c. The degree and nature of disruption to surrounding communities and businesses that will result from the use of that part of the Rights-of-Way, including whether the issuance of a Permit for the particular dates and/or times requested would cause a conflict or interfere with an exhibition, celebration, festival, or any other event;
 - d. The area is environmentally sensitive as defined by state statute or federal law or is a historic district designated by City ordinance; and

- e. The failure to comply with applicable City ordinances, or any other violation, unsafe conditions, or damage or threatened harm to the Rights-of-Way or public, except where such circumstance would otherwise not constitute a lawful basis for denial of a Permit.

(Ord. No. 9055, §1, 1-22-2019)

Section 10.1006 ROW Permit Revocation.

- A. The Director may, after reasonable notice and an opportunity to cure, revoke a ROW Permit without fee refund, but only in the event of a substantial breach of the terms and material conditions of the ROW Permit. A substantial breach by a ROW User includes but is not limited to:
 - 1. A material violation of a provision of the ROW Permit;
 - 2. An evasion or attempt to evade any material provision of the Permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens;
 - 3. A material misrepresentation of fact in the ROW Permit application;
 - 4. A failure to complete work by the date specified in the ROW Permit, unless a ROW Permit extension is obtained, or unless the failure to complete the work is due to reasons beyond the ROW User's control;
 - 5. A failure to correct, within the time specified by the City, work that does not conform to applicable national safety codes, industry construction standards, or local safety codes, upon inspection and notification by the City of the faulty condition; or
 - 6. Such other lawful reasons.

(Ord. No. 9055, §1, 1-22-2019)

Section 10.1007 Location and Design of Facilities.

- A. *Exclusion of Certain Locations/Facilities.* To the extent permitted by applicable law, the Director may designate certain locations or Facilities in the Rights-of-Way to be excluded from use by the ROW User, including but not limited to, ornamental or similar specially-designed street lights or other Facilities or locations which, in the reasonable judgment of the Director, do not have electrical service adequate or appropriate for the provider's Facilities, or cannot safely bear the weight or wind loading thereof, or any other Facility or

location that in the reasonable judgment of the Director is incompatible with the proposed Facilities, or would be rendered unsafe or unstable by the installation. The Director may further exclude certain other Facilities that have been designated or planned for other use or are not otherwise available for use by the ROW User due to engineering, technological, proprietary, legal, or other limitations or restrictions as may be reasonably determined by the City. In the event such exclusions conflict with the reasonable requirements of the ROW User, the City will cooperate in good faith with the ROW User to attempt to find suitable alternatives, if available, provided that the City shall not be required to incur financial cost nor require the City to acquire new locations for the ROW User.

B. *Location, Type, and Design of Facilities Subject to Approval.*

1. *Review Required.* The design, location, and nature of all Facilities shall be subject to the review and approval of the Director. Such review shall be on a non-discriminatory basis in application of City policy and approvals shall not be unreasonably withheld. City height limitations, applicable zoning restrictions, and general City policies with regard to all users of the Rights-of-Way shall be applicable to all Facilities. The Director may establish regulations or policies as may be deemed necessary or appropriate to affect this provision.
2. *Underground and Collocation of Facilities Required; Exceptions.* Except as provided herein or where prohibited by applicable law, and in accordance with the City's long-standing policy of favoring underground construction, no Person may erect, construct, or install Facilities above the surface of the Rights-of-Way without the written permission of the City based on good cause established by Applicant and found by the City. In addition, all new fiber optics, coaxial, and similar cable Facilities shall be located within existing conduit, trenches, or other Facilities to minimize unnecessary use of Rights-of-Way space, reduce potential existing or future interference and obstructions, and to reduce the cost to the public or others therefrom, and to maximize the public's ability to use and license appropriate private or public uses of the Rights-of-Way in the public interest except where preempted by law or where good cause is established and written permission granted by the City. Such permission may be granted by the City Council when other similar Facilities exist above-ground and conditions are such that underground construction is impossible, impractical or 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. Where reasonable and appropriate and where adequate Rights-of-Way exists, the ROW User shall place above-ground Facilities underground in conjunction with City

capital improvement projects and/or at specific locations requested by the City provided that such placement is practical, efficient, and economically feasible. New Utility Poles and related ground mounted equipment shall be permitted to be installed above ground; provided, however, that to ensure unobstructed pedestrian use and City maintenance of the ROW and minimize visual obstructions for vehicular traffic, a new Utility Pole and any ground mounted equipment related to that Utility Pole or the equipment thereon shall not be installed within one hundred and fifty feet (150') of another Utility Pole or other ground mounted equipment on the same side of the ROW. A replacement Utility Pole that is installed in lieu of an existing Utility Pole and is installed within ten feet (10') of the existing Utility Pole, shall not be considered a new Utility Pole subject to the spacing requirements herein. Such spacing regulations as applied to that specific site may be altered by the Director may waive this requirement and reduce the spacing separation upon good cause shown by the application.

- a.** *Wireless Antennas and Facilities.* Pursuant to City authority, including by Section 67.1830(f) RSMo. and the Uniform Small Wireless Facility Deployment Act (§§ 67.5110 et seq. RSMo.), and due to the limited space in the City's Rights-of-Way and in order to minimize obstructions and interference with the use of the Rights-of-Way and to ensure traffic safety, while also seeking to facilitate delivery of broadband technologies to City residents and businesses, wireless Facilities shall be permitted in the Rights-of-Way in compliance with the requirements applicable to other Facilities and users in the Rights-of-Way, and the additional requirements set forth in this Section for wireless antennas and Facilities. General Conditions. Any wireless Facility in the ROW shall be subject to conditions relating to the location (including prohibited or limited locations), design, height, appearance, safety, radio-frequency, and other interference issues as may be lawfully imposed by the City where necessary or appropriate to protect the public, and to conform to policies and interests of the public as may be set forth in special district plans, historic areas, or other policies as may be reasonably adopted by the Director to address changing infrastructure, technology, and uses of the Rights-of-Way and/or City Facilities. A wireless Facility shall not be located or installed in a manner that results in interference with or impairs the operation of existing utility facilities or City or third-party attachments. Wireless Antennas or Facilities shall further comply with (1) all applicable requirements for installation of any Facilities in the ROW as set forth in this Article including a Excavation Permit, (2) the requirements of this Section, and (3) requirements for installation of wireless

Antennas and Facilities set forth in the Uniform Wireless Communications Infrastructure Deployment Act (§§ 67.5090 et seq. RSMo.), Uniform Small Wireless Facility Deployment Act (§§ 67.5110 et seq. RSMo.), applicable zoning, building, and other regulations and approvals, specifically including Section 52.221 through 53.229 of the Zoning Code.

b. *Specific Conditions.*

(a) *Small Wireless Facilities.* Any Small Wireless Facility meeting the requirements for Small Wireless Facility as defined by Section 53.020 and as provided in Section 53.225 of the Zoning Code shall be authorized to be located in the Rights-of-Way with approval of the Director subject to the following additional requirements:

- i. If proposing to install a new Utility Pole, compliance with the spacing requirements in Section 10.1007 (B.2.);
- ii. Compliance with § 67.5113.3(9) RSMo. to the satisfaction of the City;
- iii. For collocations on City Utility Poles, all make-ready estimates for the Utility Pole, including replacement costs where necessary for the safety and reliability of the Utility Pole, as determined by the City;
- iv. Attestation that the proposed Small Wireless Facility meets the volumetric requirements to meet the definition of a Small Wireless Facility in Section 53.020 Definitions of the Zoning Code; and
- v. Any other requirements which may be applicable to the proposed Small Wireless Facility pursuant to the Uniform Small Wireless Facility Deployment Act (§§ 67.5110 et seq. RSMo.).

(b) *“Fast-track” Small Wireless Collocation.* Any wireless Facility meeting the requirements of a “Fast-Track’ Small Wireless Facility” as defined by Section 52.020, and as provided in Section 53.225 of the Zoning Code, may be authorized to be located in the Rights-of-Way with approval of the Director subject to the following additional requirements:

1. Attestation that the proposed facilities meet the volumetric requirements to meet the definition of “Fast Track” in Section 53.020 Definitions of the Zoning Code;

2. Only one "Fast-Track" Small Wireless Facility shall be permitted per structure or Utility Pole in the ROW;
 3. No ground equipment shall be authorized;
 4. If the proposed structure the Applicant proposes to locate its "Fast-Track" Small Wireless Facility is not structurally sound, but the Director finds such to be a desired location, the Director can require the Applicant to install a new substantially similar structure at its cost; and
 5. Compliance with the spacing requirements in Section 10.1007 (B.2.) if granted a waiver under the "Fast-Track" zoning procedure to install a new structure.
- (c) *All other Wireless in ROW.* Any wireless Facility located on a Utility Pole or Existing Structure but not meeting the requirements of (a) Small Wireless Facilities or (b) "Fast-track" Small Wireless Collocation above, may be approved, subject to conditions as may be imposed consistent with the purposes of this Section, only upon approval by the Council upon a determination by the Council that such wireless Facility is: (1) in the public interest to provide a needed service to persons within the City, (2) cannot feasibly meet all of the requirements of a "Small Wireless Facility," "Fast-track" or otherwise, but varies from such requirements to the minimum extent necessary, (3) does not negatively impact appearance or property values in light of the location, design, and circumstances to be approved, (4) does not create any reasonable safety risk, and (5) complies with all zoning, ROW, and other applicable requirements.
- c.** *Wireless Facility Compensation.* If the Small Wireless Facility or Fast Track is to be located on a City owned structure or Utility Pole, an annual payment of \$150.00 per attachment shall be required.
- d.** *Application Requirements.* Any application including one or more wireless antennas or facilities shall include all applicable and lawful requirements for:
- (a) Installation of any facilities in the Rights-of-Way as set forth in this Section;
 - (b) The requirements of this Subsection; and
 - (c) Requirements for installation of wireless antennas and facilities set forth in the Uniform Wireless Communications Infrastructure Deployment Act (Section 67.5090 et. seq., RSMo.), Chapter 53, and other applicable law, including written proof of consent of the landowner and the structure owner.

3. *Limited Space.* The City shall have the power to prohibit or limit the placement of new or additional equipment in the Rights-of-Way if there is insufficient space to accommodate all of the requests of potential ROW Users. In making such decisions, the City shall strive to the extent possible to accommodate all existing and potential users of the Rights-of-Way, but shall be guided primarily by considerations of the public interest, public health and safety, the public's priority needs for the particular service, the condition of the Rights-of-Way, the time of year with respect to essential utilities, the protection of existing equipment in the Rights-of-Way, and future City plans for public improvements and development projects which are in the public interest.

 4. *Limit Number of ROW Users.* To the extent not prohibited by law, the City may limit the number of users in the Rights-of-Way in a competitively neutral manner, based upon, but not necessarily limited to, specific local considerations such as:
 - a. The capacity of the Rights-of-Way to accommodate current or future Facilities, public improvements, or public use;
 - b. The impact on the community of the volume of Facilities in the Rights-of-Way;
 - c. The disruption arising from the use of or numerous Excavations of the Rights-of-Way; or
 - d. Any other consideration based upon the interests of the public safety and welfare.
- C. *No Interference.* All ROW Users shall construct and maintain its Facilities so as not to interfere with other users of the Rights-of-Way. The ROW User shall not interfere with or alter the Facilities of the City or other ROW User without their consent and shall be solely responsible for such. Except as may otherwise be provided or as determined by the Director, the ROW User shall, prior to commencement of work, execute a City-approved resident-notification plan to notify residents affected by the proposed work. All construction and Maintenance by the ROW User or its subcontractors shall be performed in accordance with industry standards. The ROW User shall, in the performance of any Excavation, Facilities Maintenance, or other ROW work, limit such work to that necessary for efficient operation and so as not to interfere with other users of the Rights-of-Way. Facilities and other structures shall not be placed where they will disrupt or interfere with other Facilities, structures, or public improvements or obstruct or hinder in any manner the various utilities serving the residents and businesses in the City or public improvements. When reasonable and necessary to accomplish such purposes, the Director may require as alternatives to the proposed work either less disruptive methods or different locations for Facilities consistent with applicable law.

- D. *Subordinate Uses.* ROW User's use shall be in all situations subordinate and subject to public municipal use.
- E. *Sight Triangle Maintained.* ROW Users shall comply with the requirements of sight triangles and nothing shall be erected, placed, planted, or allowed to grow in such a manner as to materially impede vision within the triangular area formed by the Rights-of-Way lines and a line connecting them at points thirty (30) feet from their point of intersection or at equivalent points on private street.

(Ord. No. 9055, §1, 1-22-2019)

Section 10.1008 Insurance – Surety – Indemnification.

- A. *Insurance Required.* Except as provided in this Section, each ROW User shall provide, at its sole expense, and maintain during the term of any ROW Use Agreement or Franchise or anytime the ROW User has Facilities in the ROW, commercial general liability insurance with a reputable, qualified, and financially sound company licensed to do business in the State of Missouri, and unless otherwise approved by the City, with a rating by Best of not less than "A", that shall protect the ROW User, the City, and the City's officials, officers, and employees, from claims which may arise from such use of the ROW, whether such operations are by the ROW User, its officers, directors, employees, and agents, or any contractors or subcontractors of the ROW User. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from all ROW User operations, products, services, or use of automobiles or construction equipment. The amount of insurance for single limit coverage applying to bodily and personal injury and property damage shall be in no event less than the individual and combined sovereign immunity limits established by § 537.610 RSMo. for political subdivisions; provided that nothing herein shall be deemed to waive the City's sovereign immunity. An endorsement which states that the City as an additional insured with full and equivalent coverage as the insured under the insured's policy and stating that the policy shall not be cancelled or materially modified so as to be out of compliance with the requirements of this Section, or not renewed without thirty (30) days' advance written notice of such event being given to the Director, along with copies of the policy and other documentation, shall be provided. If the Person is self-insured, it shall provide the City proof of compliance regarding its ability to self-insure and proof of its ability to provide coverage in the above amounts. Any self-insurance or deductible above fifty thousand dollars (\$50,000.00) must be declared to and pre-approved by the City.

- 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 Article.
- E. Exemption from Insurance Requirements. In accordance with § 67.5121(3), a self-insured ROW User shall not be required to obtain insurance naming the City as an additional insured solely to the extent such ROW User is utilizing "Small Wireless Facilities" as defined in the Uniform Small Wireless Facility Deployment Act within the ROW. This exception to the City's insurance requirements shall only apply as related to "Small Wireless Facilities" and shall not otherwise alter the obligations of a ROW User to provide appropriate insurance to the City for any other activities or operations. The insurance requirements in this Section or otherwise shall not apply to a ROW User to the extent and for such period as the ROW User is exempted from such requirements pursuant to § 67.1830(6)(a) RSMo. and has on file with the City Clerk an affidavit certifying that ROW User has twenty-five million dollars (\$25,000,000.00) in net assets and is otherwise therefore so exempted unless otherwise provided by a ROW Use Agreement or Franchise or the City determines such exemption has not been adequately shown. The City may waive any and all requirements under this Subsection when deemed to be lawful and in the public interest.
- 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, 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 Article.
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. 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. Solely caused by the City's own negligence, willful misconduct, intentional or criminal acts, or
 - b. Solely caused by the City acting in a proprietary capacity to deliver service(s) within the City.

Additionally, in accordance with § 67.5121(3), a self-insured ROW User shall not be required to obtain insurance naming the City as an additional insured solely to the extent such ROW User is utilizing "Small Wireless Facilities" as defined in the Uniform Small Wireless Facility Deployment Act within the ROW. This exception to the City's insurance requirements shall only apply as related to "Small Wireless Facilities" and shall not otherwise alter the obligations of a ROW User to provide appropriate insurance to the City for any other activities or operations

- 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.

Section 10.1009 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 Article. 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 Article; 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. *Appeals.* Unless otherwise provided herein or by any other governing ordinance or law, any person aggrieved by a decision, fee or requirement established or made pursuant to this Chapter shall, prior to seeking any judicial or statutory relief, if any, file a written appeal of any such decision, fee, or requirement with the City Council within fifteen (15) days of such decision or imposition of such fee or requirement specifying this provision and including specific details of the alleged claim or grievance, and an evidentiary hearing shall be held on such appeal by the City Council or its designee to render a final decision. Nothing herein shall deny or preclude any additional applicable appeal remedy that may be granted and required by federal or state law after such decision.

(Ord. No. 9055, §1, 1-22-2019)

Section 10.1010 Violations, Enforcement, and Penalties.

- A. *Repairs when Defective.* All violations of the standards and requirements herein shall be corrected within the time specified in the issuance of a written notice to correct. Action to correct violations which require immediate action shall be taken upon notification to the Person by the City. Every Person failing to comply with the oral or written notice shall be deemed in violation of this Article. If the action is not taken within the time period specified by notice and in addition to any other remedy, the Director may have the violation, including but not limited to, the existence of mud or debris on the Rights-of-Way, immediately remedied and the City's costs shall be reimbursed by the ROW User through the surety or otherwise. Nothing in this Subsection shall prevent prosecution of violation of this Article in the absence or in addition to the issuance of notice of violation.

- B. *Enforcement; Attorneys' Fees.* The City shall be entitled to enforce any provision of this Article through all remedies lawfully available, and any person determined to have violated the terms of this Code shall further be liable to pay the City's costs and attorneys' fees in enforcing such Code provisions. Additionally, any user of City services, Rights-of-Way, or other City facilities or property, shall, as a condition of such use or continued use, to the full extent permissible by law, be liable to pay the City's costs and attorneys' fees incurred in enforcing any lawful requirement applicable to such use, whether arising in contract, statute, ordinance, or other enforceable duty as to such use.

- C. Penalties. In addition to any other penalties and remedies for violations that may exist in law or equity, any Person that violates any provision of this Chapter shall be subject to such penalties as set forth in Section 1.060 of the City Code per day for each and every day the violation exists or continues.

(Ord. No. 9055, §1, 1-22-2019)

Section 10.1011 Miscellaneous Provisions.

- A. *Captions.* Captions throughout this Article are intended solely to facilitate reading and reference to the Sections and provisions. Such captions shall not affect the meaning or interpretation of this Article.
- B. *Interpretation of Article.* The provisions of this Article 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. *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.
- E. *No Cause of Action Against the City.* As a condition for use of the Rights-of-Way, a ROW User shall have no damages, remedy, or monetary recourse whatsoever against the City for any loss, cost, expense, or damage arising from any of the provisions or requirements of any ROW Use Agreement, Franchise, or License, or because of the enforcement thereof by said City, or from the use of the Rights-of-Way. Nothing herein shall preclude the ROW User from seeking injunctive or declaratory judgment relief against the City where such relief is otherwise available and the requirements therefor are otherwise satisfied.
- F. *Force Majeure.* A Person shall not be deemed in violation of this Article where performance was hindered by war or riots, civil disturbances, floods, or other natural catastrophes beyond the Person's control and a Person shall not be 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.

- G. **Public Emergency.** To the extent not prohibited by applicable law, 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.

- H. **Calculation of Time.** Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required under this Article 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.

- I. **Severability.** If any term, condition, clause, sentence, or provision of this Article 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. 9055, §1, 1-22-2019)

Section 10.1012 Reservation of Rights.

In addition to any rights specifically reserved to the City by this Article, the City reserves unto itself every right and power which is required to be reserved by a provision of any ordinance under any registration, Permit, or other authorization granted under this Article, and as may be authorized by Chapter 67 RSMo. and other authority applicable to regulation of the use of the Rights-of-Way. Notwithstanding anything to the contrary set forth herein, the provisions of this Chapter shall not infringe upon the rights of any Person pursuant to any applicable state or federal statutes, including, but not limited to any right that may exist to occupy the Rights-of-Way.

(Ord. No. 9055, §1, 1-22-2019)

Section 10.1013 RESERVED
Section 10.1014 RESERVED
Section 10.1015 RESERVED

(Ord. No. 8946, §1, 10-4-2016; Ord. No. 9055, §1, 1-22-2019)

Article XII: Parks

Section 10.1200 Locations.

The following locations are designated as City parks located in the City of Webster

Groves:

- a. Backflip Park---520 E. Lockwood Avenue
- b. Barbre Park---411 N. Elm Avenue
- c. Barnickel Park---1101 N. Bompart Avenue
- d. Blackburn Park---421 Edgar Road
- e. Deer Creek Park---849 E. Pacific Avenue
- f. Deer Creek Greenway---Lorraine Davis Park to Deer Creek Park
- g. Gazebo Park---8180 Big Bend Boulevard
- h. Glen Park---199 Newport Avenue
- i. Ivory Crockett Park---106 Almentor Avenue
- j. Larson Park---2 Denver Place
- k. Lockwood Park---912 Newport Avenue
- l. Lorraine Davis Park---137 E Waymire Avenue
- m. Margaret Atalanta Park---681 Atalanta Avenue
- n. Marshall Avenue Trailhead---329 Marshall Avenue
- o. McKee Park---176 Hammel Avenue
- p. Memorial Park---1 E. Glendale Road
- q. Frederick S. Plant, Bird and Wildlife Sanctuary---150 Jefferson Road
- r. Ruhe Park---824 Old Elm Lane
- s. Sculpture Park---175 W. Kirkham Avenue
- t. Shady Creek Nature Sanctuary---112 W. Kirkham Avenue
- u. Southwest Park---1155 S. Rock Hill Road

Section 10.1201 Hours of Use

All parks shall be open to all members of the public from 6:00 a.m. till one-half (1/2) hour following sunset on each day of the week. After hours usage is available by permit only, or other special situations authorized by the Director of Parks and Recreation, provided, however, that with the exception of the Webster Groves Recreation Complex, in no event shall these activities be permitted later than 1:00 a.m.

Section 10.1202 Possession or Consumption of Alcoholic Beverages in Parks.

The possession or consumption of alcoholic beverages or non-intoxicating beer in any City park is hereby prohibited unless such possession or consumption is pursuant to a special permit issued by the Department of Recreation, as provided herein.

Section 10.1203 Consumption of Tobacco Products in Parks.

The consumption of tobacco products including, but not limited to, cigarettes, cigars, vaping devices or smokeless tobacco in any City park is hereby prohibited unless such consumption is pursuant to a special permit issued by the Department of Parks and Recreation, as provided herein.

Section 10.1204 Permit Required.

A permit shall be obtained from the Director of Parks and Recreation before participating in organized activities including but not limited to baseball, softball, soccer and tennis, group picnics, special use of any portion of a park, or any other particular activity named by the Director of Recreation. A person seeking issuance of a permit required by this article shall file an application with the Department of Recreation. The Department of Recreation shall prepare the appropriate application forms, subject to the approval of the City Council, and the application shall state:

- a. The name and address of the applicant, who must be a Webster Groves resident.
- b. If the activity is sponsored by someone other than the applicant, the name and address of the person sponsoring the activity, or if the sponsor is a corporation or organization, the name of the responsible officer.
- c. The day, or days, and hours for which the permit is desired.
- d. An estimate of the anticipated attendance.
- e. Activity for which permit is sought
- f. Name of park, and specific location within the park, for which the permit is sought.
- g. Whether alcohol or tobacco products will be served at the event, and if so, what type of alcohol and the number and location of venues from which alcohol is sold. (If alcohol will be sold, an additional permit or permits will be necessary pursuant to Section 10.1205 or Section 10.1210).
- h. Any other information that the Director of Parks and Recreation finds reasonably necessary to a fair determination as to whether a permit should issue hereunder.

Section 10.1205 Standards for Issuance.

The Director of Parks and Recreation shall issue a permit required by this article

when it is found that:

- a. The proposed activity will not unreasonably interfere with or detract from the general public enjoyment of the park.
- b. The proposed activity and use will no unreasonably interfere with or detract from the promotion of public health, welfare, safety and recreation.
- c. The proposed activity or use is not reasonably anticipated to incite violence, crime, or disorderly conduct.
- d. The proposed activity will not entail unusual, extraordinary or burdensome expense or police operation by the City.
- e. The specific facilities desired have not been reserved for other use at the day and hour required in the application, and the issuance of the permit will not result in crowded or congested conditions in the park due to the issuance of prior permits for the same day, or due to the anticipated number of attendees for the planned event.
- f. If seeking a permit for an event at which attendance is anticipated to be over one hundred (100), the Director shall consult the Chief of Police regarding whether and to what extent security is necessary for the event.
- g. If seeking a permit for an event at which attendance is anticipated to be over two hundred fifty (250), the applicant must show to the satisfaction of the Director of Parks and Recreation, whose determination shall be based upon all relevant factors, including but not limited to the following:
 1. Proven ability to provide the proposed activity or substantially similar activity, such as food booths, community booths, carnivals, and so on;
 2. Staffing capability;
 3. Capability of providing adequate insurance as required by Section 10.1209 of this Chapter; or
 4. Capability to provide effective crowd and traffic control.
- h. The proposed facility will not cause unacceptable damage to green space or park facilities.
- i. The organization, or responsible person, has not been involved in complaints within the City relating to conduct of such person or members of such organization within three (3) years prior to the date for which the event is planned.
- j. If alcohol will be consumed, the applicant has satisfied the Director of Parks and Recreation that sufficient precautions shall be taken to prevent excessive consumption, or the illegal consumption, of such beverages by persons under lawful age, and when necessary, that applicant is providing appropriate security

for the event. The organization, or responsible person, has not been involved in complaints within the City relating to conduct of such person or members of such organization within three (3) years prior to the date for which the event is planned.

- k. Only one permit shall be issued for a specific location within a park for the same period of time for which the permit is issued.

Section 10.1206 Appeals.

Within ten (10) days after receipt of a completed and all necessary supporting documentation for a permit required by this article, the Director of Parks and Recreation shall notify an applicant in writing of his decision to grant or refuse such permit and or any insurance, deposit or other special condition required for issuance of such permit or for restoration, and any aggrieved person shall have the right to appeal in writing within fifteen (15) days to the City Manager, who shall consider the application under the standards set forth in this article, and sustain or overrule the Director of Parks and Recreation's decision within twenty (20) days. The City Manager shall notify the appellant in writing of such decision. The decision of the City Manager shall be final, except as provided under the Administrative Procedure and Review Act, as set forth in Sections 536.105, 536.110 and 536.140 Missouri Revised Statutes, as amended.

Section 10.1207 Applicability of Rules, Regulation and Laws.

A permittee under this article shall be bound by all park rules and regulations and all applicable provisions of this code and other City ordinances and state or federal laws as though they were inserted in the permit.

Section 10.1208 Liability of Permittee.

The person to whom a permit is issued pursuant to this article shall be liable for any loss, damage or injury sustained by any person whatever by reason of the negligence of the permittee. Organizations granted permits to hold functions within a park shall furnish to the Director a Certificate of Insurance to the City at least thirty (30) days before the event for any and all injuries sustained by any person or persons as a result of that organization's activity within the park, including the preparation of and the dismantling of all facilities provided for the function covered by the permit; the Certificate of Insurance shall be in such form as the Director and the Council shall require to hold the City, its officials, agents and employees harmless and to defend any claim for any loss whatsoever.

Section 10.1209 Fees and Security Deposits

The fee for such permit shall be set by a schedule approved from time to time by the City Council and in addition to such fee, the Director may require a security deposit to be made with the Department of Parks and Recreation, which sum shall remain on deposit until such time as the event has terminated and the Director has determined that no damage has occurred to the City property or it has been restored to its pre-existing condition. Any damage that shall occur to the City property shall be charged against such deposit but the liability of the applicant shall not be limited to the

amount of such deposit in the event damage shall exceed such amount, and any such excess liability shall be paid to the City within thirty (30) days of the event, unless the City Council provides otherwise by resolution. The City reserves the right to undertake all restoration the Director deems necessary at the cost of the permittee, subject to appeal as provided in Section 10.1206.

Section 10.1210 Revocations.

The Director of Parks and Recreation shall have the authority to revoke a permit issued pursuant to this article upon a finding of violation of any rule or any provision of this code or other City ordinance, or upon good cause shown.

Section 10.1211 Discrimination Prohibited.

No person, group, organization, association, corporation or other entity who has obtained a permit from the City of Webster Groves, pursuant to this article, shall discriminate against any qualified Participants, considering physical and mental qualifications, in any activities to be undertaken pursuant to such permit on the basis of sex, race or physical or mental handicap. (Ord. No. 8265, §2, 3-5-02)

Section 10.1212 Penalty.

Any person violating any of the provisions of this article shall be subject to a fine or not less than Ten Dollars (\$10.00) no more than One Hundred Dollars (\$100.00) for each offense.

(Ord. No. 9067, §1, 4-2-2019)