

BILL NO. \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING THE CITY OF INDEPENDENCE CITY CODE BY AMENDING CHAPTER 17, "PUBLIC WORKS REGULATIONS" TO CHAPTER 17, "MUNICIPAL SERVICES REGULATIONS" MAKING NECESSARY UPDATES AND CLARIFYING THE RIGHT-OF-WAY POLICY.

WHEREAS, City Staff have determined it necessary to update Chapter 17 of the City Code in order to clarify Right-of-Way policy to accommodate new utilities; and,

WHEREAS the Public Works Department and the Water Pollution Control Department described in Chapter 17 have been reorganized into the Municipal Services Department.

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

SECTION 1. That Chapter 17 of the City Code is hereby amended to read as follows:

**PUBLIC WORKS REGULATIONS MUNICIPAL SERVICES REGULATIONS**

**ARTICLE 1. USE OF STREET RIGHTS-OF-WAY**

**Sec. 17.01.001. ~~Streets may be closed when.~~ Definitions**

~~The Director of Public Works is hereby authorized to withdraw temporarily from public use any public street, alley, or highway, or part thereof, when necessary, for the proper control of traffic or upon which public work or improvement or repair or reconstruction is in progress, for such period as is deemed necessary and for that purpose, to cause such street, alley, or highway, or part thereof, to be barred to travel by the public and signed or barricaded as closed. It shall be unlawful for any person willfully to drive any vehicle on, along, or across any public street, alley, or highway so barricaded and signed, or willfully to throw down or remove or otherwise disturb any such barricade or sign placed by direction of said Director.~~

For the purposes of this ~~article~~ chapter, the following terms, phrases, words and abbreviations shall have the meanings given herein. The words "shall" and "will" are mandatory, and "may" is permissive:

ABANDONED EQUIPMENT OR FACILITIES means any equipment, materials, apparatuses, devices or facilities that are:

- A. Declared abandoned by the owner of such equipment or facilities.
- B. No longer in active use, physically disconnected from a portion of the operating facility or any other; or
- C. Facility that is in use or in service, and no longer capable of being used for the same or similar purpose for which the equipment, apparatuses or facilities were installed.

ADJOINING PROPERTY OWNER means a person owning or legally occupying any land abutting a public right-of-way.

AGGRIEVED means a person directly impacted by an action or decision of the city such that the person would have standing in a court of law to challenge the action.

APPLICANT means any person requesting permission to occupy or operate facilities using the right-of-way, or to work, excavate, or locate facilities in the right-of-way.

APPLICATION means that form designed by the ~~Public Works~~ **Municipal Services** Department which an applicant must use to obtain a permit to conduct facilities work across, over or under the City's public rights-of-way.

BOARD means the Board of Building and Engineering Appeals established herein.

CHARTER means the Charter of the City of Independence, Missouri.

CITY means the City of Independence, Missouri, a municipal corporation and any duly authorized representative.

CITY COUNCIL means the City Council of the City of Independence, Missouri.

CITY ENGINEER means the City Engineer of Independence, Missouri, or an authorized representative.

CITY MANAGER shall mean the City Administrator or any designee.

CODE means the Code of Ordinances of the City of Independence, Missouri.

COMMISSION means the Missouri Public Service Commission.

CONSTRUCT means and includes construct, install, erect, build, affix, or otherwise place any fixed structure or object, in, on, under, through, or above the right-of-way.

CONDUIT means a tube or for protecting electric wiring. Synonyms: pipe, duct, chase, chute.

DAY means calendar day unless otherwise specified.

DIRECTOR shall mean the Director of ~~Public Works~~ **Municipal Services** or designee. When another Director of the City is intended, that Director shall be referred to with the Department overseen.

EMERGENCY includes, but is not limited to, the following:

- A. An unexpected or unplanned outage, cut, rupture, leak or any other failure of a ROW-user facility that prevents or significantly jeopardizes the ability of a ROW-user to provide service to customers;
- B. An unexpected or unplanned outage, cut, rupture, leak or any other failure of a ROW-user facility that results or could result in danger to the public or a material delay or hindrance to the provision of service to the public if the outage, cut, rupture, leak or any other such failure of ROW-user facilities is not immediately repaired, controlled, stabilized or rectified; or
- C. Any occurrence involving a ROW-user facility that a reasonable person could conclude under the circumstances that immediate and undelayed action by the ROW-user is necessary and warranted.

EXCAVATE, EXCAVATING, OR EXCAVATION means any act by which earth, asphalt, concrete, sand, gravel, rock, or any other material in or on the ground is cut into, dug, uncovered, removed, tunneled into, bored into, graded, or otherwise displaced, by means of any tools, equipment, or explosives, except that the following shall not be deemed excavation:

- A. Any de minimis displacement or movement of ground caused by pedestrian or vehicular traffic;
- B. Any other activity which does not disturb or displace surface conditions of the earth, asphalt, concrete, sand, gravel, rock, or any other material in or on the ground.

FCC means Federal Communications Commission.

FACILITY or FACILITIES means lines, pipes, irrigation systems, wires, cables, conduit facilities, poles, towers, vaults, pedestals, boxes, appliances, antennas, transmitters, gates, meters, appurtenances, or other equipment used for or related to providing service.

FACILITY BASED SERVICE PROVIDER means a service provider owning or possessing facilities in the right-of-way.

FINAL ACTION means

- 1. Any action or decision for which no further review or amendment is contemplated or apparent, other than through this procedure, and
- 2. Any temporary or interim action or failure to act for which immediate irreparable injury will occur prior to any formal action being taken.

GOVERNMENTAL ENTITY means 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 of any other state of the United

States and any agency or instrumentality of the State of Missouri or of any other state of the United States or of the United States.

MANUAL means the ~~Public Works~~ **Design and Construction** Manual maintained and modified from time to time by the Director of ~~Public Works~~ **Municipal Services**.

MISSOURI ONE CALL means the procedural requirements for excavation and utility safety established by RSMo 319.010 et seq. as amended from time to time.

PARKWAY means the area between a property line and the street curb or the edge of pavement, sometimes called boulevards, tree-shelves, or snow-shelves.

PAVEMENT means and includes portland cement concrete pavement, asphalt concrete pavement, asphalt treated road surfaces, and any aggregate base material.

PERMIT means a permit granted by the ~~Public Works~~ **Municipal Services** Director to do facilities work within the public rights-of-way.

PERMIT FEE shall mean the monetary charges that each applicant or owner of facilities must pay to the City. User fees may include administrative fees, permit fees and license fees.

PERSON means any natural or corporate person, business association, or business entity including, but not limited to, a corporation, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.

PUBLIC lands means any real property of the City that is not right-of-way.

PUBLIC IMPROVEMENT means any project undertaken by the City, or its agents, contractors, or subcontractors, for the construction, reconstruction, maintenance, or repair of any public infrastructure, and including without limitation, streets, alleys, bridges, bikeways, parkways, sidewalks, sewers, drainage facilities, traffic control devices, street lights, public facilities, public buildings or public lands; provided that projects undertaken by the City for the construction, reconstruction, maintenance, or repair of any public infrastructure funded by, or substantially by, user fees imposed upon those using the public infrastructure shall not be deemed "public improvements" and shall not be exempt from the permit requirements of this article.

~~PUBLIC WORKS~~ **DESIGN AND CONSTRUCTION** MANUAL means the official document to regulate the construction of public infrastructure improvements within the City including the design and construction of streets, water lines, sanitary sewers, and storm sewers.

REGISTRATION means the registration process for a service provider located in any City rights-of-way.

RESELLER SERVICE PROVIDER means a right-of-way (ROW) user providing service within the City that does not have its own facilities in the right-of-way, but instead uses the right-of-way by interconnecting with or using the network elements of another ROW-user utilizing the right-of-way, and/or by leasing excess capacity from a facility based service provider.

RESTORATION means the process by which an excavated right-of-way and surrounding area, including pavement and foundation, is returned to the same or better condition than existed before the commencement of the excavation or work as determined by the Director of ~~Public Works~~ **Municipal Services**.

RIGHT-OF-WAY or ROW means generally public property vested in the City in trust for the citizens, in fee or easement, to which the public has a right to access and use for the purpose intended by the dedication, including but not limited to, the area on, below or above a public sidewalk, roadway, highway, street or alleyway in which the City has an ownership interest, but not including:

- A. The airwaves above a public right-of-way with regard to cellular or other non-wire telecommunications or broadcast service;
- B. Easements obtained by utilities or private easements in platted subdivisions or tracts;
- C. Railroad right-of-way and ground utilized or acquired for railroad facilities to the extent the City may provide for protection of same or the railroad right-of-way are adjacent to or within City right-of-way; or

- D. Other equipment and facilities utilized by a utility owned or operated by a governmental entity pursuant to RSMo Ch. 91, or pursuant to a charter form of government.

RIGHT-OF-WAY PERMIT means the authorization to work, excavate, or locate facilities in the right-of-way.

ROUTINE SERVICE OPERATION means excavation or work that makes no material change to the facilities and does not disrupt traffic.

ROW-USER means a person, its successors and assigns, that uses the right-of-way for purposes of work, excavation, provision of services, or to install, construct, maintain, repair facilities, equipment, or structures thereon or adjacent to, for which a right-of-way permit and/or a temporary traffic control permit is required, including but not limited to landowners and service providers. A ROW-user shall not include ordinary vehicular or pedestrian traffic.

SERVICE means a commodity provided to a person by means of a delivery system that is comprised of facilities located or to be located in the right-of-way, including, but not limited to, gas, telephone, cable television, internet services, open video systems, alarm systems, steam, electric, water, telegraph, data transmission, petroleum pipelines, or sanitary sewerage.

SERVICE PROVIDER means any person that is a provider of a service for or without a fee that has the requisite certifications and authorizations from applicable governmental entities, including the FCC, to provide such service, including, but not limited to, every cable television service provider, pipeline corporation, gas corporation, electrical corporation, rural electric cooperative, telecommunications company, water corporation, water district, heating or refrigerating corporation or sewer corporation under the jurisdiction of the public service commission; every municipally owned or operated utility pursuant to RSMo Ch. 91, or pursuant to a charter form of government or cooperatively owned or operated utility pursuant to RSMo Ch. 394; every street light maintenance district; every privately owned utility; and every other entity, regardless of its form of organization or governance, whether for profit or not, which in providing a public utility type of service for members of the general public, utilizes pipes, cables, conduits, wires, optical cables, poles, or other means of transmission, collection or exchange of communications, information, substances, data, or electronic or electrical current or impulses, in the collection, exchange or dissemination of its product or services through the public right-of-way. Service provider includes both facility based service providers and reseller service providers.

STREET means the pavement and sub-grade of a City local, collector, commercial, industrial, or arterial roadway and alleys.

TEMPORARY TRAFFIC CONTROL means the temporary management of motorized and nonmotorized traffic through the use of official traffic control devices as called for in the Manual on Uniform Traffic Control Devices (MUTCD) as amended from time to time, including but not limited to signs, markings, fence, barricades, lights, delineators, and channelizers, as necessary when the construction, repair, removal, excavation, work, events, or other activity, whether within or adjacent to the public right-of-way, impacts normal traffic conditions.

TEMPORARY TRAFFIC CONTROL AUTHORIZATION means the written authorization for a ROW-user to act in a manner that narrows, closes, or otherwise impacts the normal flow of vehicular traffic or pedestrian traffic on any public street or sidewalk. The authorization will be indicated on the right-of-way permit by the City Engineer at the time of issuance when required information and documentation is provided by the ROW-user, where applicable.

UNLAWFUL means any act or omission in violation of any applicable law or actions that are not authorized by any applicable law.

WORK or WORKING means the construction, installation, repair or maintenance of any type of facility within the right-of-way, unless an exemption as provided in this article applies to the routine maintenance of the facility.

**Sec. ~~17.01.001.~~ 17.01.002. Streets may be closed when.**

The Director of ~~Public Works~~ **Municipal Services** is hereby authorized to withdraw temporarily from public use any public street, alley, or highway, or part thereof, when necessary, for the proper control of traffic or upon which public work or improvement or repair or reconstruction is in progress, for such period as is deemed necessary and for that purpose, to cause such street, alley, or highway, or part thereof, to be barred to travel by the public and signed or barricaded as closed. It shall be unlawful for any person willfully to drive any vehicle on, along, or across

any public street, alley, or highway so barricaded and signed, or willfully to throw down or remove or otherwise disturb any such barricade or sign placed by direction of said Director.

**Sec. ~~17.01.002.~~ 17.01.003. Obstruction of view.**

- A. It shall be unlawful for the owner or occupant of any corner lot to:
  - 1. Erect, place, or maintain any earthwork, wall, fence, other structure or object, hedge, shrub, tree, or other growth to a height exceeding 30 inches above pavement level within the triangle defined by the point of intersection of the rights-of-way or its tangents and 25 feet along the right-of-way in both directions.
  - 2. Allow the limbs of any tree to extend lower than nine feet above the level of the street in a triangular area the lateral sides of which are 25 feet in length measured from the point of intersection of the abutting property lines.
  - 3. Plant shrubs or other plants taller than 30 inches in height or allow shrubs or other plants to grow taller than 30 inches in height above the level of the street in a triangular area the lateral sides of which are 20 feet in length measured from the point of intersection of the abutting property line.
- B. It shall be unlawful for the owner or occupant of any property adjacent to a private drive, public drive or commercial drive to plant shrubs or other plants taller than 30 inches in height or allow shrubs or other plants to grow taller than 30 inches in height in a triangular area the lateral sides of which are 20 feet in length as measured from the point of intersection of the side of the driveway and the property line.
- C. It shall be unlawful for the owner or occupant of any property to allow the limbs of any tree to extend lower than 15 feet above the level of the street past the curb line into the street.
- D. When the height of any tree, shrub or other plant as required in this section does not insure a clear view of an approaching person or vehicle or impedes the passage of a vehicle or person along a public right-of-way, the Director of ~~Public Works~~ **Municipal Services** shall have the authority to require the owner or occupant of the corner lot or abutting property to trim or remove any tree or other plant to insure the clear view of an approaching vehicle or person or passage of a vehicle or person.

**Sec. ~~17.01.003.~~ 17.01.004. Warning lights required.**

No person, firm, or corporation shall permit or suffer any building materials, soil, debris, or other object which may obstruct free passage of the public, to remain on any street, alley, or sidewalk without placing or causing to be placed on or about such obstruction red warning devices in such manner as to warn anyone coming toward same from any direction. Such devices shall remain lighted from sundown of each day until sunrise of the following day until such obstruction is removed.

**Sec. ~~17.01.004.~~ 17.01.005. Throwing or leaving substances on sidewalks and streets.**

It shall be unlawful for any person to throw or cause to be thrown or permit anyone in his or her employ to throw into any public highway, street, alley, or any other public place, any kind of wire, ashes, glass, animal or vegetable substance whatever, or advertising matter; or to distribute or cause to be distributed, or permit anyone in his or her employ to distribute any kind of advertising matter so that it shall litter the public highways, streets, sidewalks, alleys, or other public places. No person shall sweep, or cause to be swept, or permit anyone in his or her employ to sweep, from any store, office, warehouse, factory, hotel, or any other building occupied in whole or in part for business, any refuse or dirt from the floors of such establishment or any of them, onto a public highway, street, sidewalk, alley, or other public place of the City.

**Sec. ~~17.01.005.~~ 17.01.006. Posting signs in public streets or places.**

- A. No person shall print, paint, place, post or otherwise affix any sign, hand-bill or poster on any sidewalk, street, street right-of-way, or other public property or public easement, or to or upon any utility pole, street sign, light pole, tree or other structure located on public property or public easement. No person shall cause or permit any other person under his/her direction or control to do any act prohibited by this section.
- B. Nothing in this section shall prohibit the City or its personnel from posting or causing or permitting to be posted any sign, hand-bill or poster in or upon any place or structure listed in subsection A. that relates to the functions of municipal government.
- C. Nothing in this section shall prohibit the installation of a permanent sign or plaque, or the placement of a temporary sign, in or upon any place or structure listed in subsection A. commemorating a local historical,

cultural, or artistic event, location or local personality for which the Community Development Director or any authorized representative, with the approval of the Council, has granted a written permit. Any permanent sign or plaque authorized by this subsection must meet the construction requirements of the Independence Sign Code and must be located as near as practical to the site of the event, location or personality being commemorated. Any temporary sign authorized by this subsection may not be placed or posted more than 14 days prior to the commencement of the celebration and must be removed within 24 hours of the termination of the celebration.

- D. Any hand-bill, poster or sign found posted or otherwise affixed in or upon any place or structure listed in subsection A. and not authorized by subsection B. or C. shall be forfeited and may be removed by the Police Department or the Department of ~~Public Works~~ **Municipal Services**. The person responsible for any such illegal posting shall be liable for the cost incurred in the removal thereof. This remedy is not exclusive and in no way effects any other remedy or sanction for a violation of this section.

**Sec. ~~17.01.006.~~ 17.01.007. Streets, sidewalks, and gutters not to be obstructed**

It shall be unlawful for any person to cause, create or maintain any obstruction of any street, sidewalk or alley, unless specifically authorized to do so by the Director of ~~Public Works~~ **Municipal Services**.

**Sec. ~~17.01.007.~~ 17.01.008. Cleaning and washing animals and vehicles on or near streets, etc.**

No person shall wash or clean, or cause to be washed or cleaned, any animal, vehicle, or other thing in or upon any street, sidewalk, or park, or upon any place so near any street, sidewalk, or park that the water, dirt, mud, or dust therefrom flows or is blown in or upon the street, sidewalk, or park. This prohibition shall not apply to the washing or cleaning of a vehicle legally parked on private property, including driveway or offstreet parking facility, provided the activity does not create a nuisance.

**Sec. ~~17.01.008.~~ 17.01.009. Spikes and barbed wire.**

No person shall place or permit to be placed or to remain on or along any railroad or building front, or any part of any building, fence, or premises, adjacent or contiguous to the traveled portion of any street or sidewalk, any spikes or sharp-pointed cresting or any barbed wire or other thing dangerous and liable to snag, tear, cut, or otherwise injure anyone coming in contact therewith.

**Sec. ~~17.01.009.~~ 17.01.010. Vehicles with lugs prohibited on public streets—Exception.**

It shall be unlawful to drive, convey, or operate upon, over, or across any public street or highway or public place in the City any vehicle of any kind having on its wheels any clamps, ridges, extensions, projections, bars, bolts, rods, curves, or other contrivance of metal which may cut or make holes, gashes, or crevices in the street, or otherwise tear up, injure, damage, or disfigure the street. Nothing herein contained shall restrict the right of the City to use such equipment as herein described.

**Sec. ~~17.01.010.~~ 17.01.011. Encroachments of public rights-of-way and easements.**

A. It shall be unlawful to erect, place, or maintain any building or structure regulated by the Building Code of the City of Independence, Missouri, on a public right-of-way or easement without obtaining a license to do so.

B. An application for a license to erect, place or maintain a building or structure on a public right-of-way or easement shall be made to the ~~Public Works~~ **Municipal Services** Director. The Director shall forward applications received to the City Council for action, along with an evaluation of whether the proposed building or structure interferes with the lawful use of the public right-of-way or easement.

C. A license approved by the City Council shall not be valid until recorded by the licensee in the County Division of Property Records.

**Sec. ~~17.01.011.~~ 17.01.012. Penalty**

Any person violating any provision of this article shall, upon conviction thereof, be punished by a fine of not less than \$10.00 nor more than \$500.00 for each and every violation. Each day such violation is permitted to continue shall constitute a separate offense. As an additional remedy, a petition for abatement may be made to a court of competent jurisdiction.

**Secs. ~~17.01.012~~, 17.01.013 – 17.01.999 Reserved**

## **ARTICLE 2. STORM DRAINAGE IN PUBLIC RIGHTS-OF-WAY**

### **Sec. 17.02.001. Driveway culverts.**

All driveways must provide adequate storm drainage facilities to prevent storm water drainage from running onto a public street or across a driveway during a 25 year flood event. All driveway culverts shall be sized by the Department of ~~Public Works~~ **Municipal Services** in accordance with the ~~Public Works~~ **Design and Construction** Manual. Driveway culvert installation requires a street or right-of-way opening permit. The City will, if approved and in accordance with the ~~Public Works~~ Manual, install driveway pipes when the appropriate pipe is provided by the property owner. The City does not maintain driveway pipes.

### **Sec. 17.02.002. Roadway ditches.**

The City reserves the right to maintain roadside ditches, in accordance with the written policy established in the ~~Public Works~~ **Municipal Services** Department. This work, if required, shall be performed in accordance with applicable provisions of the ~~Public Works~~ **Design and Construction** Manual. Prior to the approval of a Survey Development for residential development of tracts from three to nine acres, roadway ditches and shoulders must be constructed according to Section 20.04.002(8), Standard Detail Sheet "H", "Rural Streets." Smaller parcels must provide full storm water facilities according to the City Code.

**Secs. 17.02.003—17.02.999. Reserved.**

## **ARTICLE 3. DRIVEWAYS**

### **Sec. 17.03.001. Definitions.**

A driveway is defined as a point of vehicular access providing ingress and egress to any property.

### **Sec. 17.03.002. Permit required—Fee.**

No person shall construct or relocate a driveway, nor shall any person maintain a driveway not heretofore constructed and used for such, without first obtaining right-of-way permit and paying the permit fee.

### **Sec. 17.03.003. Filing of plat or drawing.**

No permit required by this article shall be granted until the applicant shall file, for approval, blueprints of a plat or drawing showing the location and size of all driveways serving the property effected.

### **Sec. 17.03.004. Driveway requirements.**

All driveways shall be constructed in accordance with applicable provisions of the ~~Public Works~~ **Design and Construction** Manual, except where considered impractical by the reviewing Engineer. Adjustments in dimensions may be made with the approval of the Director of ~~Public Works~~ **Municipal Services**. All driveways must be paved with a concrete or asphaltic concrete material within the public right-of-way and for an additional distance of 25 feet if the driveway slopes at more than eight percent downward slope to the adjacent street and for an additional distance of up to 50 feet if the front building line of the structure is within 50 feet of the right-of-way line. ~~Within public rights-of-way driveways must be a minimum of 16 feet wide at the street edge tapering to a minimum of 12 feet wide at the right-of-way line. The downward side slope adjacent to a driveway may not exceed 3:1 within ten feet of the driveway edge.~~

### **Sec. 17.03.005. Relocation permits.**

Existing driveways shall not be relocated without a permit approving the relocation, enlarging, or expanding of such driveways, and such relocated driveways shall be subjected to limitations provided in the preceding section.

### **Sec. 17.03.006. Penalty.**

Any person, firm, or corporation constructing, relocating, or maintaining a driveway in violation of any provision of this article shall, upon conviction thereof, be subject to a fine of not less than \$10.00 and not more than \$500.00. Each such violation shall constitute a separate and distinct offense and shall be punishable as such.

**Secs. 17.03.007—17.03.999. Reserved.**

## ARTICLE 4. CONSTRUCTION BY PROPERTY OWNERS

### Sec. 17.04.001. Duty of Director of ~~Public Works~~ Municipal Services.

The ~~Public Works~~ Municipal Services Director is hereby authorized to grant permission to the owners of property fronting upon or adjoining any street, avenue, public highway, or alley, to grade, construct, or reconstruct the curbing, roadway, paving, sidewalk, or sewers of such street, avenue, public highway, or alley, at said property owner's own cost and expense. Such work shall be done under the supervision of the ~~Public Works~~ Municipal Services Director, and in accordance with the ~~Public Works~~ Design and Construction Manual.

### Sec. 17.04.002. Permits.

Street or right-of-way opening permits shall be obtained prior to commencement of any work approved herein.

### Sec. 17.04.003. Penalty.

Any person, firm, or corporation accomplishing any construction or reconstruction in violation of any provision of this article shall, upon conviction thereof, be subject to a fine of not less than \$10.00 and not more than \$500.00. Each such violation shall constitute a separate distinct offense and shall be punishable as such.

### Secs. 17.04.002—17.04.999. Reserved.

## ARTICLE 5. USE AND MANAGEMENT OF RIGHT-OF-WAY

### Sec. 17.05.001 Policy statement.

This article is enacted to define the authority of the City and its officers and employees with regard to public ownership, control and management of its right-of-way. The right-of-way is a valuable public resource that has required and will continue to require substantial public investment and is intended to be used by the public in travel and utilities when such use does not incommode the public. This article shall apply to all users of the right-of-way engaged in any activities defined in, regulated by, or requiring a permit pursuant to this article. This article and its application is in addition to all other City Codes, provisions of this chapter and the ~~Public Works~~ Design and Construction Manual of the Department of ~~Public Works~~ Municipal Services as maintained and modified from time to time.

### Sec. 17.05.002. Definitions.

For the purposes of this article, the following terms, phrases, words and abbreviations shall have the meanings given herein. The words "shall" and "will" are mandatory, and "may" is permissive:

~~ABANDONED EQUIPMENT OR FACILITIES~~ means any equipment, materials, apparatuses, devices or facilities that are:

- A. ~~Declared abandoned by the owner of such equipment or facilities;~~
- B. ~~No longer in active use, physically disconnected from a portion of the operating facility or any other; or~~
- C. ~~Facility that is in use or in service, and no longer capable of being used for the same or similar purpose for which the equipment, apparatuses or facilities were installed.~~

~~ADJOINING PROPERTY OWNER~~ means a person owning or legally occupying any land abutting a public right of way.

~~AGGRIEVED~~ means a person directly impacted by an action or decision of the City such that the person would have standing in a court of law to challenge the action.

~~APPLICANT~~ means any person requesting permission to occupy or operate facilities using the right of way, or to work, excavate, or locate facilities in the right of way.

~~APPLICATION~~ means that form designed by the Public Works Department which an applicant must use to obtain a permit to conduct facilities work across, over or under the City's public rights of way.

~~BOARD~~ means the Board of Building and Engineering Appeals established herein.

~~CHARTER~~ means the Charter of the City of Independence, Missouri.

~~CITY~~ means the City of Independence, Missouri, a municipal corporation and any duly authorized representative.

~~CITY COUNCIL~~ means the City Council of the City of Independence, Missouri.

~~CITY ENGINEER~~ means the City Engineer of Independence, Missouri, or an authorized representative.

~~CITY MANAGER~~ shall mean the City Administrator or any designee.

~~CODE~~ means the Code of Ordinances of the City of Independence, Missouri.



~~COMMISSION means the Missouri Public Service Commission.~~

~~CONSTRUCT means and includes construct, install, erect, build, affix, or otherwise place any fixed structure or object, in, on, under, through, or above the right of way.~~

~~CONDUIT means a tube or for protecting electric wiring. Synonyms: pipe, duct, chase, chute.~~

~~DAY means calendar day unless otherwise specified.~~

~~DIRECTOR shall mean the Director of Public Works or designee. When another Director of the City is intended, that Director shall be referred to with the Department overseen.~~

~~EMERGENCY includes, but is not limited to, the following:~~

~~A. — An unexpected or unplanned outage, cut, rupture, leak or any other failure of a ROW user facility that prevents or significantly jeopardizes the ability of a ROW user to provide service to customers;~~

~~B. — An unexpected or unplanned outage, cut, rupture, leak or any other failure of a ROW user facility that results or could result in danger to the public or a material delay or hindrance to the provision of service to the public if the outage, cut, rupture, leak or any other such failure of ROW user facilities is not immediately repaired, controlled, stabilized or rectified; or~~

~~C. — Any occurrence involving a ROW user facility that a reasonable person could conclude under the circumstances that immediate and undelayed action by the ROW user is necessary and warranted.~~

~~EXCAVATE, EXCAVATING, OR EXCAVATION means any act by which earth, asphalt, concrete, sand, gravel, rock, or any other material in or on the ground is cut into, dug, uncovered, removed, tunneled into, bored into, graded, or otherwise displaced, by means of any tools, equipment, or explosives, except that the following shall not be deemed excavation:~~

~~A. — Any de minimis displacement or movement of ground caused by pedestrian or vehicular traffic;~~

~~B. — Any other activity which does not disturb or displace surface conditions of the earth, asphalt, concrete, sand, gravel, rock, or any other material in or on the ground.~~

~~FCC means Federal Communications Commission.~~

~~FACILITY or FACILITIES means lines, pipes, irrigation systems, wires, cables, conduit facilities, poles, towers, vaults, pedestals, boxes, appliances, antennas, transmitters, gates, meters, appurtenances, or other equipment used for or related to providing service.~~

~~FACILITY BASED SERVICE PROVIDER means a service provider owning or possessing facilities in the right of way.~~

~~FINAL ACTION means~~

~~1. — Any action or decision for which no further review or amendment is contemplated or apparent, other than through this procedure, and~~

~~2. — Any temporary or interim action or failure to act for which immediate irreparable injury will occur prior to any formal action being taken.~~

~~GOVERNMENTAL ENTITY means 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 of any other state of the United States and any agency or instrumentality of the State of Missouri or of any other state of the United States or of the United States.~~

~~MANUAL means the Public Works Manual maintained and modified from time to time by the Director of Public Works.~~

~~MISSOURI ONE CALL means the procedural requirements for excavation and utility safety established by RSMo 319.010 et seq. as amended from time to time.~~

~~PARKWAY means the area between a property line and the street curb or the edge of pavement, sometimes called boulevards, tree shelves, or snow shelves.~~

~~PAVEMENT means and includes portland cement concrete pavement, asphalt concrete pavement, asphalt treated road surfaces, and any aggregate base material.~~

~~PERMIT means a permit granted by the Public Works Director to do facilities work within the public rights-of way.~~

~~PERMIT FEE shall mean the monetary charges that each applicant or owner of facilities must pay to the City. User fees may include administrative fees, permit fees and license fees.~~

~~PERSON means any natural or corporate person, business association, or business entity including, but not limited to, a corporation, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.~~

~~PUBLIC lands means any real property of the City that is not right of way.~~

**PUBLIC IMPROVEMENT** means any project undertaken by the City, or its agents, contractors, or subcontractors, for the construction, reconstruction, maintenance, or repair of any public infrastructure, and including without limitation, streets, alleys, bridges, bikeways, parkways, sidewalks, sewers, drainage facilities, traffic control devices, street lights, public facilities, public buildings or public lands; provided that projects undertaken by the City for the construction, reconstruction, maintenance, or repair of any public infrastructure funded by, or substantially by, user fees imposed upon those using the public infrastructure shall not be deemed "public improvements" and shall not be exempt from the permit requirements of this article.

**PUBLIC WORKS MANUAL** means the official document to regulate the construction of public infrastructure improvements within the City including the design and construction of streets, water lines, sanitary sewers, and storm sewers.

**REGISTRATION** means the registration process for a service provider located in any City right-of-way.

**RESELLER SERVICE PROVIDER** means a right-of-way (ROW) user providing service within the City that does not have its own facilities in the right-of-way, but instead uses the right-of-way by interconnecting with or using the network elements of another ROW user utilizing the right-of-way, and/or by leasing excess capacity from a facility-based service provider.

**RESTORATION** means the process by which an excavated right-of-way and surrounding area, including pavement and foundation, is returned to the same or better condition than existed before the commencement of the excavation or work as determined by the Director of Public Works.

**RIGHT OF WAY** or ROW means generally public property vested in the City in trust for the citizens, in fee or easement, to which the public has a right to access and use for the purpose intended by the dedication, including but not limited to, the area on, below or above a public sidewalk, roadway, highway, street or alleyway in which the City has an ownership interest, but not including:

- A. The airwaves above a public right-of-way with regard to cellular or other non-wire telecommunications or broadcast service;
- B. Easements obtained by utilities or private easements in platted subdivisions or tracts;
- C. Railroad right-of-way and ground utilized or acquired for railroad facilities to the extent the City may provide for protection of same or the railroad right-of-way are adjacent to or within City right-of-way; or
- D. Other equipment and facilities utilized by a utility owned or operated by a governmental entity pursuant to RSMo Ch. 91, or pursuant to a charter form of government.

**RIGHT OF WAY PERMIT** means the authorization to work, excavate, or locate facilities in the right-of-way.

**ROUTINE SERVICE OPERATION** means excavation or work that makes no material change to the facilities and does not disrupt traffic.

**ROW USER** means a person, its successors and assigns, that uses the right-of-way for purposes of work, excavation, provision of services, or to install, construct, maintain, repair facilities, equipment, or structures thereon or adjacent to, for which a right-of-way permit and/or a temporary traffic control permit is required, including but not limited to landowners and service providers. A ROW user shall not include ordinary vehicular or pedestrian traffic.

**SERVICE** means a commodity provided to a person by means of a delivery system that is comprised of facilities located or to be located in the right-of-way, including, but not limited to, gas, telephone, cable television, internet services, open video systems, alarm systems, steam, electric, water, telegraph, data transmission, petroleum pipelines, or sanitary sewerage.

**SERVICE PROVIDER** means any person that is a provider of a service for or without a fee that has the requisite certifications and authorizations from applicable governmental entities, including the FCC, to provide such service, including, but not limited to, every cable television service provider, pipeline corporation, gas corporation, electrical corporation, rural electric cooperative, telecommunications company, water corporation, water district, heating or refrigerating corporation or sewer corporation under the jurisdiction of the public service commission; every municipally owned or operated utility pursuant to RSMo Ch. 91, or pursuant to a charter form of government or cooperatively owned or operated utility pursuant to RSMo Ch. 394; every street light maintenance district; every privately owned utility; and every other entity, regardless of its form of organization or governance, whether for profit or not, which in providing a public utility type of service for members of the general public, utilizes pipes, cables, conduits, wires, optical cables, poles, or other means of transmission, collection or exchange of communications, information, substances, data, or electronic or electrical current or impulses, in the collection, exchange or dissemination of its product or services through the public right-of-way. Service provider includes both facility-based service providers and reseller service providers.

**STREET** means the pavement and sub-grade of a City local, collector, commercial, industrial, or arterial roadway and alleys.

~~TEMPORARY TRAFFIC CONTROL~~ means the temporary management of motorized and nonmotorized traffic through the use of official traffic control devices as called for in the Manual on Uniform Traffic Control Devices (MUTCD) as amended from time to time, including but not limited to signs, markings, fence, barricades, lights, delineators, and channelizers, as necessary when the construction, repair, removal, excavation, work, events, or other activity, whether within or adjacent to the public right of way, impacts normal traffic conditions.

~~TEMPORARY TRAFFIC CONTROL AUTHORIZATION~~ means the written authorization for a ROW user to act in a manner that narrows, closes, or otherwise impacts the normal flow of vehicular traffic or pedestrian traffic on any public street or sidewalk. The authorization will be indicated on the right of way permit by the City Engineer at the time of issuance when required information and documentation is provided by the ROW user, where applicable.

~~UNLAWFUL~~ means any act or omission in violation of any applicable law or actions that are not authorized by any applicable law.

~~WORK or WORKING~~ means the construction, installation, repair or maintenance of any type of facility within the right of way, unless an exemption as provided in this article applies to the routine maintenance of the facility.

**Sec. ~~17.05.003~~, 17.05.002 Administration and authority.**

- A. The Director is the principal City official responsible for administration of the right-of-way registration and permitting processes. The Director may delegate any and all duties under this article consistent with the Charter.
- B. The City Manager or Board may hear appeals as provided under this article and make recommendations to the City Council for actions on appeals.
- C. No action or omission of the City shall operate as a future waiver of any rights of the City under this article.
- D. The City shall have the maximum plenary authority to regulate applications, permits and Facilities work as may now or hereafter be lawfully permissible. Except where rights are expressly granted or waived by permit, they are reserved, whether or not expressly enumerated. This article may be amended from time to time and in no event shall this article be considered a contract between the City and an applicant such that the City would be prohibited from amending any provision hereof.

**Sec. ~~17.05.004~~, 17.05.003 Registration of right-of-way (ROW) users.**

- A. Except where otherwise authorized or required by law, no person may construct, maintain, own, control, or use facilities or structures in the right-of-way without first obtaining a franchise or right-of-way use agreement with the City as provided herein.
  - 1. A franchise shall be obtained in conformance with all applicable franchise procedures for any person or utility seeking to use the right-of-way for purposes of providing service or distribution of electricity, gas, water, steam, lighting, or sewer public utility service in the City.
  - 2. A right-of-way use agreement shall be required for all other persons desiring to use the right-of-way, except as provided herein or otherwise required by law. Such agreement shall conform to all applicable laws and requirements, including as provided in this chapter for ROW-users providing communications services, if applicable, but shall not be subject to procedures applicable to franchises.
  - 3. Activities specifically described in this chapter are exempt from the franchise and right-of-way use agreement requirements set forth herein. If activities beyond those described in this chapter are performed, the ROW-user may still be subject to registration requirements.
- B. The authority granted by the City in any agreement or franchise shall be for non-exclusive use of the right-of-way. The City specifically reserves the right to grant, at any time, such additional agreements or other rights to use the right-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 agreement or franchise shall not be deemed to create any property interest of any kind in favor of the ROW-user. All franchises and right-of-way use agreements shall be approved by the City Manager and all applicable approval processes on a non-discriminatory basis provided that the person is in compliance with all applicable requirements. Such franchises and agreements shall be deemed to incorporate the terms of this chapter and other applicable laws of the City, except as may be expressly stated in such agreements and franchises.

- C. Unless prohibited by applicable law, no right-of-way permit may be issued to any person subject to these requirements unless or until such person has a valid franchise or right-of-way use agreement with the City that authorizes that person's general use of the right-of-way. Unless prohibited by applicable law, in addition to any other reason provided herein, the City Engineer may deny a right-of-way permit to any person that does not have a valid franchise or right-of-way agreement with the City or is exempted from these requirements as described above.
- D. Unless otherwise provided, use or installation of any utility facilities or other structure in, on, or over non-right-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.
- E. Registration of Reseller Service Providers and Exempt Entities.
  - 1. Prior to providing service within the City or transmitting communications through facilities in the City, reseller service providers shall register with the City of the intent to do so and shall include: (1) identity of the reseller service provider and certification of the applicable regulatory approval necessary to undertake such service or communications, (2) the name of the provider(s) owning the facilities with the City through which the communications shall be transmitted; (3) name, address, telephone number, and email address of an officer, agent, or employee responsible for the accuracy of the registration; and (4) such other information as requested by the Director. It shall be unlawful for any reseller service provider not having its own agreement or franchise to have its own facilities within the right-of-way, have the right to physically access the facilities within the right-of-way, or to transmit communication for commercial purposes through any facility owned by a person without a valid agreement or other City authorization for such facilities. It shall be the duty of a reseller service provider to report any changes to its registration information within 30 days of such change.
  - 2. Prior to providing service within the City, transmitting communications through facilities in the City or constructing in the right-of-way, entities not required to obtain a franchise or right-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 right-of-way application in subsection F.2 of this section. It shall be the duty of such exempt entity to report any changes to such registration information within 30 days of such change.
- F. Franchise or Right-of-Way Use Agreement Application Process.
  - 1. An application for a franchise or right-of-way use agreement shall be presented to the Director in writing on the form provided by the City and shall include all such information as is required by this section and on the application form. All ROW-users shall be responsible for accurately maintaining the information in the application during the term of any franchise or 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 herein.
  - 2. All applicants for a franchise or right-of-way use agreement shall submit a completed application on such form provided by the City, which shall include information necessary to determine compliance with this chapter including but not limited to:
    - a. Identity and legal status of the proposed right-of-way user.
    - b. Name, address, telephone number, and email address of each officer, agent or employee responsible for the accuracy of the application. Each officer, agent or employee shall be familiar with the local facilities of the proposed ROW-user, shall be the person(s) to whom notices shall be sent, and shall be responsible for facilitating all necessary communication including, but not limited to, certifications to the City of any material changes to the information provided in such completed application during the term of any franchise or agreement.
    - c. Name, address, telephone number and email address of the local representative of the proposed ROW-user who shall be available at all times to act on behalf of the ROW-user in the event of an emergency.

- d. Proof of any necessary permit, certification, license, grant, registration, franchise agreement, or any other authorization required by any appropriate governmental entity including, but not limited to, the Federal Communications Commission or the Public Service Commission.
  - e. Description of the proposed ROW-user's intended use of the right-of-way including such information as to proposed services so as to determine the applicable, federal, state, and local regulatory provisions as may apply to such ROW-user.
  - f. A list of authorized agents, contractors, and subcontractors eligible to obtain permits on behalf of the proposed ROW-user. An application may be updated to add such person at the time of permit application if the updated application is submitted by an authorized representative of the ROW-user.
  - g. Information sufficient to determine the amount of net assets of the proposed ROW-user.
  - h. Information sufficient to determine whether the proposed ROW-user is subject under applicable law to franchising, service regulation, payment of compensation for the use of the right-of-way, taxation or other requirements of the City.
  - i. An application deposit fee as established by the most recent and applicable Schedule of Fees, consistent with applicable law. Such deposit fees shall be utilized to offset the City's costs in review and issuance of a right-of-way use agreement or franchise agreement. Any amount not used by the City for its actual lawfully reimbursable costs will be refunded to the applicant on request after execution of a right-of-way use agreement or franchise agreement. If applicable, the applicant shall be obligated to reimburse the City for its reasonable expenses associated with the review, negotiation, and approval of an appropriate right-of-way use agreement or franchise agreement that may reasonably exceed the application deposit amount.
  - j. Such other information as may be reasonably required by the Director to determine requirements and compliance with applicable regulation.
3. After submission of a duly executed and completed application and application deposit fee and an executed franchise or right-of-way 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 chapter and all applicable laws, the Director shall submit such agreement to the City Manager for approval. Upon determining compliance with this chapter, the City Manager shall authorize execution of the franchise or right-of-way agreement (or a modified agreement otherwise acceptable to the City consistent with the purposes of this chapter) and such executed franchise or agreement shall constitute consent to use the right-of-way in accordance with this chapter and the right-of-way use agreement; provided that nothing herein shall preclude the rejection or such modification of any executed franchise or agreement submitted to the City to the extent such 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 applicant.
- G. To the extent allowable by law, the City may limit the number of users in the right-of-way in a competitively neutral manner, based upon, but not limited to, specific local considerations such as:
1. The capacity of the right-of-way to accommodate service facilities;
  2. The impact on the community of the volume of facilities in the right-of-way;
  3. The disruption arising from numerous excavation of the right-of-way;
  4. The financial capabilities of the service provider and its guaranteed commitment to make necessary investments to erect, maintain, and operate the proposed facilities; or
  5. Any other consideration based upon the interests of the public safety and welfare.

The City shall not exercise its authority under this provision to, in any way, deter competition or discriminate against any service provider.

- H. All existing ROW-users who do not possess a franchise or other written consent to use the ROW must register within 90 days of the effective date of this article.
- I. Any person who is not a ROW-user prior to the effective date of this article and who wishes to become a ROW-user must first register with the City.
- J. The ROW-user shall be responsible for all costs incurred by the City due to the failure to provide any information to the City required for registration.

**Sec. ~~17.05.005~~. 17.05.004 Transferability.**

Except as provided in this article, or as otherwise required by law, no registration may be transferred without the written consent of the City Council. Any person not named on a valid registration, including any affiliates or successors in interest to a registered ROW-user, must register in accordance with this article or receive written authorization to transfer the registration. Written authorization to transfer a registration shall be granted according to the same standards for a registration. The City shall not unreasonably withhold its consent to transfer as provided herein.

**Sec. ~~17.05.006~~. 17.05.005 Right-of-way use and equipment placement.**

- A. Except as otherwise provided herein, no person, service provider, or ROW-user shall perform excavation or work, as those terms are defined in Section 505.320 hereof, in the right-of-way without a right-of-way permit or a permit obtained under another City Code Section. Obtaining a permit under this article does not excuse or replace permits required under other provisions of this Code.
- B. No adjoining property owner shall construct, maintain, or permit in or on the portion of the public right-of-way to which such land is adjacent, any fixed structure, material or object without having obtained the appropriate right-of-way permit under this chapter.
- C. The application for a right-of-way permit shall be submitted to the Director either by the registered ROW-user or an authorized agent of the ROW-user who will do the work and/or excavation in the right-of-way. The application must be completed accurately and in full prior to the approval of the right-of-way permit. An incomplete application or an application containing inaccurate information will not be considered to be a completed application until all required and accurate information is submitted, in full, to the Director.
- D. If the Director determines that the applicant has satisfied the requirements of this article, the Director shall issue a right-of-way permit.
- E. Any person who is found to be working or excavating in the public right-of-way without a right-of-way permit will be directed to stop the excavation or work until a right-of-way permit is acquired and available at the excavation or work site.
- F. Except as otherwise provided herein, no person, service provider, or ROW-user shall narrow, close, alter, affect, or otherwise impact the normal flow of vehicular traffic or pedestrian traffic in the right-of-way without a temporary traffic control authorization.
- G. The right-of-way permit application must include all applicable information to obtain a temporary traffic control authorization, where required by the City Engineer, either by the registered ROW-user or an authorized agent of the ROW-user who will do the temporary traffic control. ROW-users or an authorized agent must include all required traffic control plans and documentation with the right-of-way permit application as determined and required by the City Engineer.
- H. The applicant for the permit may be required to designate on a map or diagram placed upon or attached to the application the location of the proposed cut, excavation, or work to be made in such a manner that the house number or lot number in front of which, and the side of the street upon which the same is to be made, is plainly indicated. The map or diagram may also be required to show dimensions and character of the proposed cut, excavation, or work.
- I. If the City Engineer determines that the applicant has satisfied the requirements of this article, the City Engineer shall approve the temporary traffic control authorization at the time of the issuance of the right-of-way permit.

- J. Any person who is found narrowing, closing, altering, affecting or otherwise impacting the normal flow of vehicular traffic or pedestrian traffic in the right-of-way without a temporary traffic control authorization will be directed to stop the cause for temporary traffic control, remove all temporary traffic control devices, restore normal traffic conditions and leave the site until temporary traffic control authorization is approved and the updated right-of-way permit is available at the site.
- K. ROW-user equipment, facilities and structures shall be placed so as not to incommode the public, diminish the rights of use of abutting landowners or impede or interfere with the use of other ROW-users and in accordance with Section 505.410.J in addition this subsection. Equipment, facilities and structures shall be placed in accordance with directions and standards set by the Director. In addition, wherever feasible, utility cabinets should be placed in rear yards or other areas not visible from the street right-of-way. Cabinets and other structures to shelter and house equipment shall be screened in a manner to make them less aesthetically obtrusive to the area and painted a color that blends in with the surroundings. The maximum size of such a cabinet allowed in a commercial area or within the ROW for an arterial or through street will be 64 cubic feet and the maximum size of such a cabinet allowed in a residential area or within the right-of-way for a residential street will be 25 cubic feet. Any exemption from this size requirement granted by the Director shall also be reviewed by the Planning Commission, except when superseded by state or federal law or City Charter, for determination if the size of the cabinet or structure incommodes the public, interferes with abutting landowner rights as recognized by Missouri and federal law, will interfere or impede a ~~public works~~ **Municipal Services** project already identified by the City, overwhelms the immediate area rendering it out of scale with adjacent structures, landscaping and already existing uses, impedes or interferes with other ROW-user rights and access to their own facilities and equipment, degrades the integrity of historical locations and landmarks or otherwise interferes with traffic both vehicular and pedestrian.

**Sec. ~~17.05.007~~, 17.05.006 Permit conditions.**

Except as provided within this chapter, no person may narrow, alter, affect or otherwise change or impact the ROW without obtaining a permit under this section.

- A. Right-of-way permit conditions include the following:
1. The Director may impose reasonable conditions upon the issuance of a right-of-way permit and the performance of the ROW-user in order to protect the public health, safety and welfare, to ensure the structural integrity of the right-of-way, to protect the property and safety of other users of the right-of-way, and to minimize the disruption and inconvenience to the general public. These conditions may, but are not limited to include, the requirements of a maintenance bond **or escrow**, a paved surface disturbance fee, or other reasonable requirements.
  - ~~2. Any right of way or permit fee involving the right of way provided for in this Code, actions of City Council such as passage of the budget or other policy of the City may be raised from time to time by posting same on the City's website and in the City Clerk's office 30 days before the effective date of same and providing electronic notice to the registered ROW users of such posting. The ROW user may file an objection to any fee and if it does so, the fee shall be reviewed by the City Manager and approved, modified or rejected through a motion, resolution or ordinance. The payment of this fee and deposit shall not excuse or exempt the ROW user from all costs it is liable for under this article.~~
  - 2.** When a right-of-way permit is requested for purposes of installing additional facilities and the performance and maintenance bonds **or escrow** for additional facilities is reasonably determined to be insufficient, the posting of an additional or larger performance or maintenance bond **or escrow** for the additional facilities may be required by the Director.
  - 3.** A ROW-user shall perform all excavation or work in full accord with any and 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 commission or any other local, state or federal agency having jurisdiction over the parties. A ROW-user shall perform all excavation or work in conformance with all applicable codes and established rules and regulations and shall be responsible for all excavation or work done in the right-of-way pursuant to its right-of-way permit, regardless of by whom the excavation or work is done.

4. Except in cases of an emergency or with approval of the Director, no right-of-way excavation or work may be done in violation of a stop work order issued by the Director if in his or her determination conditions are unreasonable for such excavation or work based on standard engineering and construction practices.
5. A ROW-user shall not disrupt a right-of-way such that the natural free and clear passage of water through the gutters or other waterways is interfered with. No person may park private vehicles within or next to the work or excavation area, except for such areas which may be designated and marked as safe areas for vehicle parking in accordance with an approved temporary traffic control authorization.
6. If excavation or work is being done for the ROW-user by another person, a subcontractor or otherwise, the ROW-user shall be responsible for ensuring that the excavation or work of said person is performed consistent with its right-of-way permit and applicable law and shall be responsible for promptly correcting acts or omissions by said person.
7. The Director may establish in the right-of-way permit limitations on the amount of excavation or work which may occur at one time and the amount of rights-of -way which may be obstructed during construction.
8. The ROW-user shall, in the performance of any excavation or work required for the installation, repair, maintenance, relocation and/or removal of any of its facilities, limit all excavation or work to that necessary for efficient operation.
9. The ROW-user shall not permit excavation or work to remain open longer than is necessary to complete the repair or installation, and in no event may excavation or work remain open beyond the expiration of the right-of-way permit or any approved extension.
10. The ROW-user shall perform excavation or work on the right-of-way at such times that will allow the least interference with the peace and quiet of the neighborhood, and shall not work between the hours of 9:00 p.m. and 7:00 a.m. except where permissible pursuant to superseding City regulations. The ROW-user may perform excavation work after regular working hours for the ~~Public Works~~ **Municipal Services** Department inspectors and on weekends if the Director approves such a schedule and the ROW-user deposits with the City an amount mutually agreeable to cover the additional costs to City of supervising and managing the work during these time periods. City may draw on this amount as it incurs costs for labor, materials and other expenses. However, only restoration work will be allowed to be performed on weekends.
11. The Director may limit the number of conduits that may be installed by each ROW-user based on the reasonable needs to ensure that no one ROW-user may unreasonably consume a disproportionate amount of the available right-of-way to deter competition.

B. Temporary traffic control authorization conditions include the following:

1. The Director may impose reasonable conditions upon the issuance of a temporary traffic control authorization and the activities of the ROW-user in order to protect the public health, safety, and welfare, to ensure the structural integrity of the right-of-way, to protect the property and safety of other users of the right-of-way, and to minimize the disruption and inconvenience to the traveling public.
2. A ROW-user shall comply with all laws, ordinances, codes, regulations and all applicable engineering codes adopted or approved by the City. A ROW-user shall be responsible for all traffic control in the right-of-way pursuant to its temporary traffic control authorization, regardless of who performs the temporary traffic control.
3. The Director may order the cessation of temporary traffic control approved by such permit if in the opinion of the Director, based on standard engineering and construction practice, conditions are unreasonable for the continuation of such temporary traffic control. Except in cases of an emergency or with the approval of the Director, there shall be no interruption of normal traffic in violation of a stop work order issued by the Director.
4. No person may park private vehicles within or next to the temporary traffic control area, except for such areas which may be designated and marked as safe areas for vehicle parking in accordance with an approved plan and areas where parking is legally permitted under normal conditions.



5. If temporary traffic control is being done for the ROW-user by a third person, such as a subcontractor, the ROW-user shall be responsible for ensuring that the temporary traffic control of said third person is performed consistent with the temporary traffic control authorization and applicable law and the permit holder shall be responsible for promptly correcting any wrongful or erroneous acts or omissions by said third person.
6. The Director may establish in the temporary traffic control authorization limitations the extent to which traffic may be impacted at any one time.
7. The ROW-user shall limit all temporary traffic control to that which is approved through the permit.
8. The ROW-user shall not impact normal traffic flow longer than is necessary to complete the project, and in no event may the impact to traffic exceed the expiration of the temporary traffic control authorization or any approved extension.
9. Non-emergency temporary traffic control on arterial and collector streets may not be performed before 9:00 a.m. and after 4:00 p.m. Monday through Friday, nor anytime on Saturday, Sunday or public holidays observed by the City of Independence except where permissible pursuant to superseding City regulations. The City Engineer may grant exception to this condition in the temporary traffic control authorization. Issued right-of-way permits and temporary traffic control authorizations are not transferable without prior written consent of the Director. The Director shall not unreasonably withhold consent for transfer of a right-of-way permit.

**C. Permit Fees:**

1. Any right-of-way or permit fee involving the right-of-way provided for in this Code, actions of City Council such as passage of the budget or other policy of the City may be raised from time to time by posting same on the City's website and in the City Clerk's office 30 days before the effective date of same and providing electronic notice to the registered ROW-users of such posting. The ROW-user may file an objection to any fee and if it does so, the fee shall be reviewed by the City Manager and approved, modified or rejected through a motion, resolution or ordinance. The payment of this fee and deposit shall not excuse or exempt the ROW-user from all costs it is liable for under this article. The right-of-way permit fee and temporary traffic control permit fee shall be recommended by the Director, approved by the City Council and listed in the Schedule of Fees and Charges maintained in the City Clerk's Office.
2. Right-of-way permit fees and temporary traffic control permit fees shall be:
  - A. Based on the actual, substantiated costs reasonably incurred by the City in managing the right-of-way and may include the following in accordance with the Schedule of Fees;
    1. Length of work zone;
    2. Affected intersections;
    3. Hole openings, street cuts, and/or bores; and
    4. Utility connection and/or disconnection points
  - B. Based on an allocation among all users of the right-of-way, including the City, which shall reflect the proportionate costs imposed on the City by each of the various types of uses of the right-of-way;
  - c. Imposed on a competitively neutral and nondiscriminatory basis;
  - d. Imposed in a manner so that above ground uses of the right-of-way do not bear costs incurred by the City to regulate underground uses of the right-of-way; and
  - e. Shall not be offset or construed to replace any business license or other tax the ROW-user is subject to under applicable ordinance, contract, Charter Provision, Code or state law.
3. In determining the actual costs reasonably incurred by the City in managing the right-of-way, the City may include the following:

- A. The cost of issuing, processing and verifying right-of-way permit and temporary traffic control permit applications may include, but are not limited to the following items throughout the right-of-way:
- B. The cost of inspecting job sites, traffic control installations and conditions, and restoration projects;
- C. The cost of protecting or moving ROW-user construction equipment and materials after reasonable notification to the ROW-user;
- D. The cost of determining the adequacy of public right-of-way restoration;
- E. The cost of restoring temporary traffic control, excavation, or work inadequately performed after providing notice and the opportunity to correct the temporary traffic control, excavation, or work, including re-inspection fees;
- F. The cost of revoking right-of-way permits or temporary traffic control permits.
- 4. Fees paid for a right-of-way permit or a temporary traffic control permit, which is subsequently revoked by the City Engineer, are not refundable.
- 5. The right-of-way permit fee shall be imposed on a per basis schedule of continuous linear work of not more than five hundred (500) feet in length.
- 6. The temporary traffic control permit fee shall be imposed on a per basis schedule every five hundred (500) feet in length, per week basis or per intersection per week basis, whichever is greater.
- 7. In the event the scope of the project is revised during the course of the excavation or work, the City Engineer may recalculate the fee based on the actual size of the excavation or work, and may require an additional right-of-way permit fee.
- 8. In the event the scope of the project changes such that temporary traffic control is revised, the City Engineer may recalculate the fee based on the actual impact, and may require an additional temporary traffic control permit fee but in no event shall the City grant credits or refunds based on an overpayment of the permit fee.
- 9. The City Engineer may establish a system providing for payment of right-of-way permit fees by ROW-users in bulk.
- 10. A pavement cut fee will be paid by all permit users in accordance with the City's Schedule of Fees and such payment shall be in addition to any other right-of-way permit fees.
- 11. In addition to any other permit fee, a street crossing fee for boring as set out on the City's Schedule of Fees shall be paid when boring under City streets and alleys is to take place.

**Sec. ~~17.05.008~~ 17.05.007 Permit validity and display.**

Issued right-of-way permits shall be displayed by the ROW-user at all times at the indicated project location and shall be available for inspection by the Director and other City employees and the public at all times. The approved traffic control plan must be available for inspection by the Director and other City employees at all times, upon demand.

- A. A right-of-way permit and a temporary traffic control authorization shall only be valid for the area specified within such permit.
  - 1. No ROW-user may cause any excavation or work to be done outside the area specified in the right-of-way permit, except as provided herein.
  - 2. No ROW-user may cause temporary traffic control to be done outside the area specified in the temporary traffic control authorization, except as provided herein.
  - 3. Any ROW-user who determines that an area greater than that which is specified in the right-of-way permit must be excavated must do the following prior to the commencement of excavation or work in that greater area:

- a. Make application for a right-of-way permit amendment describing the area in which the excavation or work will occur; and
  - b. Pay any additional fees required thereby.
4. Any ROW-user who determines that temporary traffic control is necessary for an area greater than that which is specified in the temporary traffic control authorization must do the following prior to the commencement of temporary traffic control in that greater area:
  - a. Make application for a temporary traffic control authorization amendment describing the area in which the temporary traffic control will occur; and
  - b. Pay all additional fees required thereby.
- B. A right-of-way permit and associated temporary traffic control authorization shall be valid for 60 days.
  1. No ROW-user may commence excavation or work before the right-of-way permit start date or, except as provided herein, may continue excavation or work after the end date. If a ROW-user does not complete the excavation or work by the right-of-way permit end date, the ROW-user must apply for and receive a new right-of-way permit or a right-of-way permit extension for additional time. All applicable payments must be made for a right-of-way permit renewal prior to the issuance of the renewal.
  2. No ROW-user may perform temporary traffic control before the temporary traffic control authorization start date or, except as provided herein, continue temporary traffic control after the end date specified in the permit. If a ROW-user requires temporary traffic control beyond the temporary traffic control authorization end date, the ROW-user must apply for and receive a new temporary traffic control authorization or a temporary traffic control authorization extension for additional time.
  3. Each cut or excavation for which a right-of-way permit is granted under this article shall begin within 30 days from the date of issuance of the permit therefore; otherwise the permit shall be null and void and a new permit shall be required before the cut or excavation is made.
  4. One extension of up to 60 days may be granted for a right-of-way permit or a temporary traffic control authorization upon request and may be granted without payment by the ROW-user of additional right-of-way permit or temporary traffic control authorization fees. To qualify for an extension, a supplementary application must be submitted to the City prior to the permit end date.
- C. A right-of-way permit and temporary traffic control authorization will only be valid for those persons indicated on the approved permit and may only be transferred with prior written consent of the Director.

**Sec. ~~17.05.009~~, 17.05.008. Permit denial.**

The Director may deny an application for a right-of-way permit or a temporary traffic control authorization under this chapter if:

- A. 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 public right-of-way.
- B. 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 mean the ROW-user, or any persons acting on the behalf of the ROW-user, including contractors or subcontractors, has failed to return the public right-of-way to its previous condition under a previous right-of-way permit or temporary traffic control authorization.
- C. The City has provided the ROW-user with a reasonable, competitively neutral, and nondiscriminatory justification for requiring an alternative method for performing the temporary traffic control, excavation, or work identified in the respective right-of-way permit or temporary traffic control authorization application or a reasonable alternative route that will result in neither additional installation expense up to ten percent to the ROW-user nor a declination of service quality.

- D. 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 public service commission, 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 right-of-way permit or a temporary traffic control authorization application is necessary to protect the public health and safety, the Director may consider one or more of the following factors:
1. The extent to which the right-of-way space where the right-of-way permit or temporary traffic control authorization is sought is available, including the consideration of competing demands for the particular space in the right-of-way, or other general conditions of the right-of-way.
  2. The applicability of any ordinance, Code provision, or other regulations that affect the location of facilities and public travel in the right-of-way.
  3. The degree of disruption to surrounding communities and businesses that will result from the use of that part of the right-of-way, including whether the issuance of a right-of-way permit, including a temporary traffic control authorization, for the particular dates and/or times requested would cause a conflict or interfere with an exhibition, celebration, festival, or any other event.
- E. The area is environmentally sensitive as defined by state statute or federal law or is a historic district defined by local ordinance, and permission of work will negatively impact the environmental and/or historical preservation of said area.
- F. Any permit not granted within 30 days after application shall be deemed denied, unless otherwise communicated. The applicant may refile for a permit without additional fees unless the failure to act on the permit was the result of the applicant not submitting a complete application or failing to provide information requested by the Director.

**Sec. ~~17.05.010~~. 17.05.009 Permit exemptions.**

- A. ROW-users performing routine maintenance which does not require excavation or work in the right-of-way, which does not disrupt traffic, and which does not require more than two hours to complete, shall be exempt from the requirement of a right-of-way permit provided they meet all other requirements for performance such as return of the right-of-way condition. Failure to meet the other requirements for working within the right-of-way under the exemption shall result in no future exemptions and permits will be required regardless of the time to perform the work.
- B. A ROW-user shall not be required to obtain a right-of-way permit or a temporary traffic control authorization for temporary traffic control, excavation, or work which is necessary because of an emergency, and that emergency is declared by a proper governmental authority with jurisdiction over the emergency to be a "disaster" or "state of emergency" under federal, state or local law. In the event that temporary traffic control, excavation or work is necessary during a disaster or state of emergency, the ROW-user performing temporary traffic control, excavation or work in the right-of-way shall notify the ~~Public Works~~ **Municipal Services** Department of the nature and scope of the temporary traffic control, excavation, or work to be performed in the right-of-way, along with the location of the temporary traffic control, excavation, or work, and the estimated time of the temporary traffic control, excavation or work.

**Sec. ~~17.05.011~~. 17.05.010. Completed work.**

The ROW-user shall notify the office of the Director upon completion of the temporary traffic control, excavation, or work authorized by the applicable right-of-way permit or temporary traffic control authorization.

**Sec. ~~17.05.012~~. 17.05.011. Emergency work.**

A right-of-way permit and temporary traffic control authorization are required for emergency situations. If, however, due to an emergency it is necessary for the ROW-user to immediately perform temporary traffic control, excavation or work in the right-of-way, and it is impractical for the ROW-user to obtain a right-of-way permit or a temporary traffic control authorization prior to the commencement of work; the temporary traffic control, excavation, or work may be performed, and the required permit shall be obtained as soon as reasonably possible, but not later than two business days after the temporary traffic control, excavation, or work is begun. The ROW-user

shall notify the City's ~~Public Works~~ **Municipal Services** Department within one hour if emergency temporary traffic control, excavation or work is necessary.

**Sec. ~~17.05.013~~. 17.05.012 Use of right-of-way generally.**

- A. The ROW-user shall coordinate the placement of facilities in a manner that minimizes adverse impact on any public improvement, as reasonably determined by the City. Where placement is not regulated, the facilities shall be placed with adequate clearance from such public improvements so as not to impact or be impacted by such public improvement as defined in the City's ~~Public Works~~ Manual.
- B. All facilities shall be located and laid so as not to disrupt or interfere with any pipes, drains, sewers, irrigation systems or other structures or public improvements already installed. In addition, the ROW-user shall, in doing excavation or work in connection with its facilities, avoid disrupting or interfering with the lawful use of the streets, alleys, sidewalks, or other public lands of the City except as may be specifically authorized by a temporary traffic control authorization.
- C. All facilities of the ROW-user shall be placed so that they do not interfere with the use of right-of-way and public lands. The City, through its Director, shall have the right to consult and review the location, design, and nature of the facility prior to installation.
- D. The ROW-user shall not interfere with the facilities and structures of the other ROW-users without their permission. If and when the City requires or negotiates to have a ROW-user cease using its existing poles and to relocate its facilities underground, all other ROW-users using the same poles shall also relocate their facilities underground at the same time. The cost of such relocation shall be borne in accordance with this article and the Commission-approved applicable tariff governing that ROW-user.
- E. All facilities and other appurtenances laid, constructed, and maintained by the ROW-user shall be laid, constructed, and maintained in accordance with acceptable engineering practice and in full accord with any and all applicable engineering codes adopted or approved by the City, the Code, the City's ~~Public Works~~ **Construction and Design** Manual, applicable statutes of the State of Missouri, and rules and regulations of the FCC, the Commission, or any other local, state or federal agency having jurisdiction over the ROW-user.
  - 1. Facilities may not be constructed or placed within the roadway clear zone as established by the ~~Public Works~~ Manual, applicable policies, and accepted industry standards.
- F. The ROW-user shall cooperate promptly and fully with the City and take all reasonable measures necessary to provide accurate and complete on-site information regarding the nature and location of its facilities within the right-of-way, both underground and overhead, when requested by the City or its authorized agent for a public improvement. Such location and identification shall be at the sole expense of the ROW-user without any expense to the City, its employees, agents or authorized contractors.
- G. Unless otherwise agreed to by the City and the ROW-user by license, agreement or permit, the City shall not be liable for any damage to or loss of any of the ROW-users' facilities within the right-of-way unless the damage is the result of the sole negligence, or willful, intentional, or malicious acts or omissions of the City.
- H. No above-ground facility, cabinet, or storage/housing structure or fixture located on the right-of-way shall exceed any the limits set forth in the Unified Development Ordinance and this article without consent of the Director and review and approval of the City's Planning Commission for a determination of the impact of such a facility, cabinet, or storage/housing structure on surrounding uses including view and plantings and sight triangles and mitigation of impact that may be accomplished if such a facility, cabinet, or storage/housing structure is allowed. No above-ground facility, cabinet, or storage/housing structure shall be placed on the right-of-way in such a way as to impede or prohibit direct access by another ROW-user to its facilities or any sight triangles or in such a way as to impede access and use for the disabled, handicapped, or pedestrians and vehicles in the normal use of the right-of-way. Cabinets should be located outside the ROW in private easements whenever possible. A suitable reason must be presented to the Director for each cabinet location to be considered for placement in the ROW. The reason must detail why locations outside of the ROW are not possible.

**Sec. ~~17.05.014~~. 17.05.013 Sale, transfer, lease or sublease of facilities.**

- A. In the event that the ROW-user shall sell, lease, assign, sublet, or dispose of its facilities, or any portion thereof, that are located in the right-of-way, or any right, title, or interest in the same, or transfer any rights granted by the City to any person either by forced or involuntary sale, or by ordinary sale, consolidation or otherwise, the ROW-user shall notify the City of the same. In such case, the buyer, transferee, lessee or assignee shall be subject to all provisions of this article, including the requirement to register. This provision shall not apply to the sale of property or equipment in the normal course of business or to the sale or lease of facilities to reseller ROW-users. No notice to the City shall be required for a transfer in trust, mortgage, or other similar instrument, in whole or in part, to secure an indebtedness, or for a pro forma transfer to a corporation, partnership, or other entity controlling, controlled by or under common control with the ROW-user.
- B. A ROW-user may permit and has the authority to sell, sublet, or lease any use of excess capacity and sell services for resale to any reseller service provider providing service within the City, including the ROW-user's subsidiary or affiliate. The reseller service provider shall first register and obtain any necessary permit, license, certification, grant, registration, franchise agreement, or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC or the Commission. The ROW-user shall also provide the City, on at least an annual basis, the identity of entities with which the ROW-user has entered into an interconnection and/or resale agreement within the City. This notice will not relieve the reseller service provider from its own obligation to register and obtain any necessary franchise with the City. Nothing in this article shall prevent a facility-based service provider from providing to any reseller service provider the use of the facility-based service provider's facilities in the right-of-way as authorized by federal or state law.

**Sec. ~~17.05.015~~. 17.05.014 Facility corridors.**

The Director may designate specific utility corridors by assigning specific locations for each type of facility that is currently, or that the Director expects will someday be, located within the right-of-way. All right-of-way permits issued by the Director shall indicate the proper location for the ROW-user's facilities and standard detail as required in the City's ~~Public Works~~ **Design and Construction** Manual. Specific locations shall be specified in the City's ~~Public Works~~ **Design and Construction** Manual and can include reservation of space for any planned or future anticipated uses of the City, in its sole discretion.

**Sec. ~~17.05.016~~. 17.05.015 Conduits.**

If, in the preparation and planning of a public improvement, the Director deems it appropriate for a conduit to be constructed by the City along, across or under the right-of-way, the Director shall contact all appropriate ROW-users for their input on the planning and design of such conduit. If a ROW-user desires to construct, maintain, or operate facilities along such right-of-way concurrently, the Director may allow the ROW-user to use such conduit if the ROW-user agrees to contribute to the expense of such conduit. When a ROW-user is installing conduit in a trench, the Director may install conduit for the City at City's cost for the conduit. The City shall not be responsible for reimbursing any costs of the ROW-user in digging the trench that the City does not specifically ask for.

**Sec. ~~17.05.017~~. 17.05.016 Facility relocation.**

- A. A ROW-user shall promptly relocate or adjust any facilities located in the right-of-way as directed by the City for a public improvement. The ROW-user shall promptly remove, relocate or adjust any facilities located in the right-of-way as directed by the City which create a threat to public safety. Such removal, relocation, or adjustment shall be performed by the ROW-user at the ROW-user's sole expense without 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. The ROW-user shall proceed with the removal, relocation, or adjustment of facilities with due diligence upon notice by the City to begin removal, relocation, or adjustment.
- B. The ROW-user shall promptly relocate or adjust any facilities located in private easements for the construction of a public improvement at the cost of the ROW-user if:
  - 1. The City has condemned the private easement or the City has purchased from the ROW-user the portion of the private easement necessary for the public improvement; and

2. The City has compensated the ROW-user, through the condemnation, purchase process, or other means of compensation, for the cost of relocation of the ROW-user's facilities.
- C. As soon as City-prepared working drawings are available for public improvements that will require the ROW-user to relocate or adjust its facilities, the City shall provide the ROW-user with written notice of required relocations or adjustments, the anticipated bid letting date of the public improvement, and notice of the deadline for completion of the relocations or adjustments. The ROW-user shall respond with any conflicts and a proposed construction schedule within 30 days, subject to approval by the Director.
  - D. Following delivery of final design plans for such public improvements, the ROW-user shall relocate or adjust its facilities in accordance with the schedule set by the Director, provided the project is not delayed by adverse weather conditions and other factors beyond the control of the ROW-user. The ROW-user shall certify to the City, in writing, that its facilities have been relocated or adjusted in accordance with project plans provided by the City so as to allow the City, and its contractors, to proceed with the public improvement.
  - E. If any facilities are not relocated in accordance with this section, the City or its contractors may relocate the facilities. The ROW-user and its surety shall be liable to the City for any and all costs incurred by the City should the City be required to have the facilities relocated including any increase in cost associated with the City's improvements that are delayed or could be delayed by failure to move the facilities.
  - F. In the event the ROW-user is required to move its facilities in accordance with this section, any ordinary right-of-way permit fees shall be waived.
  - G. It is the intent of this section for both the City and the ROW-user to cooperate with one another so that the need for facility relocation is minimized and, when required and feasible, relocations may be completed prior to receipt of bids by the City for a public improvement.
  - H. Failure to comply with the relocation schedule set by the Director will subject the ROW-user to penalties as provided in Section 505.670 hereof in addition to any other remedies available to the City.

**Sec. ~~17.05.018~~. 17.05.017 Unused and abandoned facilities.**

- A. A ROW-user owning abandoned facilities in the right-of-way must notify the City of its intent to abandon the facilities and must either:
  1. Remove its facilities and replace or restore any damage or disturbance caused by the removal at its own expense. The Director may allow underground facilities, or portions thereof, to remain in place if the Director determines that it is in the best interest of public safety to do so. At such time, the City may take ownership and responsibility of such abandoned facilities left in place at its discretion;
  2. Provide information satisfactory to the City that the ROW-user's obligations for its facilities in the right-of-way have been lawfully assumed by another authorized ROW-user; or
  3. Submit to the City a proposal and instruments for transferring ownership of its facilities to the City. If the ROW-user proceeds under this subsection, the City may, at its option, purchase the equipment, require the ROW-user, at its own expense, to remove it, or require the ROW-user to post a bond or escrow in an amount sufficient to reimburse the City for reasonable anticipated costs to be incurred to remove the facilities, except as otherwise provided herein.
- B. If the City discovers abandoned facilities in its right-of-way and the owner of the abandoned facilities fails to respond within 30 days to a written notice sent by the City stating that the City considers the facilities abandoned, or the City is unable to locate the owner of the abandoned facilities after reasonable attempts, the City shall deem the facilities to be abandoned, unless the City receives confirmation that the ROW-user intends to use the facilities. Abandoned facilities 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,
  1. Abating the nuisance;
  2. Taking possession and ownership of the facility and restoring it to a useable function; or
  3. Requiring the removal of the facility by the ROW-user.

**Sec. ~~17.05.019~~. 17.05.018 Costs when right-of-way is vacated.**

If the City vacates a right-of-way which contains the facilities of a ROW-user, the vacation requires the relocation of facilities, and:

- A. Vacation proceedings are initiated by the ROW-user, then the ROW-user must pay the relocation costs.
- B. Vacation proceedings are initiated by the City, then the ROW-user must pay the relocation costs unless otherwise agreed to by the City and the ROW-user.
- C. Vacation proceedings are initiated by a person other than the ROW-user or the City, then such other person must pay the relocation costs, unless otherwise agreed to.

**Sec. ~~17.05.020~~. 17.05.019 Traffic control and street closures for right-of-way use.**

- A. All traffic control, permanent and temporary, shall be properly installed and maintained at the ROW-user's expense. All traffic control materials and methods shall be in conformance with the latest edition of the Manual on Uniform Traffic Control Devices.
- B. The ROW-user shall notify the City no less than 14 days in advance of any temporary traffic control that results in the full closure of any direction of vehicle travel along any street. Any other person doing temporary traffic control that will disrupt vehicular or pedestrian traffic shall notify the City no less than two City business days in advance of any temporary traffic control. Except in the event of an emergency as reasonably determined by the ROW-user and Director, no such closure shall take place without notice and prior authorization from the City.
- C. A traffic control plan shall be submitted for approval by the Director. This may include a detour traffic plan if the Director so requires. All safety and traffic control measures must be implemented according to any approved traffic control plan required by the temporary traffic control authorization.

**Sec. ~~17.05.021~~. 17.05.20 Excavation procedures and responsibilities.**

Except as provided in this chapter and other City Code, the following shall regulate and control excavation within the ROW.

- A. Prior to the commencement of placement or expansion of facilities, the ROW-user shall provide at least seven days written notice to abutting landowners in a form approved by the Director and during the time of any excavation or construction of facilities provide to abutting landowners a telephone number of a person to whom the landowner may speak about complaints or conditions of the ROW adjacent to the landowner's property or interference with enjoyment of the property owner's land.
- B. Prior to the placement or expansion of any facilities to be located above ground that are in excess of 15 feet in height and/or five cubic feet in volume, the ROW-user must contact all property owners within a radius to be no less than 50 feet or twice the height of the proposed facility, whichever is greater. Contact must be made by letter notification no less than 30 days prior to placement on a form approved by the Director, and during the time of any excavation or construction of facilities provide to landowners a telephone number of a person to whom the landowner may speak about complaints or conditions of the right-of-way adjacent to the landowner's property or interference with enjoyment of the property owner's land. All objections must be acknowledged by the ROW-user and adjustments made, where practicable. For facilities exceeding a height of 50 feet, direct contact must be made with all property owners through an advertised public meeting held at a time that is generally accepted as convenient at a location near the site of placement, as approved by the Director. Residents within a radius equivalent to twice the height of the facility must be notified of said meeting through certified mail ten days prior to the date of the meeting.
  - 1. Information included in the notification to property owners shall indicate the vertical and horizontal dimensions of the facility, general location of the facility, the construction schedule, and other pertinent information regarding the facility placement project as determined and approved by the Director.



- C. The Director may grant exception to the notification requirements when public health and/or safety is of concern or in the event of an emergency situation as deemed by the Director.
- D. All ROW-users shall locate existing facilities before beginning any work. The ROW-user shall identify and locate any underground facilities in conformance with the "Missouri One Call" system.
- E. The ROW-user shall be liable for any damages to facilities due to excavation or work performed prior to obtaining the location of all facilities in the area in which the excavation or work is to be performed, or for any damage to facilities that have been properly identified prior to excavation or 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.
- F. Whenever there is excavation or work by the ROW-user, the ROW-user shall be responsible for acquiring all necessary temporary traffic control authorizations and providing adequate temporary traffic control to the surrounding area as provided in this article. In the event the excavation or work 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.
- G. The ROW-user responsible for the excavation or work who leaves any debris in the right-of-way shall be responsible for providing all necessary temporary traffic control and safety protection in accordance with the temporary traffic control authorization and any applicable federal or state requirement. The ROW-user shall also be responsible for removing said debris from the right-of-way. If the ROW-user fails to comply with the temporary traffic control requirements or fails to remove debris from the right-of-way, the ROW-user shall be responsible for damages to the City, or its contractors, resulting from said failures and shall indemnify the City and its contractors as provided in in this article.
- H. In the event the ROW-user severely disturbs or damages the root structure of any tree or landscaping in the right-of-way to the detriment of the health and safety of the tree or plantings, the ROW-user shall be required to remove and replace the tree or plantings at the ROW-user's cost. Further, in review of the ROW-user's plan, the Director, in his or her discretion, may require the ROW-user to directionally bore around any tree or plantings in the right-of-way.
- I. All excavation or work shall have a metal or plastic marker, of a color, size, and shape approved by the Director, inserted into the restored pavement which shall identify the ROW-user.
- J. Upon completion of all right-of-way restoration activities, the ROW-user shall notify the City's ~~Public Works~~ **Municipal Services** Department, which shall then schedule a closeout inspection. Damage to water, sewer, storm or road assets (private or public) shall be repaired. The contractor will be responsible for any claims as the result of the contractor or ROW-user's excavation, installation or repair to any of its facilities in the ROW including but not limited to claims for damage to landscaping, trees, laterals, pipes, driveways, sidewalks or property in which rights are protected by Missouri law. The ROW-user or its contractor shall be responsible for any and all damage to water, storm and road asset (public or private).

**1. When boring procedures have been used, the ROW-user will be required to televise any sanitary, stormwater, and other affected facilities to ensure integrity. A copy of the inspection report and video will be submitted to the permitting authority.**

**Sec. ~~17.05.022~~, 17.05.021 Standard of work.**

All temporary traffic control, excavation or work performed in the right-of-way shall be done in conformance with the City's ~~Public Works~~ Manual and the MUTCD

**Sec. ~~17.05.023~~, 17.05.022. Temporary traffic control, excavation or work restoration.**

- A. After any temporary traffic control, excavation or work, the ROW-user shall, at its expense, restore all portions of the right-of-way in accordance with the ~~Public Works~~ Manual and applicable policies set forth by the Director.
- B. If excavation or work cannot be back-filled immediately and is left unattended, the ROW-user shall securely and adequately cover and mark the unfilled excavation or work. The ROW-user shall maintain as sole responsibility for maintaining proper temporary traffic control, barriers, safety fencing, signage, and/or

lights as required, from the time of the opening of the excavation or work until the excavation or work is surfaced and opened for travel.

- C. In addition to repairing its own street cuts, The ROW-user must restore any area within ~~five feet~~ twenty (20) feet of the limits of the new street cut that have previously been excavated by any entity, including all the paving and its aggregate foundations.
- D. Any street cuts that occur along a corridor that has been paved within the previous 36 months will be subject to a full pavement resurfacing in accordance with the ~~Public Works~~ Manual and applicable policies as determined by the City Engineer. The resurfacing will be the full width of the lane and a length that encompasses all street cut locations of the work zone, but a minimum of 15 feet in length. ~~And will be applicable to all street cut locations.~~
- E. All earth, materials, sidewalks, paving, crossing, utilities, public improvement or improvements of any kind damaged or removed by the ROW-user shall be fully repaired or replaced promptly by the ROW-user at its sole expense and to the reasonable satisfaction of the Director. However, a 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.
  - 1. The Director has the authority to inspect the repair or replacement of the damage, and if necessary, to require the ROW-user to do additional and necessary excavation or work. Notice of the unsatisfactory restoration and the deficiencies found will be provided to the ROW-user and a reasonable time not to exceed 15 days will be provided to allow for the deficiencies to be corrected.
  - 2. Any deficiencies not corrected shall be considered a "failure to restore" and the City shall proceed according to this article. Upon determination by the Director that the failure to repair or replace creates a threat to public safety, all such repair or replacement shall be corrected within 24 hours of notice from the City, or the Director may direct the City to make such repair or replacement at the ROW-user's expense.

**Sec. ~~17.05.024.~~ 17.05.023 Failure to restore.**

If the ROW-user fails to restore the right-of-way in the manner and to the condition required by the Director, or fails to satisfactorily and timely complete all restoration, the City may, at its option, serve written notice upon the ROW-user and its surety that, unless within ten days after serving of such notice, a satisfactory arrangement is made for the proper restoration of the right-of-way, the City shall immediately serve notice of failure to comply upon the surety and the ROW-user, and the surety shall have the right to arrange for and complete the restoration excavation or work; provided, however, that if the surety does not commence performance thereof within 14 days from the date of notice, the City may perform its own restoration excavation or work and prosecute same to completion, by contract or otherwise.

- A. Upon determination by the Director that the failure to repair, replace or restore creates a threat to public safety, all such repair or replacement shall be corrected within 24 hours of notice from the City, or the City will perform its own restoration excavation or work and prosecute same to completion, by contract or otherwise.
- B. Upon determination by the Director that the failure to repair, replace or restore creates an immediate threat to public safety, all such repair or replacement shall be corrected within one hour of notice from the City, or the City will perform its own restoration excavation or work and prosecute same to completion, by contract or otherwise.
- C. The ROW-user and its surety shall be liable to the City for its actual costs of such restoration, including the value of any time or overtime incurred through the labor of City employees, the value of the use of City equipment, the cost of City materials used in the restoration project, and all actual costs incurred by the City for making the repairs.

**Sec. ~~17.05.025.~~ 17.05.024 Guarantee of restoration.**

- A. In restoring the right-of-way, including but not be limited to plant coverings, landscaping, grading, artificial surface, the ROW-user shall guarantee its excavation or work on artificial surfaces and settlement and shall maintain such restoration and work result for a period of 48 months, and plant coverings and landscaping and

similar conditions shall be guaranteed and maintained for a period of 24 months, or for any type of repair, replacement or condition resulting from the excavation the maximum period of time allowed by law, whichever is greater, following its completion and provide a bond to secure such guarantee at the request of the Director.

1. During said guarantee period the ROW-user shall, upon notification from the Director, correct all restoration excavation or work to the extent necessary, using any method as required by the Director.
  2. Said excavation or work shall be completed within a reasonable time, not to exceed 30 calendar days, of the receipt of notice from the Director.
  3. 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 48 months, or other greater period allowed by law, from the date of the new restoration, if the Director determines there was action by the ROW-user not to comply with the conditions of the right-of-way permit and any restoration requirements.
- B. When any required corrective actions have been completed and inspected to the Director's satisfaction, the guarantee period will begin.
- C. The guarantee period shall be applicable to failure of the pavement surface as well as failure below the pavement surface.

**Sec. ~~17.05.026~~, 17.05.025, Mapping requirements.**

The ROW-user shall submit to the Director in a form approved by the Director electronic shape files showing the location of its facilities within 15 days of registering or for new facilities within 30 days of inspection. Such maps shall be updated every six months beginning on January 1 of each year.

**Sec. ~~17.05.027~~, 17.05.026, Appeals.**

Whenever a person has been denied a right-of-way permit or a temporary traffic control authorization, had its right-of-way permit or temporary traffic control authorization revoked, believes that the fees imposed on the person by the City do not conform to the requirements of RSMo 67.1840, relating to the amount of fees, asserts any issues related to the use of the right-of-way, or deems themselves otherwise aggrieved by any decision or action taken by the City or the Director under this article, the person may file an appeal to the City Manager or his/her designee by filing written notice of such appeal with the City Clerk's office within ten calendar days of the date of notice of such decision or action.

- A. The City Manager or his/her designee shall schedule an informal meeting with the aggrieved person and shall have the power to overrule such decision or action taken by the City or the Director, may extend the time limit of such decision or action, or may grant exceptions to, or waive requirements of, or grant a variance from the specific provisions of this article.
- B. The City Manager or designee shall issue their decision in writing. After the decision of the City Manager or designee is rendered, the aggrieved person may appeal the decision of the City Manager or designee to the Board by filing written notice of such appeal with the City Clerk's office within ten calendar days of the date of notice of such decision or action.

**Sec. ~~17.05.028~~, 17.05.027 Actions on appeal to City Council.**

- A. Such appeals to the Board of Building and Engineering Appeals as provided by Section 17.05.030 hereof shall be heard by the Board on the record with evidence and testimony as a contested hearing pursuant to RSMo Ch. 536.
1. The Board shall provide written recommendation for action to the City Council.
  2. The City Council may overrule such decision or action taken by the City or the Director, may extend the time limit of such decision or action, or may grant exceptions to, or waive requirements of, or grant a variance from the specific provisions of this article.

3. Any decision by the City Council affirming the denial, revocation, fee imposition or dispute resolution shall be in writing and supported by written findings establishing the reasonableness of the decision.
- B. Pending a decision by the City Council, the order of the Director shall be stayed, unless the Director determines that such action will pose a threat to public safety or the integrity of the public infrastructure.
- C. In the event the City Council affirms the prior decision of the City or the Director, in addition to all other remedies and if both parties agree, the aggrieved person shall have the right to have the matter resolved by mediation or binding arbitration.
  1. Non-binding arbitration shall be before an arbitrator agreed to by both the City and the aggrieved person.
  2. The costs and fees of a single arbitrator shall be borne equally by the City and the aggrieved person.
  3. If the parties cannot agree on an arbitrator, the matter shall be resolved by a three-person arbitration panel consisting of one arbitrator selected by the City, one arbitrator selected by the aggrieved person, and one arbitrator selected by the other two arbitrators. In the event that a three-person arbitrator panel is necessary, each party shall bear the expense of its own arbitrator and shall jointly and equally bear with the other party the expense of the third arbitrator and of the arbitration.
  4. Each party to the arbitration shall pay its own costs, disbursements and attorney fees.
  5. In no event shall litigation of any kind be filed until the City and ROW-user have submitted to mediation, with the mediator being selected and paid for in the same manner as an arbitrator.

**Sec. ~~17.05.029~~, 17.05.028 Insurance requirements.**

- A. Unless a ROW-user has \$25,000,000.00 in net assets and does not have a history of noncompliance, or permitting noncompliance, within the City, then the ROW-user shall file with the City evidence of liability insurance with an insurance company licensed to do business in Missouri.
  1. The ROW-user shall provide all information to the City necessary to determine the amount of net assets of the ROW-user.
  2. The amount of insurance shall be in amounts sufficient to protect the City against all liabilities not protected by the State of Missouri's sovereign immunity statute. The insurance will protect the City from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death or property damage arising out of or alleged to have arisen out of the negligent or willful acts or omissions of the ROW-user.
  3. If the ROW-user 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.
  4. A copy of the liability insurance certificate must be on file with the City Clerk.
- B. No liability insurance will be required of any residential property owner excavating or working in the right-of-way adjacent to his/her residence who does not utilize a contractor to perform the excavation or work and who does not require a temporary traffic control authorization. However, said residential property owner shall be required to demonstrate proof of a homeowner's policy with coverage and limits acceptable to the Director.
- C. For purposes of this section, "history of noncompliance, or permitting noncompliance, within the City", shall mean the ROW-user, or any persons acting on the behalf of the ROW-user, including contractors or subcontractors, has failed to return the public right-of-way to its previous condition under a previous right-of-way permit or temporary traffic control authorization.

**Sec. ~~17.05.030~~, 17.05.029 Bonding and escrows.**

- A. If a ROW-user has \$25,000,000.00 in net assets and does not have a history of noncompliance, or permitting noncompliance, within the City, then the ROW-user shall not be required to maintain a performance or maintenance bond or escrow.
  1. The ROW-user shall provide all information to the City necessary to determine the amount of net assets of the ROW-user.

2. For purposes of this section, "history of noncompliance, or permitting noncompliance, within the City," shall mean the ROW-user, or any persons acting on the behalf of the ROW-user, including contractors or subcontractors, has failed to return the public right-of-way to its previous condition under a previous right-of-way permit or temporary traffic control authorization.
- B. If it is determined pursuant to Subsection A of this section that a ROW-user does not have \$25,000,000.00 in net assets or does have a history of noncompliance, or permitting noncompliance, within the City, then the ROW-user shall:
1. Maintain a performance bond **or escrow** in a form approved by the City Attorney. The amount of the bond **or escrow** will be \$10,000.00 or the value of the restoration, whichever is greater, as determined by the Director, for a term consistent with the term of the applicable right-of-way permit or temporary traffic control authorization, conditioned upon the ROW-user's faithful performance of the provisions, terms and conditions conferred by this article.
  2. Maintain a maintenance bond **or escrow** in a form approved by the City Attorney. The amount of the bond **or escrow** will be \$10,000.00 or the value of the restoration, whichever is greater, as determined by the Director, for a term consistent with the term of the applicable right-of-way permit or temporary traffic control authorization plus four additional years, conditioned upon the ROW-user's faithful performance of the provisions, terms and conditions conferred by this article.
- C. In the event the City shall exercise its right to revoke the right-of-way permit or the temporary traffic control authorization as permitted herein, then the City shall be entitled to recover under the terms of said bonds **or escrows** the full amount of any loss occasioned. A copy of the maintenance and performance bonds **or escrows** must be on file with the City Clerk. No maintenance or performance bond **or escrow** will be required of any residential property owner excavating or working in the right-of-way adjacent to his/her residence, who does not utilize a contractor to perform the excavation or work and who does not require a temporary traffic control authorization.

**Sec. ~~17.05.031~~, 17.05.030 Indemnification.**

- A. Any person operating under the provisions of this article or performing any temporary traffic control, excavation or work in the right-of-way shall fully indemnify, release, defend and hold harmless the City, officers, employees and agents of the City when acting in their capacity as municipal officials, employees, elected officials, attorneys, 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, to the extent caused by acts or omissions of the person, or its agents, contractors, or subcontractors, in the performance of the permitted temporary traffic control, excavation or work. In no event shall the requirements of this article and more specifically any provision dealing with indemnification be construed as a waiver of any sovereign or other immunity available to the City, its officers, employees or agents.
- B. 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 its duty to defend against liability or its duty to pay any judgment entered against the City, or its agents.
- C. All ROW-users shall be responsible for promptly correcting acts or omissions by any contractor or subcontractor performing permitted temporary traffic control, excavation or work for such ROW-user hereunder.

**Sec. ~~17.05.032~~, 17.05.031 Indemnification for contractual or economic loss damages.**

Any person operating under the provisions of this article or performing any temporary traffic control, excavation or work in the right-of-way shall fully indemnify, release, defend and hold harmless the City and agents of the City when acting in their capacity as municipal officials, employees, elected officials, attorneys, contractors and agents, from and against any and all claims, demands, suits, proceedings, and actions, liability and judgment by other persons for contractual or economic losses, damages, losses, costs, and expenses, including attorney fees, to the extent caused by failure of a ROW-user, or its agents, contractors, or subcontractors, to relocate or adjust its facilities pursuant to the provisions of this article.

**Sec. ~~17.05.033~~, 17.05.032 Indemnification for damages to facilities.**

- A. Any person operating under the provisions of this article or performing any excavation or work in the right-of-way shall be liable for any damages to facilities due to excavation or work performed by the person, including damage to underground facilities that have been properly identified prior to commencement of excavation or work.
- B. Any person operating under the provisions of this article or performing any excavation or work in the right-of-way shall fully indemnify, release, defend and hold harmless the City and agents of the City when acting in their capacity as municipal officials, employees, elected officials, attorneys, contractors, 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, associated with damage to the facilities of other ROW-users by a person, or its agents, contractors or subcontractors.

**Sec. ~~17.05.034~~, 17.05.033. Other agreements.**

- A. Any ROW-user may satisfy the insurance, bonding or escrow, and indemnification provisions of this article through a valid franchise agreement with the City. Any requirements thus satisfied shall be indicated on the ROW-user's registration and shall not be required for each right-of-way permit and temporary traffic control authorization.
- B. This section shall not apply to an applicant acting on behalf of a ROW-user, unless the applicant is listed as an additional insured on the ROW-user's insurance policy and is covered by the surety. The applicant must submit evidence of the satisfaction of these requirements prior to issuance of a right-of-way permit or a temporary traffic control authorization.

**Sec. ~~17.05.035~~, 17.05.034. Violations.**

- A. No person shall perform temporary traffic control, excavate or work in the right-of-way in violation of this article. Any violation of this article shall result in the immediate issuance of a citation to the person and enforcement action pursuant to City Code and state law. In addition, a stop work order may be issued by the Director which shall be complied with. Failure to comply with such stop work order may be enforced through any legal means available to the City at City's option including daily penalties as provided in this article.
- B. Except as provided in Subsection A of this section, if the Director determines that a ROW-user has committed a violation of this article, any law or ordinance, or a condition placed on the right-of-way permit or the temporary traffic control authorization, the Director shall make a written demand upon the ROW-user to remedy such violation, which may include the issuance of a stop work order. The demand shall state that the continued violation may be cause for revocation of the right-of-way permit or the temporary traffic control authorization as provided for herein, or legal action if applicable.
- C. A violation will allow the Director, at his or her discretion, to place additional or revised conditions on the right-of-way permit or the temporary traffic control authorization, specifically related to the manner in which the violation is cured by the ROW-user.
  - 1. Within 14 calendar days of receiving notification of the violation, the ROW-user shall contact the Director with a plan, acceptable to the Director, for correction of the violation.
  - 2. Upon determination by the Director that the violation creates a threat to public safety, the ROW-user shall within 24 hours of notice from the City contact the Director with a plan, acceptable to the Director, for correction of the violation.
  - 3. Upon determination by the Director that the violation creates an immediate threat to public safety, the ROW-user shall within one hour of notice from the City contact the Director with a plan, acceptable to the Director, for correction of the violation.
  - 4. A ROW-user's failure to contact the Director, ROW-users failure to submit an acceptable plan, or ROW-user's failure to reasonably implement the approved plan shall be cause for immediate revocation of the right-of-way permit or the temporary traffic control authorization.

**Sec. ~~17.05.036~~, 17.05.035. Revocation of permits.**

- A. The City may, after reasonable notice and an opportunity to cure, revoke a right-of-way permit or a temporary traffic control authorization granted to a ROW-user, without a fee refund, if one or more of the following occurs:
1. A material violation of a provision of the right-of-way permit or temporary traffic control authorization;
  2. An evasion or attempt to evade any material provision of the right-of-way permit or temporary traffic control authorization, or the perpetration or attempt to perpetrate any fraud or deceit upon the political subdivision or its citizens;
  3. A material misrepresentation of fact in the right-of-way permit or temporary traffic control authorization application;
  4. A failure to complete temporary traffic control, excavation, or work by the date specified in the associated right-of-way permit, unless a right-of-way permit is obtained or unless the failure to complete the temporary traffic control, excavation or work is due to reasons beyond the ROW-user's control;
  5. A failure to correct, within the time specified by the City, temporary traffic control, excavation or work that does not conform to applicable engineering standards, specifications, national safety codes, industry construction standards, or applicable City Code provisions or safety codes that are no more stringent than national safety codes or provisions, upon inspection and notification by the City of the faulty condition; and
  6. A failure to comply with a stop work order.
- B. If a right-of-way permit or temporary traffic control authorization is revoked, the ROW-user shall also reimburse the City for the City's reasonable costs, including administrative costs, restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

**Sec. ~~17.05.037~~, 17.05.036. Penalty.**

- A. Any person violating any provision of this article is guilty of a public offense, and upon conviction thereof shall be fined in a sum of not less than \$200.00 nor more than \$500.00 in addition to any amount necessary to restore the ROW or repair City facilities. Every day that this article is violated shall constitute a separate offense. The City shall have the authority to maintain civil suits or actions in any court of competent jurisdiction for the purpose of enforcing the provisions of this article. In addition to any other remedies, the City Attorney may institute injunction, mandamus or other appropriate actions or proceedings to prevent violations of this article.
- B. ROW-users may face revocation or suspension of the agreed-upon franchise or right-of-way user agreement in the event of grievous or continued violation of any provision of this article or the franchise or right-of-way user agreement. Revocation or suspension may result in denial of any and all right-of-way permits until the franchise or agreement is reinstated or renegotiated and approved.

**Sec. ~~17.05.038~~, 17.05.037. Failure to enforce.**

The City's failure to enforce or remedy any noncompliance of the terms and conditions of this article or of any right-of-way permit or temporary traffic control authorization granted hereunder shall not constitute a waiver of the City's rights nor a waiver of any person's obligation as herein provided.

**Sec. ~~17.05.039~~, 17.05.038. Other rights and laws.**

- A. This article shall be construed in a manner consistent with all applicable and valid federal, state and local laws. Notwithstanding any other provisions of this article to the contrary, the construction, operation and maintenance of the ROW-user's facilities shall be in accordance with all laws and regulations of the United States, the state and any political subdivision thereof, or any administrative agency thereof, having jurisdiction.
- B. In addition, the ROW-user shall meet or exceed the most stringent technical standards set by regulatory bodies, including the City, now or hereafter having jurisdiction.

- C. The ROW-user's rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. The ROW-user shall comply with all applicable laws and ordinances enacted pursuant to that power.
- D. Finally, failure of the ROW-user to comply with any applicable law or regulation may result in a forfeiture of any permit, registration or authorization granted in accordance with this article.

**Sec. ~~17.05.040~~ 17.05.039. Reservation of rights.**

- A. 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.
- B. The City shall have the right to waive any provision of this article or any registration, permit or other authorization granted thereunder, except those required by federal or state law, if the City determines as follows:
  - 1. That it is in the public interest to do so; and,
  - 2. That the enforcement of such provision will impose an undue hardship on the person.
- C. To be effective, such waiver shall be evidenced by a statement in writing signed by a duly authorized representative of the City. Further, the City hereby reserves to itself the right to intervene in any suit, action or proceeding involving the provisions herein.
- D. Notwithstanding anything to the contrary set forth herein, the provisions of this article shall not infringe upon the rights of any person pursuant to any applicable state or federal statutes, including, but not limited to the right to occupy the right-of-way.

**Secs. ~~17.05.041~~ 17.05.040 —17.05.999. Reserved.**

## **ARTICLE 6. CURBS AND SIDEWALKS**

**Sec. 17.06.001. Permit application.**

An application shall be filed with the Director of ~~Public Works~~ **Municipal Services** for a right-of-way permit for the construction, reconstruction or repair of a sidewalk, stating the character of sidewalk to be laid or the repairs to be made and the location thereof. Said application shall be upon forms provided by said Director.

**Sec. 17.06.002. Maintenance.**

No owner or occupant of any house, building, or premises shall permit or allow the sidewalk, or any curbing or guttering in front or along side of such house, building, lot, or premises to be removed or remain out of repair, or shall suffer or allow such sidewalk, curbing, or guttering to be or remain above or below the established grade of the same, except as approved by the Director of ~~Public Works~~ **Municipal Services**. Prior to the approval of a Survey Development, the Community Development Department will inspect the existing facilities and require proper maintenance to occur prior to issuance of any building permit.

It shall be the duty of all persons owning or occupying any property fronting upon any street to keep the sidewalk, parkway between the sidewalk and street, curbing, or guttering in front and alongside such property and on the same side of the street in good order and to clean the same and remove from any such sidewalk, parkway between the sidewalk and street, curbing, and guttering all ice, snow, earth, or other substances that obstruct or render the same dangerous.

**Sec. 17.06.003. Sidewalk specifications.**

All sidewalks hereafter constructed in street rights-of-way shall be constructed in accordance with the ~~Public Works~~ **Design and Construction** Manual.



**Sec. 17.06.004. Merchandise on streets and sidewalks.**

No person shall place, leave, deposit, or hang up any merchandise, in or upon any street or sidewalk, or cause or permit the same to be done, except as approved.

**Sec. 17.06.005. Water drains.**

Every owner or occupant of any house or other building shall cause the pipes conducting the water from the eaves or roof of such house or other building to be so constructed as to prevent the spread of the drainage over the sidewalk, with the discharge constructed in accordance with an approved plan.

**Sec. 17.06.006. Recovery of costs.**

- A. The ~~Public Works~~ **Municipal Services** Director, or a designee, shall keep an itemized account of the expenses incurred in the abatement of any violation, repair or demolition of any sidewalk or curb done pursuant to the provisions of this Code. Upon the completion of the work of the abatement, repair or demolition, the ~~Public Works~~ **Municipal Services** Director shall prepare, file, and certify with the Finance Director a report specifying the work done, the itemized and total cost of the work, a description of the real property upon which the work was performed, and the names and addresses of the persons entitled to notice pursuant to this Code.
- B. Thereafter, the Finance Director shall cause an invoice to be issued to the property owner seeking payment of the abatement or repair costs. If, after 30 days, the bill is not paid in full, the Finance Director shall cause the certified costs to be included in a special assessment tax bill for the property. Special tax bills shall bear interest at a rate not to exceed the rate on ten year United States treasury notes as established at the most recent auction from 60 days after the date the initial bill was issued until paid. Special assessment tax bills may be paid by the property owner in equal principal installments, including interest, over the period of five years.
- C. The property owner may file a written protest on the grounds that a mistake or error was made in the invoice prepared for the abatement, repair or demolition of a sidewalk or curb. Such written protest must be filed with the ~~Public Works~~ **Municipal Services** Director within 30 days of the date that the Finance Director issued the invoice and shall contain a description of the effected property. The ~~Public Works~~ **Municipal Services** Director shall set a date and time to hear the protest. If the ~~Public Works~~ **Municipal Services** Director finds that a mistake or error has been made, the ~~Public Works~~ **Municipal Services** Director may make such revision, correction or modification in the invoice as is necessary to remedy the mistake or error. The decision of the ~~Public Works~~ **Municipal Services** Director on the protest and this amount shall be final. The property owner shall have 30 days from the date of the decision of the ~~Public Works~~ **Municipal Services** Director to pay the bill. If, after 30 days, the revised invoice is not paid in full, then the Finance Director shall cause the certified costs to be included in a special assessment tax bill for the property as hereinafter provided.
- D. A special assessment tax bill shall be a lien against the lot or parcel of land assessed. The lien shall be subordinate to all existing special assessment liens previously imposed upon the same property and shall be paramount to all other liens, except for State, County and Municipal taxes, with which it shall be on a parity. The lien shall continue until the assessment and all interest due and payable are paid.
- E. Copies of the special assessment tax bill shall be given to the Jackson County Tax Collection Division, which shall add the amount of the assessment to the next regular tax bill levied against the parcel for Municipal purposes.
- F. The amount of the special assessment tax bill shall be collected in accordance with the terms as stated on the special assessment tax. All laws applicable to the levy, collection and enforcement of property taxes shall be applicable to this assessment.
- G. All money recovered by payment of the charge or assessment or from the sale of the property at foreclosure sale shall be paid to the Finance Director who shall credit the same to the appropriate fund.

**Sec. 17.06.007. Penalty.**

Any person violating any provision of this article shall, upon conviction, be subject to a fine of not less than \$10.00 nor more than \$500.00 for each and every violation.

**Secs. 17.06.007—17.06.999. Reserved.**

## **ARTICLE 7. FLOODPLAIN MANAGEMENT ORDINANCE**

### **Sec. 17.07.001. Statutory authorization, findings of fact, and purposes.**

- A. *Statutory Authorization.* The Legislature of the State of Missouri has in RSMo 89.020 delegated the responsibility to local governmental units to adopt floodplain management regulations designed to protect the health, safety, and general welfare. Therefore, the City Council of the City of Independence, Missouri ordains as follows:
- B. *Findings of Fact.*
1. *Flood Losses Resulting from Periodic Inundation.* The special flood hazard areas of Independence, Missouri are subject to inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base; all of which adversely affect the public health, safety and general welfare.
  2. *General Causes of the Flood Losses.* These flood losses are caused by (1) the cumulative effect of development in any delineated floodplain causing increases in flood heights and velocities; and (2) the occupancy of flood hazard areas by uses vulnerable to floods, hazardous to others, inadequately elevated, or otherwise unprotected from flood damages.
  3. *Methods Used to Analyze Flood Hazards.* The Flood Insurance Study (FIS) that is the basis of this ordinance uses a standard engineering method of analyzing flood hazards which consist of a series of interrelated steps.
    - a. Selection of a base flood that is based upon engineering calculations which permit a consideration of such flood factors as its expected frequency of occurrence, the area inundated, and the depth of inundation. The base flood selected for this ordinance is representative of large floods which are characteristic of what can be expected to occur on the particular streams subject to this ordinance. It is in the general order of a flood which could be expected to have a one percent chance of occurrence in any one year as delineated on the Federal Insurance Administrator's FIS, and illustrative materials for Jackson County, Missouri dated January 20, 2017 as amended, and any future revisions thereto.
    - b. Calculation of water surface profiles are based on a standard hydraulic engineering analysis of the capacity of the stream channel and overbank areas to convey the regulatory flood.
    - c. Computation of a floodway required to convey this flood without increasing flood heights more than one foot at any point.
    - d. Delineation of floodway encroachment lines within which no development is permitted that would cause any increase in flood height.
    - e. Delineation of flood fringe, i.e., that area outside the floodway encroachment lines, but still subject to inundation by the base flood.
- C. *Statement of Purpose.* It is the purpose of this ordinance to promote the public health, safety, and general welfare; to minimize those losses described in Article 1, Section B (1); to establish or maintain the community's eligibility for participation in the National Flood Insurance Program (NFIP) as defined in 44 CFR 59.22(a)(3); and to meet the requirements of 44 CFR 60.3(d) by applying the provisions of this ordinance to:
1. Restrict or prohibit uses that are dangerous to health, safety, or property in times of flooding or cause undue increases in flood heights or velocities;
  2. Require uses vulnerable to floods, including public facilities that serve such uses, be provided with flood protection at the time of initial construction; and
  3. Protect individuals from buying lands that are unsuited for the intended development purposes due to the flood hazard.

**Sec. 17.07.002. General provisions.**

- A. *Lands to Which Ordinance Applies.* This ordinance shall apply to all lands within the jurisdiction of the City of Independence, Missouri identified as numbered and unnumbered A zones, AE, AO, and AH Zones, on the Flood Insurance Rate Maps (FIRMs) for Jackson County on map panels, 29095C0164G, 29095C0168G, 29095C0169G, 29095C0190G, 29095C0193G, 29095C0194G, 29095C0213G, 29095C0214G, 29095C0276G, 29095C0277G, 29095C0278G, 29095C0279G, 29095C0281G, 29095C0282G, 29095C0283G, 29095C0284G, 29095C0286G, 29095C0287G, 29095C0289G, 29095C0291G, 29095C0292G, 29095C0293G, 29095C0294G, 29095C0301G, 29095C0302G, 29095C0303G, 29095C0304G, 29095C0306G, 29095C0307G, 29095C0308G, 29095C0309G, 29095C0311G, 29095C0312G, 29095C0313G, 29095C0314G, 29095C0316G, 29095C0317G, 29095C0327G, and 29095C0330G, dated January 20, 2017 as amended, and any future revisions thereto. In all areas covered by this ordinance, no development shall be permitted except through the issuance of a floodplain development permit, granted by the City Council or its duly designated representative under such safeguards and restrictions as the City Council or the designated representative may reasonably impose for the promotion and maintenance of the general welfare, health of the inhabitants of the community, and as specifically noted in Section 17.07.004.
- B. *Floodplain Administrator.* The ~~Public Works~~ **Municipal Services** Director is hereby designated as the Floodplain Administrator under this ordinance.
- C. *Compliance.* No development located within the special flood hazard areas of this community shall be located, extended, converted, or structurally altered without full compliance with the terms of this ordinance and other applicable regulations.
- D. *Abrogation and Greater Restrictions.* It is not intended by this ordinance to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance imposes greater restrictions, the provisions of this ordinance shall prevail. All other ordinances inconsistent with this ordinance are hereby repealed to the extent of the inconsistency only.
- E. *Interpretation.* In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements, shall be liberally construed in favor of the governing body, and shall not be deemed a limitation or repeal of any other powers granted by State statutes.
- F. *Warning and Disclaimer of Liability.* The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. Larger floods may occur on rare occasions or the flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This ordinance does not imply that areas outside the floodway and flood fringe or land uses permitted within such areas will be free from flooding or flood damage. This ordinance shall not create a liability on the part of the City of Independence, any officer or employee thereof, for any flood damages that may result from reliance on this ordinance or any administrative decision lawfully made thereunder.
- G. *Severability.* If any section, clause, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court of appropriate jurisdiction, the remainder of this ordinance shall not be affected thereby.

**Sec. 17.07.003. Administration.**

- A. *Floodplain Development Permit Required.* A floodplain development permit shall be required for all proposed construction or other development, including the placement of manufactured homes, in the areas described in Article 2, Section A. No person, firm, corporation, or unit of government shall initiate any development or substantial-improvement or cause the same to be done without first obtaining a separate floodplain development permit for each structure or other development.
- B. *Designation of Floodplain Administrator.* The ~~Public Works~~ **Municipal Services** Director is hereby appointed to administer and implement the provisions of this ordinance.
- C. *Duties and Responsibilities of Floodplain Administrator.* Duties of the ~~Public Works~~ **Municipal Services** Director shall include, but not be limited to:

1. Review of all applications for floodplain development permits to assure that sites are reasonably safe from flooding and that the floodplain development permit requirements of this ordinance have been satisfied;
  2. Review of all applications for floodplain development permits for proposed development to assure that all necessary permits have been obtained from Federal, State, or local governmental agencies from which prior approval is required by Federal, State, or local law;
  3. Review all subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, to determine whether such proposals will be reasonably safe from flooding;
  4. Issue floodplain development permits for all approved applications;
  5. Notify adjacent communities and the Missouri State Emergency Management Agency (Mo SEMA) prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA);
  6. Assure that the flood carrying capacity is not diminished and shall be maintained within the altered or relocated portion of any watercourse.
  7. Verify and maintain a record of the actual elevation (in relation to mean sea level) of the lowest floor, including basement, of all new or substantially improved structures;
  8. Verify and maintain a record of the actual elevation (in relation to mean sea level) that the new or substantially improved nonresidential structures have been floodproofed;
  9. When floodproofing techniques are utilized for a particular nonresidential structure, the ~~Public Works~~ **Municipal Services** Director shall require certification from a registered professional engineer or architect.
- D. *Application for Floodplain Development Permit.* To obtain a floodplain development permit, the applicant shall first file an application in writing on a form furnished for that purpose. Every floodplain development permit application shall:
1. Describe the land on which the proposed work is to be done by lot, block and tract, house and street address, or similar description that will readily identify and specifically locate the proposed structure or work;
  2. Identify and describe the work to be covered by the floodplain development permit;
  3. Indicate the use or occupancy for which the proposed work is intended;
  4. Indicate the assessed value of the structure and the fair market value of the improvement;
  5. Specify whether development is located in designated flood fringe or floodway;
  6. Identify the existing base flood elevation and the elevation of the proposed development;
  7. Give such other information as reasonably may be required by the ~~Public Works~~ **Municipal Services** Director;
  8. Be accompanied by plans and specifications for proposed construction; and
  9. Be signed by the permittee or his authorized agent who may be required to submit evidence to indicate such authority.

**Sec. 17.07.004. Provisions for flood hazard reduction.**

A. *General Standards.*

1. No permit for floodplain development shall be granted for new construction, substantial-improvements, and other improvements, including the placement of manufactured homes, within any numbered or unnumbered A zones, AE, AO, and AH zones, unless the conditions of this section are satisfied.
2. All areas identified as unnumbered A zones on the FIRM are subject to inundation of the 100-year flood; however, the base flood elevation is not provided. Development within unnumbered A zones is subject

to all provisions of this ordinance. If Flood Insurance Study data is not available, the community shall obtain, review, and reasonably utilize any base flood elevation or floodway data currently available from Federal, State, or other sources.

3. Until a floodway is designated, no new construction, substantial improvements, or other development, including fill, shall be permitted within any numbered A zone or AE zone on the FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.
4. All new construction, subdivision proposals, substantial improvements, prefabricated structures, placement of manufactured homes, and other developments shall require:
  - a. Design or adequate anchorage to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
  - b. Construction with materials resistant to flood damage;
  - c. Utilization of methods and practices that minimize flood damages;
  - d. All electrical, heating, ventilation, plumbing, air-conditioning equipment, and other service facilities be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
  - e. New or replacement water supply systems and/or sanitary sewage systems be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems be located so as to avoid impairment or contamination; and
  - f. Subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, located within special flood hazard areas are required to assure that:
    - (1) All such proposals are consistent with the need to minimize flood damage;
    - (2) All public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage;
    - (3) Adequate drainage is provided so as to reduce exposure to flood hazards; and
    - (4) All proposals for development, including proposals for manufactured home parks and subdivisions, of five acres or 50 lots, whichever is lesser, include within such proposals base flood elevation data.
5. Storage, material, and equipment.
  - a. The storage or processing of materials within the special flood hazard area that are in time of flooding buoyant, flammable, explosive, or could be injurious to human, animal, or plant life is prohibited.
  - b. Storage of other material or equipment may be allowed if not subject to major damage by floods, if firmly anchored to prevent flotation or if readily removable from the area within the time available after a flood warning.
6. Accessory Structures. Structures used solely for parking and limited storage purposes, not attached to any other structure on the site, of limited investment value, and not larger than 400 square feet, may be constructed at-grade and wet-floodproofed provided there is no human habitation or occupancy of the structure; the structure is of single-wall design; a variance has been granted from the standard floodplain management requirements of this ordinance; and a floodplain development permit has been issued.
7. Agricultural Structures. Structures used solely for agricultural purposes in connection with the production, harvesting, storage, drying, or raising of agricultural commodities, including the raising of livestock, may be constructed at-grade and wet-floodproofed provided there is no human habitation or occupancy of the structure; the structure is of single-wall design; there is no permanent retail, wholesale,

or manufacturing use included in the structure; a variance has been granted from the floodplain management requirements of this ordinance; and a floodplain development permit has been issued

B. *Specific Standards.*

1. In all areas identified as numbered and unnumbered A zones, AE, and AH Zones, where base flood elevation data have been provided, as set forth in Article 4, Section A(2), the following provisions are required:
  - a. a. Residential Construction. New construction or substantial-improvement of any residential structures, including manufactured homes, shall have the lowest floor, including basement **and utility systems (including ductwork)**, elevated to one foot above base flood elevation **or otherwise floodproofed**.
  - b. Nonresidential Construction. New construction or substantial-improvement of any commercial, industrial, or other nonresidential structures, including manufactured homes, shall have the lowest floor, including basement, elevated to one foot above the base flood elevation or, together with attendant utility and sanitary facilities, be floodproofed so that below the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the Floodplain Administrator as set forth in Section 3, C(9).
  - c. Require, for all new construction and substantial-improvements, that fully enclosed areas below lowest floor used solely for parking of vehicles, building access, or storage in an area other than a basement and that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:
    - (1) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided; and
    - (2) The bottom of all opening shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

C. *Manufactured Homes.*

1. All manufactured homes to be placed within all unnumbered and numbered A zones, AE, and AH zones, on the community's FIRM shall be required to be installed using methods and practices that minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors.
2. Require manufactured homes that are placed or substantially improved within unnumbered or numbered A zones, AE, and AH zones, on the community's FIRM on sites:
  - a. Outside of manufactured home park or subdivision;
  - b. In a new manufactured home park or subdivision;
  - c. In an expansion to an existing manufactured home park or subdivision; or
  - d. In an existing manufactured home park or subdivision on which a manufactured home has incurred substantial-damage as the result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to one foot above the base flood elevation and be securely attached to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.
3. Require that manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within all unnumbered and numbered A zones, AE and AH

zones, on the community's FIRM, that are not subject to the provisions of Section 4, C(2) of this ordinance, be elevated so that either:

- a. The lowest floor of the manufactured home is at one foot above the base flood level; or
- b. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely attached to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

D. *Areas of Shallow Flooding (AO and AH zones).* Located within the areas of special flood hazard as described in Article 2 A are areas designated as AO zones. These areas have special flood hazards associated with base flood depths of one to three feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. The following provisions apply:

1. *AO Zones.*

- a. All new construction and substantial-improvements of residential structures, including manufactured homes, shall have the lowest floor, including basement **and utility systems (including ductwork)**, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified) **or otherwise floodproofed.**
- b. All new construction and substantial-improvements of any commercial, industrial, or other nonresidential structures, including manufactured homes, shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community FIRM (at least two feet if no depth number is specified) or together with attendant utilities and sanitary facilities be completely floodproofed to that so that the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
- c. Adequate drainage paths shall be required around structures on slopes, in order to guide floodwaters around and away from proposed structures.

2. *AH Zones.*

- a. The specific standards for all areas of special flood hazard where base flood elevation has been provided shall be required as set forth in Article 4, Section B.
- b. Adequate drainage paths shall be required around structures on slopes, in order to guide floodwaters around and away from proposed structures.

E. *Floodway.* Located within areas of special flood hazard established in Section 2, A are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters that carry debris and potential projectiles, the following provisions shall apply:

1. The community shall select and adopt a regulatory floodway based on the principle that the area chosen for the regulatory floodway must be designed to carry the waters of the base flood without increasing the water surface elevation of that flood more than one foot at any point.
2. The community shall prohibit any encroachments, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.
3. If Section 4, E(2) is satisfied, all new construction and substantial-improvements shall comply with all applicable flood hazard reduction provisions of Section 4.
4. In unnumbered A zones, the community shall obtain, review, and reasonably utilize any base flood elevation or floodway data currently available from Federal, State, or other sources as set forth in Section 4, A(2).

F. *Recreational Vehicles.*

1. Require that recreational vehicles placed on sites within all unnumbered and numbered A zones, AO, AE, and AH zones on the community's FIRM either:
  - a. Be on the site for fewer than 180 consecutive days,
  - b. Be fully licensed and ready for highway use\*; or
  - c. Meet the permitting, elevation, and the anchoring requirements for manufactured homes of this ordinance.

\*A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect type utilities and security devices, and has no permanently attached additions.

**Sec. 17.07.005. Floodplain management variance procedures.**

- A. *Establishment of Appeal Board.* The Board of Building and Engineering Appeals as established by Independence shall hear and decide appeals and requests for variances from the floodplain management requirements of this ordinance.
- B. *Responsibility of Appeal Board.* Where an application for a floodplain development permit or request for a variance from the floodplain management regulations is denied by the ~~Public Works~~ **Municipal Services** Director, the applicant may apply for such floodplain development permit or variance directly to the Appeal Board, as defined in Section 5, A.

The Board of Building and Engineering Appeals shall hear and decide appeals when it is alleged that there is an error in any requirement, decision, or determination made by the ~~Public Works~~ **Municipal Services** Director in the enforcement or administration of this ordinance.

- C. *Further Appeals.* Any person aggrieved by the decision of the Board of Building and Engineering Appeals or any taxpayer may appeal such decision to the Jackson County Circuit as provided in RSMo 89.110.
- D. *Floodplain Management Variance Criteria.* In passing upon such applications for variances, the Board of Building and Engineering Appeals shall consider all technical data and evaluations, all relevant factors, standards specified in other sections of this ordinance, and the following criteria:
  1. The danger to life and property due to flood damage;
  2. The danger that materials may be swept onto other lands to the injury of others;
  3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  4. The importance of the services provided by the proposed facility to the community;
  5. The necessity to the facility of a waterfront location, where applicable;
  6. The availability of alternative locations, not subject to flood damage, for the proposed use;
  7. The compatibility of the proposed use with existing and anticipated development;
  8. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
  9. The safety of access to the property in times of flood for ordinary and emergency vehicles;
  10. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters, if applicable, expected at the site; and,
  11. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems; streets; and bridges.

E. *Conditions for Approving Floodplain Management Variances.*



1. Generally, variances may be issued for new construction and substantial-improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items 2 through 6 below have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
2. Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places, the State Inventory of Historic Places, or local inventory of historic places upon determination provided the proposed activity will not preclude the structure=s continued historic designation.
3. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
4. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
5. Variances shall only be issued upon (a) a showing of good and sufficient cause, (b) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (c) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
6. A community shall notify the applicant in writing over the signature of a community official that (1) the issuance of a variance to construct a structure below base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage and (2) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with the record of all variance actions as required by this ordinance.

F. *Conditions for Approving Variances for Accessory Structures.* Any variance granted for an accessory structure shall be decided individually based on a case by case analysis of the building's unique circumstances. Variances granted shall meet the following conditions as well as those criteria and conditions set forth in Section 5, D and E of this ordinance.

In order to minimize flood damages during the 100-year flood and the threat to public health and safety, the following conditions shall be included for any variance issued for accessory structures that are constructed at-grade and wet-floodproofed.

1. Use of the accessory structures must be solely for parking and limited storage purposes in zone A only as identified on the community's Flood Insurance Rate Map (FIRM).
2. For any new or substantially damaged accessory structures, the exterior and interior building components and elements (i.e., foundation, wall framing, exterior and interior finishes, flooring, etc.) below the base flood elevation, must be built with flood-resistant materials in accordance with Section 4, A (4)(b) of this ordinance.
3. The accessory structures must be adequately anchored to prevent flotation, collapse, or lateral movement of the structure in accordance with Section 4, A (4)(a) of this ordinance. All of the building's structural components must be capable of resisting specific flood-related forces including hydrostatic, buoyancy, and hydrodynamic and debris impact forces.
4. Any mechanical, electrical, or other utility equipment must be located above the base flood elevation or floodproofed so that they are contained within a watertight, floodproofed enclosure that is capable of resisting damage during flood conditions in accordance with Section 4 4, A (4)(d) of this ordinance.
5. The accessory structures must meet all National Flood Insurance Program (NFIP) opening requirements. The NFIP requires that enclosure or foundation walls, subject to the 100-year flood, contain openings that will permit the automatic entry and exit of floodwaters in accordance with Section 4, B (1)(c) of this ordinance.

6. The accessory structures must comply with the floodplain management floodway encroachment provisions of Section 4, D(2) of this ordinance. No variances may be issued for accessory structures within any designated floodway, if any increase in flood levels would result during the 100-year flood.
7. Equipment, machinery, or other contents must be protected from any flood damage.
8. No disaster relief assistance under any program administered by any Federal agency shall be paid for any repair or restoration costs of the accessory structures.
9. A community shall notify the applicant in writing over the signature of a community official that (1) the issuance of a variance to construct a structure below base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage and (2) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with the record of all variance actions as required by this ordinance.
10. Wet-floodproofing construction techniques must be reviewed and approved by the community and registered professional engineer or architect prior to the issuance of any floodplain development permit for construction.

- G. *Conditions for Approving Variances for Agricultural Structures.* Any variance granted for an agricultural structure shall be decided individually based on a case by case analysis of the building's unique circumstances. Variances granted shall meet the following conditions as well as those criteria and conditions set forth in Section 5, D and E of this ordinance.

In order to minimize flood damages during the 100-year flood and the threat to public health and safety, the following conditions shall be included for any variance issued for agricultural structures that are constructed at-grade and wet-floodproofed.

1. All agricultural structures considered for a variance from the floodplain management regulations of this ordinance shall demonstrate that the varied structure is located in wide, expansive floodplain areas and no other alternate location outside of the special flood hazard area exists for the agricultural structure. Residential structures, such as farm houses, cannot be considered agricultural structures.
2. Use of the varied structures must be limited to agricultural purposes in zone A only as identified on the community's Flood Insurance Rate Map (FIRM).
3. For any new or substantially damaged agricultural structures, the exterior and interior building components and elements (i.e., foundation, wall framing, exterior and interior finishes, flooring, etc.) below the base flood elevation, must be built with flood-resistant materials in accordance with Section 4, A(4)(b) of this ordinance.
4. The agricultural structures must be adequately anchored to prevent flotation, collapse, or lateral movement of the structures in accordance with Section 4, A(4)(a) of this ordinance. All of the building's structural components must be capable of resisting specific flood-related forces including hydrostatic, buoyancy, and hydrodynamic and debris impact forces.
5. Any mechanical, electrical, or other utility equipment must be located above the base flood elevation or floodproofed so that they are contained within a watertight, floodproofed enclosure that is capable of resisting damage during flood conditions in accordance with Section 4, A(4)(d) of this ordinance.
6. The agricultural structures must meet all National Flood Insurance Program (NFIP) opening requirements. The NFIP requires that enclosure or foundation walls, subject to the 100-year flood, contain openings that will permit the automatic entry and exit of floodwaters in accordance with Section 4, B(1)(c) of this ordinance.
7. The agricultural structures must comply with the floodplain management floodway encroachment provisions of Section, D(2) of this ordinance. No variances may be issued for agricultural structures within any designated floodway, if any increase in flood levels would result during the 100-year flood.
8. Major equipment, machinery, or other contents must be protected from any flood damage.
9. No disaster relief assistance under any program administered by any Federal agency shall be paid for any repair or restoration costs of the agricultural structures.

10. A community shall notify the applicant in writing over the signature of a community official that (1) the issuance of a variance to construct a structure below base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage and (2) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with the record of all variance actions as required by this ordinance.
11. Wet-floodproofing construction techniques must be reviewed and approved by the community and a registered professional engineer or architect prior to the issuance of any floodplain development permit for construction.

**Sec. 17.07.006. Penalties for violation.**

Violation of the provisions of this ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with granting of variances) shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$ 500.00, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the City of Independence or other appropriate authority from taking such other lawful action as is necessary to prevent or remedy any violation.

**Sec. 17.07.007. Amendments.**

The regulations, restrictions, and boundaries set forth in this ordinance may from time to time be amended, supplemented, changed, or appealed to reflect any and all changes in the National Flood Disaster Protection Act of 1973, provided, however, that no such action may be taken until after a public hearing in relation thereto, at which parties of interest and citizens shall have an opportunity to be heard. Notice of the time and place of such hearing shall be published in a newspaper of general circulation in the City of Independence. At least 20 days shall elapse between the date of this publication and the public hearing. A copy of such amendments will be provided to the Region VII office of the Federal Emergency Management Agency (FEMA). The regulations of this ordinance are in compliance with the National Flood Insurance Program (NFIP) regulations.

**Sec. 17.07.008. Definitions.**

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the same meaning they have in common usage and to give this ordinance its most reasonable application.

100-YEAR FLOOD see "base flood."

ACCESSORY STRUCTURE means the same as "appurtenant structure."

ACTUARIAL RATES see "risk premium rates."

ADMINISTRATOR means the Federal Insurance Administrator.

AGENCY means the Federal Emergency Management Agency (FEMA).

AGRICULTURAL COMMODITIES means agricultural products and livestock.

AGRICULTURAL STRUCTURE means any structure used exclusively in connection with the production, harvesting, storage, drying, or raising of agricultural commodities.

APPEAL means a request for review of the Floodplain Administrator's interpretation of any provision of this ordinance or a request for a variance.

APPURTENANT STRUCTURE means a structure that is on the same parcel of property as the principle structure to be insured and the use of which is incidental to the use of the principal structure.

AREA OF SPECIAL FLOOD HAZARD is the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year.

BASE FLOOD means the flood having a one percent chance of being equaled or exceeded in any given year.

BASEMENT means any area of the structure having its floor subgrade (below ground level) on all sides.

BUILDING see "structure."

**CHIEF EXECUTIVE OFFICER** or **CHIEF ELECTED OFFICIAL** means the official of the community who is charged with the authority to implement and administer laws, ordinances, and regulations for that community.

**COMMUNITY** means any State or area or political subdivision thereof, which has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction.

**DEVELOPMENT** means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, levees, levee systems, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

**ELEVATED BUILDING** means for insurance purposes, a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

**ELIGIBLE COMMUNITY** or **PARTICIPATING COMMUNITY** means a community for which the Administrator has authorized the sale of flood insurance under the National Flood Insurance Program (NFIP).

**EXISTING CONSTRUCTION** means for the purposes of determining rates, structures for which the "start of construction" commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. "Existing construction" may also be referred to as "existing structures."

**EXISTING MANUFACTURED HOME PARK** or **SUBDIVISION** means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

**EXPANSION TO AN EXISTING MANUFACTURED HOME PARK** or **SUBDIVISION** means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

**FLOOD** or **FLOODING** means a general and temporary condition of partial or complete inundation of normally dry land areas from (1) the overflow of inland and/or (2) the unusual and rapid accumulation or runoff of surface waters from any source.

**FLOOD BOUNDARY AND FLOODWAY MAP (FBFM)** means an official map of a community on which the Administrator has delineated both special flood hazard areas and the designated regulatory floodway.

**FLOOD ELEVATION DETERMINATION** means a determination by the Administrator of the water surface elevations of the base flood, that is, the flood level that has a one percent or greater chance of occurrence in any given year.

**FLOOD ELEVATION STUDY** means an examination, evaluation and determination of flood hazards.

**FLOOD FRINGE** means the area outside the floodway encroachment lines, but still subject to inundation by the regulatory flood.

**FLOOD HAZARD BOUNDARY MAP (FHBM)** means an official map of a community, issued by the Administrator, where the boundaries of the flood areas having special flood hazards have been designated as (unnumbered or numbered) A zones.

**FLOOD INSURANCE RATE MAP (FIRM)** means an official map of a community, on which the Administrator has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

**FLOOD INSURANCE STUDY (FIS)** means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.

**FLOODPLAIN** or **FLOOD-PRONE AREA** means any land area susceptible to being inundated by water from any source (see "flooding").

**FLOODPLAIN MANAGEMENT** means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.

**FLOODPLAIN MANAGEMENT REGULATIONS** means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as floodplain and grading ordinances) and other applications of police power. The term describes such state or local regulations, in any combination thereof, that provide standards for the purpose of flood damage prevention and reduction.

**FLOODPROOFING** means any combination of structural and nonstructural additions, changes, or adjustments to structures that reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, or structures and their contents.

**FLOODWAY** or **REGULATORY FLOODWAY** means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

**FLOODWAY ENCROACHMENT LINES** means the lines marking the limits of floodways on Federal, State and local floodplain maps.

**FREEBOARD** means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as bridge openings and the hydrological effect of urbanization of the watershed.

**FUNCTIONALLY DEPENDENT USE** means a use that cannot perform its intended purpose unless it is located or carried out in close proximity to water. This term includes only docking facilities and facilities that are necessary for the loading and unloading of cargo or passengers, but does not include long-term storage or related manufacturing facilities.

**HIGHEST ADJACENT GRADE** means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

**HISTORIC STRUCTURE** means any structure that is (a) listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; (b) certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; (c) individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or (d) individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either (1) by an approved state program as determined by the Secretary of the Interior or (2) directly by the Secretary of the Interior in states without approved programs.

**LOWEST FLOOR** means the lowest floor of the lowest enclosed area, including basement. An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access, or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable floodproofing design requirements of this ordinance.

**MANUFACTURED HOME** means a structure, transportable in one or more sections, that is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

**MANUFACTURED HOME PARK** or **SUBDIVISION** means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**MAP** means the Flood Hazard Boundary Map (FHBM), Flood Insurance Rate Map (FIRM), or the Flood Boundary and Floodway Map (FBFM) for a community issued by the Federal Emergency Management Agency (FEMA).

**MARKET VALUE** or **FAIR MARKET VALUE** means an estimate of what is fair, economic, just and equitable value under normal local market conditions.

**MEAN SEA LEVEL** means, for purposes of the National Flood Insurance Program (NFIP), the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map (FIRM) are referenced.

**NEW CONSTRUCTION** means, for the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of the floodplain management regulations adopted by a community and includes any subsequent improvements to such structures.

**NEW MANUFACTURED HOME PARK or SUBDIVISION** means a manufactured home park or subdivision for which the construction of facilities for servicing the lot on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by the community.

**NFIP** means the National Flood Insurance Program (NFIP).

**PARTICIPATING COMMUNITY** also known as an "eligible community," means a community in which the Administrator has authorized the sale of flood insurance.

**PERSON** includes any individual or group of individuals, corporation, partnership, association, or any other entity, including Federal, State, and local governments and agencies.

**PRINCIPALLY ABOVE GROUND** means that at least 51 percent of the actual cash value of the structure, less land value, is above ground.

**RECREATIONAL VEHICLE** means a vehicle which is (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projections; (c) designed to be self-propelled or permanently towable by a light-duty truck; and (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

**REMEDY A VIOLATION** means to bring the structure or other development into compliance with Federal, State, or local floodplain management regulations; or, if this is not possible, to reduce the impacts of its noncompliance.

**REPETITIVE LOSS** means flood-related damages sustained by a structure on two separate occasions during a ten-year period for which the cost of repairs at the time of each such flood event, equals or exceeds 25 percent of the market value of the structure before the damage occurred.

**RISK PREMIUM RATES** means those rates established by the Administrator pursuant to individual community studies and investigations which are undertaken to provide flood insurance in accordance with Section 1307 of the National Flood Disaster Protection Act of 1973 and the accepted actuarial principles. "Risk premium rates" include provisions for operating costs and allowances.

**SPECIAL FLOOD HAZARD AREA** see "area of special flood hazard."

**SPECIAL HAZARD AREA** means an area having special flood hazards and shown on an FHBM, FIRM or FBFM as zones (unnumbered or numbered) A and AE.

**START OF CONSTRUCTION** includes substantial-improvements, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvements were within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slabs or footings, the installation of piles, the construction of columns, any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling, the installation of streets and/or walkways, excavation for a basement, footings, piers, foundations, the erection of temporary forms, nor installation on the property of accessory structures, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial-improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

**STATE COORDINATING AGENCY** means that agency of the state government, or other office designated by the governor of the state or by state statute at the request of the Administrator to assist in the implementation of the National Flood Insurance Program (NFIP) in that state.

STRUCTURE means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. "Structure" for insurance purposes, means a walled and roofed building, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, as well as a manufactured home on a permanent foundation. For the latter purpose, the term includes a building while in the course of construction, alteration or repair, but does not include building materials or supplies intended for use in such construction, alteration or repair, unless such materials or supplies are within an enclosed building on the premises.

SUBSTANTIAL-DAMAGE means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. The term includes repetitive loss buildings (see definition).

For the purposes of this definition, "repair" is considered to occur when the first repair or reconstruction of any wall, ceiling, floor, or other structural part of the building commences.

The term does not apply to:

- (a) Any project for improvement of a building required to comply with existing health, sanitary, or safety code specifications which have been identified by the Code Enforcement Official and which are solely necessary to assure safe living conditions, or
- (b) Any alteration of a "historic structure" provided that the alteration will not preclude the structure's continued designation as a "historic structure", or
- (c) Any improvement to a building.

SUBSTANTIAL IMPROVEMENT means any combination of reconstruction, alteration, or improvement to a building, taking place over a ten year period, in which the cumulative percentage of improvement equals or exceeds 50 percent of the current market value of the building. For the purposes of this definition, an improvement occurs when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the building. This term includes structures, which have incurred "repetitive loss" or "substantial damage", regardless of the actual repair work done.

The term does not apply to:

- (a) any project for improvement of a building required to comply with existing health, sanitary, or safety code specifications which have been identified by the Code Enforcement Official and which are solely necessary to assure safe living conditions, or
- (b) Any alteration of a "historic structure" provided that the alteration will not preclude the structure's continued designation as a "historic structure." Or
- (c) Any building that has been damaged from any source or is categorized as repetitive loss.

Substantially improved existing manufactured home parks or subdivisions is where the repair, reconstruction, rehabilitation or improvement of the streets, utilities and pads equals or exceeds 50 percent of the value of the streets, utilities and pads before the repair, reconstruction or improvement commenced.

VARIANCE means a grant of relief by the community from the terms of a floodplain management regulation. Flood insurance requirements remain in place for any varied use or structure and cannot be varied by the community.

VIOLATION means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required by this ordinance is presumed to be in violation until such time as that documentation is provided.

WATER SURFACE ELEVATION means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 (or other datum where specified) of floods of various magnitudes and frequencies in the floodplain.

**Secs. 17.07.009—17.07.999. Reserved.**

## ARTICLE 8. BLASTING REGULATIONS

### Sec. 17.08.001. Definitions.

For the purposes of this article the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words used in the plural include the singular, and words used in the singular include the plural. The word "shall" as used herein is not merely directory but is considered mandatory.

Unless otherwise specified, the following terms are defined:

DIRECTOR means the Director of ~~Public Works~~ Municipal Services or designee.

EXPLOSIVE means any chemical compound, mixture or device, the primary or common purpose of which is to function by explosion.

LICENSING OFFICER means the Director of ~~Public Works~~ Municipal Services or designee.

PARTICLE VELOCITY means a unit of measure in inches per second commonly used in mining and quarrying operations to measure by instrumentation the ground vibration caused by blasting.

PERMIT AREA means the land owned or leased by the permittee upon which blasting is to be done. It includes the boundaries of all land in which the permittee has rights under law to occupy and use.

PERMITTEE is any person, as hereinafter defined, who shall apply for and obtain a permit under the terms of this article and in accordance therewith.

### Sec. 17.08.002. Permits required.

No person shall do or cause to be done any blasting within the City limits, without first obtaining a permit therefore from the Director of ~~Public Works~~ Municipal Services, subject to all the provisions of this article.

### Sec. 17.08.003. Permits—Time limit.

All permits issued pursuant to the requirements of this article shall be issued for a term not to exceed one year. Provided, that if the Director of ~~Public Works~~ Municipal Services shall determine that the purpose for which the permit is to be issued can be fulfilled in a term less than one year, said Director shall specify the duration of the permit which has been determined to be reasonably sufficient to fulfill the purpose for which the permit is issued.

### Sec. 17.08.004. Permits—Renewals.

- A. Any valid permit issued pursuant to this article shall carry with it the right of successive renewal upon expiration. The holders of the permit may apply for renewal and such renewal shall be issued provided the applicant seeking renewal has met the requirements and conditions of this article.
- B. Application for permit renewal shall be made at least 60 days prior to the expiration of the valid permit.

### Sec. 17.08.005. Application requirements.

- A. The permit application shall be submitted in a manner satisfactory to the Director of ~~Public Works~~ Municipal Services and shall contain:
  - 1. The name and address of the permit applicant;
  - 2. A legal description of the property upon which the blasting is to be performed;
  - 3. If the applicant is a corporation, the state of incorporation;
  - 4. A statement of whether the applicant, any subsidiary, affiliate, or persons controlled by or under common control with the applicant, has ever held a blasting permit in any state or political subdivision which in the five-year period prior to the date of submission of the application has been suspended or revoked;
  - 5. A description of the purpose for which the blasting permit is to be used;
  - 6. A statement of the land which the applicant has the legal right to enter and commence blasting, and a statement of those documents upon which the applicant bases its legal right to enter and commence on the area effected;



7. Accurate maps of a scale of not less than one inch to 200 feet clearly showing:
    - a. The land proposed to be effected during the period of the permit including all boundaries of the land to be effected, and
    - b. Location of the closest structures to the permit area in any direction; and
  8. All easements of record, public and private, which cross the permit area.
- B. For underground mining the application shall also include a survey performed by a registered land surveyor, accurately showing the total perimeter of the area proposed to be mined during this permit period and a survey, performed by a registered land surveyor showing the total area actually mined.

**Sec. 17.08.006. Public liability insurance required for blasting.**

- A. Before any permit as required by this article is issued for the use of explosives or blasting agents, every applicant shall procure public liability insurance with the following coverage:
1. For bodily injury to or death of any one person in the amount of \$300,000.00.
  2. For any one accident in the amount of \$300,000.00.
  3. For damage to the property of another person in the amount of not less than \$100,000.00 for any one accident.
  4. An additional \$1,000,000.00 Umbrella Excess Liability if work is to be done in a fully developed area.
- B. The applicant shall file with the Director of ~~Public Works~~ **Municipal Services** a certificate of insurance issued by the insurance carrier concerned as evidence that the public liability insurance requirements have been complied with and with the City named as an additional insured.
- C. A bond ~~or escrow~~ in such form as approved by the City Counselor and in such amount and coverage as determined by the Director of ~~Public Works~~ **Municipal Services** to be adequate in each case to indemnify the City against any damages arising from the permitted blasting will be allowed in lieu of, or to supplement, the liability insurance coverage for certain limited permits.

**Sec. 17.08.007. Use of explosives.**

- A. All blasting shall be conducted between sunrise and sunset.
1. The Director may specify more restrictive time periods based on public requests or other relevant information, according to the need to adequately protect the public from adverse noise.
  2. Blasting may, however, be conducted between sunset and sunrise if—
    - a. A blast that has been prepared during the afternoon must be delayed due to the occurrence of an unavoidable hazardous condition and cannot be delayed until the next day because a potential safety hazard could result that cannot be adequately mitigated;
    - b. In addition to the required warning signals, oral notices are provided to persons within one-half mile of the blasting site unless persons have requested in writing they not be notified; and
    - c. A complete written report of the blasting at night is filed by the person conducting the surface mining activities with the Director not later than three days after the night blasting. The report shall include a description in detail of the reasons for the delay in blasting including why the blast was actually conducted, the warning notices given, and a copy of the blast report required by Section 17.08.008 of this article.
- B. Blasting shall be conducted at times announced in the blasting schedule, except in those unavoidable hazardous situations previously identified in the permit and plan, where operator or public safety require unscheduled detonation. The office of the Director of ~~Public Works~~ **Municipal Services** shall be notified at least 24 hours in advance of surface blasting on projects where a blasting schedule is not possible.
- C. For surface blasting operations other than trenching, warning and all-clear signals of different character that are audible within a range of one-quarter mile from the point of the blast shall be given. Each person within

the permit area and each person who resides or regularly works within one-quarter mile of the permit area shall be notified of the meaning of the signals through appropriate instructions. These instructions shall be periodically delivered or otherwise communicated in a manner which can be reasonably expected to inform such persons of the meaning of the signals. Each person who conducts surface mining activities shall maintain signs in accordance with State regulations found in 10 CSR 40-3.010(6).

For blasting operation for trenching, the permittee shall be required, prior to the commencement of blasting, to notify residences and businesses within 300 feet of the permitted site. Notification to multi-family housing and shopping centers may be made to individual tenants, the property owner, manager or approved operating authority. Notification shall include the following:

1. Name of permittee.
2. Reason for blasting.
3. Hours during which blasting is to occur.
4. Approximate duration of blasting operations.
5. Permittee's business telephone number.
6. Department of ~~Public Works~~ **Municipal Services** telephone number.

A sample notification form may be obtained from the Director of ~~Public Works~~ **Municipal Services**. A copy of the notification shall be furnished to the Director of ~~Public Works~~ **Municipal Services**.

- D. Access to an area possibly subject to flyrock from blasting shall be regulated to protect the public and livestock. Access to the area shall be controlled to prevent the presence of livestock or unauthorized personnel during blasting and until an authorized representative of the person who conducts the surface mining activities has reasonably determined the following:
  1. That no unusual circumstances, such as imminent slides or undetonated charges, exist; and
  2. That access to and travel in or through the area can be safely resumed.
- E. Except where lesser distances are approved in the permit and plan, based upon a pre-blasting survey, seismic investigation, or other appropriate investigation, blasting shall not be conducted within the following:
  1. Three hundred feet of any building used as a dwelling, school, church, hospital, or nursing facility; and
  2. Three hundred feet of facilities including, but not limited to disposal wells, petroleum or gas-storage facilities, municipal waterstorage facilities, fluid-transmission pipelines, gas or oil-collection lines, or water and sewage lines.
- F. Flyrock, including blasted material traveling along the ground, shall not be cast from the blasting vicinity more than half the distance to the nearest dwelling or other occupied structure and in no case beyond the boundary line of property owned or leased by the permittee, or beyond the area of regulated access required under subsection D., above.
- G. Blasting shall be conducted to prevent injury to persons, damage to public or private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of ground or surface waters outside the permit area.
- H. In all blasting operations, except as otherwise authorized in this section, the maximum peak particle velocity shall not exceed the following limits at the location of any dwelling, public building, school, church, or commercial or institutional building.

Type of Structure	Ground Vibrations-Peak Particle Velocity, in./sec.	
	At Low Frequency <sup>1</sup> (<40 Hz)	At High Frequency (>40 Hz)
Modern Homes, Drywall Interiors	0.75	2.0
Older Homes, Plaster on Wood Lath Construction for interior walls	0.50	2.0

All spectral peaks within 6 dB (50 pct.) amplitude for the predominant frequency must be analyzed.

Peak particle velocities shall be recorded in three mutually perpendicular directions. The maximum peak particle velocity shall be the largest of any of the three measurements. The Director may reduce the maximum peak particle velocity allowed, if it is determined that a lower standard is required because of density of population or land use, age or type of structure, geology or hydrology of the area, frequency of blasts, or other factors.

- I. Airblast shall not exceed the maximum limits listed below at the location of any dwelling, public building, school, church, or commercial or institutional building.

Lower Frequency Limit of measuring system, in Hz	Maximum Level, in dB
2 Hz high-pass system	133 peak
5 or 6 Hz high-pass system	129 peak

The Director may require airblast measurement of any or all blasts and may specify the locations at which such measurements are taken. The measuring systems used shall have an upper-end flat frequency response of at least 200 Hz.

- J. If blasting is conducted to prevent adverse impacts on any underground mine and changes in the course, channel, or availability of ground or surface water outside the permit area, then the maximum peak particle velocity limitation of subsection H., above, shall not apply at the following locations:
1. At structures owned by the person conducting the mining activity, and not leased to another party; and
  2. At structures owned by the person conducting the mining activity, and leased to another party, if a written waiver by the lessee is submitted to the Director prior to blasting.

**Sec. 17.08.008. Record of blasting operations.**

A record of each blast, including seismograph reports, shall be submitted to the Director of ~~Public Works~~ **Municipal Services** on the 15th day of each month, for blasts occurring during the previous month for mining operations. Records for surface blasting shall be submitted to the Director of ~~Public Works~~ **Municipal Services** within ten days following the blast. The record shall contain the following data:

1. Name of the permittee conducting the blast;
2. Location date and time of the blast;
3. Testing location;
4. Direction and distance in feet, from the blast to the monitoring device;
5. The number of holes drilled;
6. The maximum weight of explosives in pounds per delay;
7. The total weight of explosives in pounds used in the blast;
8. Peak particle velocity at the testing location in three mutually perpendicular directions; (longitudinal, vertical, and traverse);
9. Name of company and the person taking the seismograph reading;
10. Affidavit of company monitoring the blast, certifying the accuracy and truth of the reading obtained from the seismograph;
11. A schedule of the calibration on the seismograph being used.

**Sec. 17.08.009. Right of entry.**

The City maintains the right of entry to premises where blasting operations are being conducted, both above ground and under ground, during reasonable hours. This right of entry includes the purpose of determining the precise area being blasted as of any one day and whether the permittee was in compliance with this article.

**Sec. 17.08.010. Special permits.**

- A. If the Director of Public Works shall determine that the purpose for which the permit is to be used can be fulfilled in less than one year and the purpose is one for non-mining activities, the Director may issue a permit for such time as is determined to be sufficient for the proposed use. Applicants for such permits must meet the requirements of this article, and the Director of ~~Public Works~~ **Municipal Services** may impose such other conditions upon such special permits as shall be determined reasonable and necessary to protect the health, welfare, safety and property of the citizens of the City.
- B. Any permittee issued a permit under the provisions of this section shall have the option of monitoring any blasts done under authority of said permit by calculating the scaled distance of those blasts. In the absence of instrumentation the minimum scaled distance shall not be less than 100.

**Sec. 17.08.011. Transfer, assignment or sale of rights granted under permit.**

No transfer, assignment, or sale of the rights granted under any permit issued pursuant to this article shall be made without prior approval of the Director of ~~Public Works~~ **Municipal Services**.

**Sec. 17.08.012. Variances.**

- A. Upon application, the Director of ~~Public Works~~ **Municipal Services** may allow an increase in the maximum peak particle velocity, if it is determined that the permittee has taken the necessary precautions to protect property from damage and persons from injury and has otherwise complied with the provisions of this section.
- B. The permittee shall submit a pre-blast design to the Director of ~~Public Works~~ **Municipal Services** at least 30 days prior to conducting any blast with the probability of exceeding the allowable maximum peak particle velocity of this article. Said pre-blast design shall include sketches of the type of blast, direction, drill patterns, delays, type and amount of explosives to be used, critical dimensions and the location and general condition of structures to be protected. Such pre-blast design shall also include:
  - 1. The intended maximum peak particle velocity or minimum scaled distance, where applicable, for such blast, and;
  - 2. The date and time of such proposed blast.
- C. Variance may be granted by the Director of ~~Public Works~~ **Municipal Services** after notice and hearing and after taking into consideration the extent to which the following facts favorable to the applicant have been established by the evidence:
  - 1. The applicant has taken the necessary precautions to protect property from damage and persons from injury;
  - 2. The granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the area to be effected by the proposed blast;
  - 3. The applicant will suffer unusual hardship unless the variance is granted.
- D. The Director of ~~Public Works~~ **Municipal Services** shall fix a time for the hearing on the variance application within 14 days following its receipt and given public notice of the variance application by publication one time in a newspaper of local circulation in Independence not less than five nor more than ten days prior to the date of said hearing. At the hearing the variance applicant may appear in person or by agent or by attorney and any other persons may appear who will be aggrieved or effected by the granting of the variance. The Director of ~~Public Works~~ **Municipal Services** shall make a decision upon the variance application within a reasonable time after the hearing, but in no case may the decision be made later than 30 days after receipt of the application.
- E. The Director of ~~Public Works~~ **Municipal Services** may waive the requirements of this section and grant a variance if a delay in blasting would create an emergency situation that could result in an immediate hardship to the permittee or adversely effect public welfare and safety.

**Sec. 17.08.013. Suspension or revocation of permit.**

- A. The Director of ~~Public Works~~ **Municipal Services** shall have the power to suspend or revoke any permit granted under the terms and conditions of this article for any of the following causes:
1. Any fraud, misrepresentation or false statement contained in the application for permit; or
  2. Any violation of this article.
- B. The Director of ~~Public Works~~ **Municipal Services** shall have the power to issue subpoenas and all necessary processes and to require the production of papers, to administer oaths and to take testimony and to make findings thereon and shall hold a public hearing prior to such revocation or suspension.
- C. Notice of hearing for the suspension or revocation of a license shall be given, in writing, setting forth specific reasons for the suspension or revocation of the permit and the time and place of the hearing. Such notice shall be mailed to the permittee at its last known address, at least ten days prior to the date set for the hearing. In the alternative, such notice of hearing may be delivered to the permittee by personal service.
- D. Upon revocation or suspension no refund of any portion of the license fee shall be made to the permittee and the permittee shall cease all blasting operations.

**Sec. 17.08.014. Right of appeal—Procedure.**

- A. Whenever any person is aggrieved by a decision of the Director of ~~Public Works~~ **Municipal Services** in the interpretation of this article, such person shall have the right to appeal to the Board of Building and Engineering Appeals as constituted in Article 10 of Chapter 4 of the Independence City Code.
- B. Any person aggrieved by the decision of the Director of ~~Public Work~~ **Municipal Services** in regard to the revocation of a license as provided in this article shall have the right of appeal to the City Council. Such appeal shall be taken by filing with the City Clerk for transmittal to the City Council within 14 days after notice of the decision by the Director of ~~Public Works~~ **Municipal Services** has been mailed to such person's last known address a written statement setting forth the grounds for the appeal. A notice of such hearing shall be given in the same manner as provided in Section 17.08.013(C) of this article.

**Sec. 17.08.015. Reserved.**

**Sec. 17.08.016. Penalty.**

Any person who shall violate any provisions of this article shall be deemed guilty of a misdemeanor, and upon conviction thereof, may be fined not less than \$25.00, nor more than \$500.00 for each offense; and each day that such person shall continue violation of any of the provisions of this article shall constitute a separate and distinct offense and may be punishable as such.

**Secs. 17.08.017—17.08.999. Reserved.**

**ARTICLE 9. DETENTION FACILITIES**

**Sec. 17.09.001. Scope.**

This article applies to all required detention facilities constructed as part of a development plan, whether the facility is located upon an easement or private property. A detention facility is any physical structure used to control runoff as required by the ~~Public Works~~ Manual and approved by the Director of ~~Public Works~~ **Municipal Services**.

**Sec. 17.09.002. Design and preserve.**

Any detention facility designed and constructed as a part of a development plan approved by the Director shall remain as designed and not altered in any way. The facility shall remain unless an alternate plan is developed, constructed and approved by the Director.

**Sec. 17.09.003. Maintenance.**

Detention facilities shall be maintained in working order. Obstructions shall be removed which alter or hinder the operation of the facility. All cleaning and mowing, if appropriate, shall be performed by the owner. The City maintains the storm structures accepted by the City and located on a storm sewer easement.

**Sec. 17.09.004. Penalty.**

Any person violating any provision of this article shall, upon conviction thereof, be punished by a fine of not less than \$10.00 nor more than \$500.00 for each and every violation.

**Secs. 17.09.005—17.09.999. Reserved.**

**ARTICLE 10. DUMPS AND LANDFILLS**

**Sec. 17.10.001. Scope.**

This article applies to any disposal of solid waste material within the City of Independence, Missouri. Solid waste is any trash, refuse, garbage, rubbish, rubble, or other waste material.

**Sec. 17.10.002. Permit required.**

No person shall maintain or operate a dump or landfill for the disposal of trash, refuse, garbage, rubbish, rubble, or other waste material, whether combustible or noncombustible, or offal, waste fruits, or vegetables, or animal matter, without securing a permit therefor from the ~~Public Works~~ **Municipal Services** Director and complying with the provisions of this article.

**Sec. 17.10.003. Application for permit—contents.**

Application for a permit hereunder shall be made upon blank forms provided by the Department of ~~Public Works~~ **Municipal Services**, and shall contain:

1. The name and address of the applicant.
2. The name, address, and signature of the owner of the land on which such dumping activities will take place.
3. The name and address of the operator if not the owner or applicant therein.
4. The land area to be so used and the existing zoning classification thereof.
5. A brief statement describing the means and methods by which applicant proposes to secure against the danger of disease, fire, and other menaces to the public health and safety, the suppression of rodents, mosquitoes, and other insects, and any other pertinent arrangements for the operation of said dump.
6. The classification of dump for which permit is requested.
7. A statement from the Community Department Director as to whether or not the applicant has applied for or received a special use permit for a landfill.

Upon receipt of an application as provided herein, the ~~Public Works~~ **Municipal Services** Director will cause a copy of said application to be directed to the Director of Health, who shall make an investigation of the place where and the manner in which the dumping or disposal is to be done, the means and methods which applicant proposes to secure the same against the danger of disease, fire, and other menace to the public health and safety, the suppression of rodents, mosquitoes, and other insects, and all other arrangements for the operation of said dump. The resultant report from the Health Director shall be forwarded to the ~~Public Works~~ **Municipal Services** Director.

If conditions are satisfactory and the requirements of this article and all other ordinances of the City of Independence, Missouri, and the laws of the State of Missouri have been complied with, the ~~Public Works~~ **Municipal Services** Director shall issue the permit applied for by the applicant.

**Sec. 17.10.004. Reserved.**

**Sec. 17.10.005. Revocation of permit.**

In the event the Director of ~~Public Works~~ Municipal Services shall find that the land, premises, or property being used for the purposes of a dump are being used for purposes in violation of this article, or in the event he/she shall determine that the operation of said dump fails to satisfactorily secure against the danger of disease, fire, or other menace to the public health or safety, or in the event the operation of said property violates other ordinances of this City, or is, by the acts or conduct of its operator or any agent, detrimental to the public health, safety, or welfare of the inhabitants of the City, or in the event the permittee is receiving material properly restricted, then said permit, upon notice and hearing before the Director of ~~Public Works~~ Municipal Services, may be revoked for violation of any of the provisions of this article.

**Sec. 17.10.006. Director of ~~Public Works~~ Municipal Services authorized to make and enforce necessary rules and regulations.**

The Director of ~~Public Works~~ Municipal Services may make and enforce such rules as he/she may deem necessary to carry out or supplement the provisions of this article, provided such rules are not inconsistent with the provisions of this article, other ordinances of the City, or the law of the State of Missouri. Said rules and regulations so promulgated by the Director of ~~Public Works~~ Municipal Services shall be reduced to writing and be filed with the City Clerk, and the copy thereof mailed to all permit holders.

**Sec. 17.10.007. Penalty.**

Any person who shall violate or fail to comply with any provision of this article shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than \$50.00, nor more than \$500.00, for each offense; and each day that such person shall violate any of the provisions of the article shall constitute a separate and distinct offense and may be punishable as such. In addition thereto, any nuisance resulting from such violation or failure of compliance with any provision of this article shall be abated in a manner provided by law, ordinance, or City Charter.

**Secs. 17.10.008—17.10.999. Reserved.**

**ARTICLE 11. SANITARY SEWERS**

**Sec. 17.11.001. Scope.**

The provisions of this article shall apply to all public and private sanitary sewers provided by or for the City of Independence used to transport waste for treatment.

**Sec. 17.11.002. Use of public sewers required.**

- A. It shall be unlawful for any person to place, deposit, or permit to be deposited in any unsanitary manner any human or animal excrement, garbage, or objectionable waste.
- B. It shall be unlawful to discharge to any natural outlet within any area under the jurisdiction of said City, any wastewater or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this article.
- C. Except as hereinafter provided, it shall be unlawful to construct or make any substantial repairs to any privy, privy vault, septic tank, cesspool, holding tank, or other facility intended or used for the disposal of wastewater.
- D. The owner(s) of all houses, buildings, or properties used for human occupancy, employment, recreation, or other purposes, situated within the City and abutting on any street, alley, or right-of-way in which there is now located, or may in the future be located, a public sanitary sewer of the City, is hereby required at the owner's(s') expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper public sewer in accordance with the provisions of this article where said public sewers are available within 90 days after date of receiving official notice from the Director of ~~Public Works~~ Municipal Services. "Availability" under this section shall be determined by the Director. To be available, the public sewer system must be located in such a way that connection to it will be economically feasible and practical from an engineering standpoint. The Director of ~~Public Works~~ Municipal Services or a representative will determine "availability" considering all relevant factors including, but not limited to the following: The elevation of the

property, the composition of the subterranean, the effect such connection will have on the surrounding system, and the public health and welfare; provided that said public sewer is located upon said property or adjacent to the property at a publicly accessible location. Property connected to a public sewer is automatically considered served.

**Sec. 17.11.003. Building sewers and connections.**

- A. No unauthorized person shall uncover, make any connection with or opening into, use, alter, or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the Director of ~~Public Works~~ **Municipal Services**.
- B. There shall be two classes of building sewer connection permits: (a) for residential and commercial service discharging less than or equal to 25,000 gallons per day domestic waste, and (b) for service to establishments producing nondomestic wastes, or establishments discharging more than 25,000 gallons per day domestic waste. In either case, the owner(s), or an agent, shall make application on a special form furnished by the City. The permit application shall be supplemented by any plans, specifications, or other information considered pertinent in the judgment of the Director of ~~Public Works~~ **Municipal Services**. The permits shall be issued in numerical order and shall be issued independently of any other permits issued by the Department of ~~Public Works~~ **Municipal Services**. The application shall be retained by the Department as a permanent record of each connection to the POTW.
- C. Except as otherwise provided in Section 7.06.004, all cost and expense incident to the installation, maintenance, repair and replacement of the sewer from the building to the sewer main and connection thereof shall be borne by the owner(s). The owner(s) shall indemnify the City from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.
- D. A separate and independent building sewer shall be provided for every building.
- E. Old building sewers may be used in connection with new buildings only when they are found, on examination and testing by the Building Official, to meet all requirements of this article.
- F. The size, slope, alignment, materials of construction of a building sewer, and the methods to be used in excavating, placing of the pipe, jointing, testing, and backfilling the trench, shall all conform to the regulations of the adopted Plumbing Code or other applicable rules and regulations of the City.
- G. Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary wastewater carried by such building drain shall be lifted by an approved means and discharged to the building sewer.
- H. No person(s) shall make connection of roof downspouts, interior and exterior foundation drains, areaway drains, sump pumps, or other sources of surface runoff or groundwater to a building sewer or building drain, which in turn, is connected directly or indirectly to a public sanitary sewer.
- I. The connection of the building sewer into the public sewer shall conform to the requirements of the building and plumbing code or other applicable rules and regulations of the City. All such connections shall be made gas-tight and water-tight and verified by proper testing. Any deviation from the prescribed procedures and materials must be approved by the Director of ~~Public Works~~ **Municipal Services** before installation.
- J. The applicant for the building sewer permit shall notify the Building Official when the building sewer is ready for inspection and connection to the public sewer. The connection and testing shall be made under the supervision of the Building Official or an authorized representative.
- K. All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways, and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the City.

**Sec. 17.11.004. Private wastewater disposal.**

- A. Where a public sanitary sewer is not available as defined under the provisions of Section 17.11.002.D., the building sewer shall be connected to a private wastewater disposal system complying with the provisions of this section.



- B. Before commencement of construction of a private wastewater disposal system, the owner shall first obtain a written permit signed by the Director of ~~Public Works~~ **Municipal Services** or a duly authorized representative. The application for such permit shall be made on a form furnished by the City, which the applicant shall supplement by any plans, specifications, and other information as are deemed necessary by the City Director of ~~Public Works~~ **Municipal Services**, including but not limited to: Survey or platted location of all system components and survey or plat of the dedicated replacement site. The location of any absorption field must have soils of adequate characteristics to support the proposed system. All on-site treatment facilities must be set back a minimum of 50 feet from all property lines. A permit and inspection fee shall be paid to the City at the time the application is filed.
- C. A permit for a private wastewater disposal system shall not become effective until the installation is completed to the satisfaction of the Director of ~~Public Works~~ **Municipal Services**. The Director shall be allowed to inspect the work at any stage of construction and, in any event, the applicant for the permit shall notify the Director when the work is ready for final inspection, to insure that all defects or unsatisfactory construction features are corrected, before any underground portions are covered.
- D. The type, capacities, location, and layout of a private wastewater disposal system shall comply with rules of the Missouri Department of Health and Missouri Department of Natural Resources (Division of Environmental Quality). No permit shall be issued for any private disposal system employing subsurface soil absorption facilities where the area of the lot, tract or parcel is less than three acres, except where a lot, tract or parcel of record existed prior to April 1, 1993, and is between 15,000 square feet and one acre in size, or where a lot, tract or parcel of record existed prior to January 1, 1997, and is between one and three acres in size. The results of a soil percolation test as performed and reported by a professional engineer registered in the State of Missouri shall be submitted to the Director of ~~Public Works~~ **Municipal Services** before a permit will be issued. No septic tank or cesspool shall be allowed for any food preparation concern nor any applicant that discharges more than 350 gallons per day. All on-site waste water treatment systems shall utilize a subsurface septic tank and aerator in conjunction with a subsurface lateral field absorption system unless approved by the Director of ~~Public Works~~ **Municipal Services**.
- E. At such time as a public sanitary sewer comes within 50 feet of a subdivision, minor division, or survey development served by a private wastewater disposal system, as provided in Section 17.11.002.D., or when a private disposal system breaks or is found by the Director of ~~Public Works~~ **Municipal Services** to be operating ineffectively, a direct connection shall be made to the public sanitary sewer within 90 days after official notice in compliance with this article.
- F. Notice shall be sent by certified mail to the owner or occupant at the effected address or the notice can be physically posted upon the property in a conspicuous location.
- G. No private wastewater system shall exceed the design capacity. Plans for any modifications or expansion of existing systems shall be approved by the Director of ~~Public Works~~ **Municipal Services** before any alteration is begun.
- H. The owner shall operate and maintain the private wastewater disposal facilities in a sanitary manner at all times, at no expense to the City.
- I. No statement contained in this article shall be construed to interfere with any additional requirements that may be imposed by the City Directors of Public Health or ~~Public Works, or Water Pollution Control~~ **Municipal Services**.
- J. The owner of a private sanitary sewer system connected to the publicly owned treatment works (POTW) shall certify and report, in writing, annually to the ~~Water Pollution Control (WPC)~~ **Municipal Services** Department, that the private sanitary sewer system is being maintained. The City shall have the right to inspect and confirm the maintenance of the private system. Any private sanitary sewer system that is not in reasonably good condition shall require upgrading to a proper condition at no expense to the City. The owner shall provide a compliance schedule for system upgrade to ~~WPC~~ **Municipal Services** for approval.

The owner of a private sanitary sewer system that is not connected to the POTW, but intends to connect to the POTW, shall first provide an engineering inspection report from a registered Missouri Professional Engineer describing the condition of the private sanitary sewer system. If the owner of the private system so chooses, the ~~WPC~~ **Municipal Services** Department may make the inspection and file the report for a full cost recovery charge, to

be quoted in writing by the ~~WPC~~ Director at the time of request. In any case, the owner of the private sanitary sewer system shall upgrade any deficiencies noted in said report or provide a compliance schedule to ~~WPC~~ Municipal Services for the system upgrade prior to any connection to the POTW. ~~WPC~~ Municipal Services must approve of the compliance schedule, in writing, before any connection to the POTW is made.

**Secs. 17.11.005—17.11.999. Reserved.**

## **ARTICLE 12. DEFECTIVE TREES**

### **Sec. 17.12.001. Scope.**

- A. The provisions of this article apply to any tree located on private property that is dead or defective by reason of decay, disease, infestation by insect or damage of any kind that constitutes a hazard to the safety of persons or of property, private or public and may be removed and disposed of by the City as provided in Section 11.16 of the Charter of the City of Independence.
- B. The Director of ~~Public Works~~ Municipal Services, or an authorized representative shall have the power to enter upon any private property at all reasonable times to inspect and investigate any tree that may be in a hazardous condition.

### **Sec. 17.12.002. Defective trees—Abatement.**

- A. *Notification.* The owner or owners of any private property upon which a hazardous tree or trees exists shall be served written notice by the Director of ~~Public Works~~ Municipal Services that such a condition exists. The notice shall be by registered mail, certified mail or a similar special mail or by personal service of the Director of ~~Public Works~~ Municipal Services. If the owner or owners cannot be located by mail, the notice shall be published once each week for two consecutive weeks in a newspaper of general circulation within the City.
- B. *Notice Contents.* The notice shall contain the legal description and street address of the property, designate the hazardous tree or trees, notify the owner or owners of the property where such hazardous tree or trees exist and establish the time frame for removal of the hazardous tree or trees.
- C. *Notice Noncompliance.* If the owner or owners of the hazardous tree or trees do not comply with the written notice, the Director of ~~Public Works~~ Municipal Services shall have the work done by contract with private persons or by regular employees of the City as provided in Chapter 11 of the Charter of the City of Independence. The Director of ~~Public Works~~ Municipal Services shall keep an accurate record of the costs of removing the tree or trees and use such records in computing the costs of such work so that a special tax bill may be levied against the property as provided in Section 11.16 of the Charter.
- D. *Tax Bill.* As part of the cost of removal of the tree or trees, each such tax bill shall include a charge of \$10.00 for inspecting the premises, and a further charge of \$10.00 for computing, making, certifying, recording and issuing the special tax bill.
- E. *Interest.* Each special tax bill shall bear interest at the rate and in accordance with the provisions of Chapter 20, Article 12, of the City Code.

### **Sec. 17.12.003. Penalty.**

Any person who shall violate, fail, neglect or refuse to comply with the provisions, regulations or requirements of this article shall upon conviction thereof, be punished by a fine of not less than \$10.00 nor more than \$500.00.

**Secs. 17.12.004—17.12.999. Reserved.**

## **ARTICLE 13. CLEARING AND GRUBBING**

### **Sec. 17.13.001. Application.**

Application for a clearing and grubbing permit shall be made to the Director of ~~Public Works~~ Municipal Services, on forms furnished, and may include, but not limited to, plans in duplicate showing the nature, location,

dimensions, and elevations of the area to be cleared and grubbed. This permit is required on properties where building demolition is proposed. Specifically, the following information is required.

1. Contour lines in relation to mean sea level.
2. An approved Tree Preservation and an Approved Sensitive Area Preservation Plan shall be provided in accordance with Chapter 14.
3. An erosion control plan in accordance with applicable provisions of Chapter 20, Article 16.

**Sec. 17.13.002 Penalty.**

In addition to any other remedies provided to the City, any person, form, or corporation clearing or grubbing in violation of any provision of this article shall, upon conviction thereof, be subject to a fine of not less than \$100.00 and not more than \$500.00. Each such violation shall constitute a separate and distinct offense and shall be punishable as such.

**Secs. 17.13.003—17.13.999. Reserved.**

SECTION 2. That all other parts and provisions of the City Code shall be in full force and effect unless previously or subsequently amended or repealed.

SECTION 3. That correction of any scriveners' errors identified within these articles are hereby authorized by this ordinance.

PASSED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2023, BY THE CITY COUNCIL OF THE CITY OF INDEPENDENCE, MISSOURI.

\_\_\_\_\_  
Presiding Officer of the City Council  
of the City of Independence, Missouri

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED - FORM AND LEGALITY:

\_\_\_\_\_  
City Counselor

REVIEWED BY:

\_\_\_\_\_  
City Manager

**NOTE: Words struck through are being removed by this ordinance and words underscored and bolded are being added by this ordinance.**