

AN ORDINANCE ADDING CHAPTER 545, RIGHT-OF-WAY USAGE TO THE MUNICIPAL CODE OF THE CITY OF MARSHFIELD.

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF MARSHFIELD, MISSOURI, AS FOLLOWS:

Section 1: That Chapter 545 Right-of-Way Usage is a new chapter being added to the Marshfield Municipal Code, including Sections 545.010 through 545.200 and to read as follows:

Chapter 545. Right-of-Way Usage

Section 545.010. Policy.

- A. It shall be the policy of the City to authorize use of the rights-of-way in a manner that minimizes interference to public use and minimizes the burden on the rights-of-way physically and aesthetically to the full extent permitted by law. Any use of the rights-of-way by any person shall be subject to the terms and conditions hereof, in addition to all applicable Federal, State or local requirements, and nothing herein shall be enforced or interpreted to contravene any superseding law, including but not limited to Section 67.1830 RSMo., et seq., to the extent applicable to any given circumstance.
- B. The right granted to a person or entity to use the rights-of-way is limited to the use that the person has filed with the City and approved in accordance with this Chapter. These rights shall grant non-exclusive use only to that person except where otherwise provided herein or when expressly authorized by the City.

Section 545.020. Definitions.

The following definitions shall apply to this Section, except that where the definitions set forth in § 67.1830 RSMo., as may be amended, are required by law to apply to specific uses of the rights-of-way, such definitions shall apply to such circumstances.

ABANDONED FACILITIES

Those facilities owned by a ROW-user that are not in use or cannot be utilized by the owner in the future.

APPLICANT

Any person or entity required to apply for a rights-of-way permit.

CITY

The City of Marshfield, Missouri, a municipal corporation, and any duly authorized representative.

CITY ADMINISTRATOR

The City Administrator, Marshfield, Missouri, or his or her authorized representative.

CITY SPECIFICATIONS

The City of Marshfield Technical specifications and Design Criteria for public improvement Projects as may be amended from time to time by the authority of the City Administrator establishing such specifications and procedures consistent with the requirements and purposes of this Chapter.

CONSTRUCT

Includes construct, install, erect, build, affix, or otherwise place any fixed structure or object, in, on, under, through or above the rights-of-way.

EMBEDDED

To surround tightly or incorporate.

EMERGENCY

Any incident that requires immediate intrusion and work within the rights-of-way to restore service to a user.

EXCAVATE

Any removal of the surface, or subsurface earth or boring or tunneling activity within the public rights-of-way.

FACILITY

All/any lines, pipes, irrigation systems, wires, cables, conduit facilities, poles, towers, vaults, pedestals, boxes, or other equipment owned or controlled by an entity other than the City.

FACILITY BASED SERVICE PROVIDER

A service provider owning or possessing facilities in the rights-of-way.

FCC

The Federal Communications Commission.

GOVERNING BODY

The Board of Aldermen of the City of Marshfield, Missouri.

GOVERNMENTAL ENTITY

Any subdivision of the governments within the United States of America.

PAVEMENT

The improved surface of the public way with concrete, asphalt, aggregate or other treated materials.

PERSON

An individual, person, or body natural or corporate.

PSC

The Missouri Public Service Commission.

PUBLIC EASEMENT

Any easement for utilities, access, or other use dedicated to the City or in the name of the City irrespective of whether the easement is held in trust by the City for private and public users and regardless of whether private utilities or others in addition to or other than the City are actually using the easements.

PUBLIC IMPROVEMENT

Any public project undertaken by the City for the public good.

PUBLIC LANDS

Any real property owned by the City not used as rights-of-way or considered to be rights-of-way.

REPAIR

The temporary work necessary to make the rights-of-way useable for the public.

RESELLER SERVICE PROVIDER

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

RESTORATION

Returning the right-of-way surface to its original condition, or better.

RIGHTS-OF-WAY or ROW

The area on, below or above a public roadway, highway, street, or alleyway in which the City has an ownership interest, and including such adjacent area of such public ways within such ownership interest as made available by the City for rights-of-way use herein, but not including:

1. Easements obtained by utilities or private easements in platted subdivisions or tracts;
2. Railroad rights-of-way and ground utilized or acquired for railroad facilities; or

3. Poles, pipes, cables, conduits, wires, optical cables, or other means of transmission, collection or exchange of communications, information, substances, data, or electronic or electrical current or impulses utilized by a utility owned or operated by a Governmental Entity pursuant to Chapter 91, RSMo., or pursuant to a charter form of government.

RIGHTS-OF-WAY PERMIT

The authorization to make excavations or perform work for the construction, installation, repair, or maintenance of any type of facility within the rights-of-way.

RIGHTS-OF-WAY USER or ROW-USER

Such persons and entities maintaining, constructing, or installing facilities in the public rights-of-way of the City unless otherwise expressly exempted by law. The term shall not include the City; provided that the City shall nevertheless comply with all such requirements applicable to ROW users to the extent such compliance is otherwise required by State or Federal law.

SERVICE

That function provided to property adjoining the public rights-of-way from a service provider.

WORK

Construction, alteration, maintenance, installation, storage, or location of facilities installed below, on or above ground in the public rights-of-way, other than excavation, that also:

1. Causes or threatens to cause any obstruction or interference to any vehicular or pedestrian traffic or traffic lane in the rights-of-way,
2. Involves temporary or permanent storage of materials or equipment on rights-of-way,
3. Causes or may cause damage to any public improvement within the rights-of-way, or
4. Removal, replacement or alteration to any safety feature or requirement within the rights-of-way, including but not limited to removal of manhole covers, altering lighting, traffic signage or signals, placement, or removal of traffic barricades, etc. Work shall not include routine or other maintenance on poles, boxes, or other facilities that does not result in one or more of the circumstances described in Subsections (1) through (4) herein.

Section 545.030. Administration.

The City Administrator is the principal City official responsible for the administration of rights-of-way permits for work and excavations made in the rights-of-way. The City Administrator may delegate any or all the duties hereunder.

Section 545.040. Franchise or Rights-of-Way Agreement Required.

- A. *Agreement Or Franchise Required.* Except when otherwise authorized by applicable law, no ROW user may construct, maintain, own, control, or use facilities in the rights-of-way

without a franchise or ROW agreement with the City as provided herein. All such franchises and agreements shall be approved by ordinance of the Governing Body on a non-discriminatory basis provided that the applicant 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. Reseller service providers shall not be required to obtain a franchise or agreement but shall be required to register with the City prior to providing service on forms provided by the City.

1. *Franchise.* A franchise agreement shall be required from the City in conformance with all applicable franchise procedures for any ROW-user seeking to use the rights-of-way for purposes of providing or distribution of electricity, gas, water, lighting, telephone, telecommunication, or sewer public utility service in the City, except where otherwise provided by law. Such franchise may be granted only after satisfaction of all applicable procedural or substantive requirements established by charter or other law.
 2. *ROW agreement.* A ROW agreement with the City shall be required for all ROW-users not set forth in Subsection (1).
 3. *Incidental uses.* Incidental uses of the public rights-of-way may be permitted without a franchise or ROW agreement pursuant to a rights-of-way permit issued by the City Administrator. The City Administrator may establish such application, requirements, and conditions applicable to such uses consistent with the purposes of this Chapter or as otherwise established by law.
- B. *Franchises And Agreements Non-Exclusive.* The authority granted by the City in any agreement or franchise shall be for non-exclusive use of the rights-of-way. The City specifically reserves the right to grant, at any time, such additional agreements, or other rights to use the rights-of-way for any purpose and to any other person, including itself, as it deems appropriate, subject to all applicable law. The granting of an agreement or franchise shall not be deemed to create any property interest of any kind in favor of the ROW-user.
- C. *Lease Required For Public Lands.* Unless otherwise provided, use or installation of any facilities in, on or over public lands of the City not constituting rights-of-way 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 and conditions as the City may require.
- D. *Transferability.* Except as provided in this Chapter or as otherwise required by law, no franchise, agreement, or permit may be transferred without the written application to, and consent of, the City based on the requirements and policies of this Chapter. The City shall not unreasonably withhold its consent to transfer as provided herein but any costs incurred shall be paid by the applicant.
- E. *Application For Franchise or Agreement Required.*
1. *Application.* An application for franchise or ROW agreement shall be presented to the City Administrator, in writing, and shall include all such information as is required by this Section. The ROW-user 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. *Application form.* A ROW-user shall submit a completed application for franchise or

ROW agreement on such form provided by the City, which shall include information necessary to determine compliance with this Chapter.

3. *Approval process.* After submission by the ROW-user of a duly executed and completed application and executed franchise or ROW agreement as may be provided by the City Administrator, or as modified by the City Administrator, in review of the specific circumstances of the application, all in conformity with the requirements of this Chapter and all applicable law, the City Administrator shall submit such franchise or agreement to the Board of Aldermen for approval. Upon determining compliance with this Chapter, the Board of Aldermen shall authorize execution of the franchise or 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 public rights-of-way; provided that nothing herein shall preclude the rejection or 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.

Section 545.050. Permit Required.

- A. No person shall make an excavation or perform work within the rights-of-way without first obtaining a rights-of-way permit from the City Administrator, provided, that in case of emergency which requires immediate attention to remedy defects, in order to prevent loss or damage to persons or property, it shall be sufficient that the person making such excavation or performing work in streets, alleys or sidewalks obtain a permit as soon as possible and may proceed without a permit when such permit cannot be obtained before starting such excavation or work. The person securing a permit to make an excavation or perform work in any street, alley or sidewalk is hereby deemed to be the person, or his or her legal representative, making such excavation or performing such work. All rights-of-way permits shall expire after sixty (60) days from the date of issuance, unless extended by the City Administrator.
- B. All persons shall be subject to all rules, regulations, policies, resolutions, and ordinances now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power and are subject to all applicable laws, order, rules, and regulations adopted by governmental entities now or hereafter having jurisdiction. In addition, the persons shall be subject to all technical specifications, design criteria, policies, resolutions, and ordinances now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power relating to permits and fees, sidewalk and pavement cuts, utility location, construction coordination, surface restoration, and other requirements on the use of the rights-of-way. All persons obtaining a permit shall provide the City Administrator certificates of insurance showing proof of liability coverage for personal injury and property damage, as required herein.
- C. Any person found to be working without providing for required safety and traffic control will be directed to stop work until the appropriate measures are implemented in accordance with the current edition of the Manual on Uniform Traffic Control Devices.

Section 545.060. Permit Conditions.

- A. All excavations and work shall comply with each and every requirement set forth in the City specifications.
- B. The City Administrator may impose reasonable conditions upon the issuance of a rights-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 rights-of-way, to protect the property and safety of other users of the rights-of-way, and to minimize the disruption and inconvenience to the traveling public. Each rights-of-way permit shall be deemed to incorporate the provisions of this Chapter as permit conditions.
- C. When a rights-of-way permit is requested for purposes of installing additional facilities and the performance and maintenance bonds for additional facilities is determined to be insufficient, the posting of an additional or larger performance or maintenance bond for the additional facilities may be required by the City Administrator, except as otherwise provided in Section **545.140** hereof.
- D. A ROW-user shall perform all excavations 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 excavations or work in conformance with all applicable codes and established rules and regulations and shall be responsible for all excavations or work done in the rights-of-way pursuant to its rights-of-way permit, regardless of by whom the excavation or work is done. A ROW-user shall be responsible for all reasonable costs borne by the City that are directly associated with ROW-user's permit or use of the rights-of-way thereunder.
- E. Except in cases of an emergency or with approval of the City Administrator, no rights-of-way excavation or work may be done in violation of a stop work order issued by the City Administrator if in his or her determination conditions are unreasonable for such excavation or work based on standard engineering and construction practices.
- F. A ROW-user shall not disrupt rights-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 traffic control plan.
- G. 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 rights-of-way permit and applicable law and shall be responsible for promptly correcting acts or omissions by said person.
- H. The City Administrator may establish in the rights-of-way permit limitations on the amount of excavation or work which may occur at one (1) time and the amount of rights-of-way which may be obstructed during construction.
- I. 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 excavations or work to that necessary for efficient operation.
- J. 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 rights-of-way permit or any approved extension. Any excavations left open overnight on any thoroughfare or collector-type street shall be securely covered. Unless otherwise approved by the City Administrator, in writing, all excavations shall be filled in or covered at the end of each working day. The ROW-user assumes the sole responsibility for maintaining proper barricades, plates, safety fencing and/or lights as required from the time of opening of the excavation until the excavation is surfaced and opened for travel.

- K. The ROW-user shall perform excavation or work on the rights-of-way at such times that will allow the least interference with the normal flow of traffic and the peace and quiet of the neighborhood and shall not work between the hours of 10:00 P.M. and 7:00 AM.
- L. Whenever there is an excavation or work by the ROW-user, the ROW-user shall be responsible for providing adequate traffic control and signage to the surrounding area as determined by the City Administrator. In the event that 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 to this Chapter.
- M. The City Administrator may limit the number of conduits or other facilities 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 rights-of-way to deter competition or deprive the public or others of the reasonable use of the rights-of-way.
- N. All underground mains, their service lines with ancillary appurtenances thereto shall, wherever practicable, be placed between the curb or pavement edge and sidewalk line in the section of the street known as the parkway. Where the pavement and sidewalk occupy the entire street, the underground utilities shall be located under the sidewalk.
- O. The ROW-user shall notify the office of the City Administrator upon completion of the excavation or work authorized by the rights-of-way permit.
- P. Every person who obtains rights-of-way permit and makes an excavation within the rights-of-way shall guarantee for a period of one (1) year the restoration of the rights-of-way in the area where such person conducted an excavation and performed the restoration. Such person shall guarantee the restoration of the rights-of-way against sagging, buckling, deterioration, or other premature failures of the restoration.
- Q. The City Administrator, upon the review and approval of a plan and details for trimming trees in the rights-of-way, may grant permission by permit to any person to trim trees upon and overhanging the rights-of-way so as to prevent the branches of such trees from coming in contact with facilities of a ROW-user. In the event the person severely disturbs or damages any tree in the right-of-way to the detriment of the health and safety of the tree, the person will be required to remove and replace a tree of like size at the person's cost. The location, size, and species of any replacement tree shall be as approved by the City Administrator, and unless the City Administrator approves an equivalent monetary payment in lieu of replanting. In reviewing any permit application, the City Administrator may require the Applicant to directionally bore around or otherwise avoid disturbance to any tree, existing facility, road, drive, or other protected area in the rights-of-way.
- R. Upon the approved request of any party having satisfied City procedure and ordinances, a ROW user shall remove, raise, or lower its facilities temporarily to permit the moving of houses or other structures. Except when required for a City project, the expense of such

temporary removal, raising or lowering shall be paid by the party requesting the same, and the ROW-user may require such payment in advance. The ROW-user must be given not less than fifteen (15) days written notice from the party detailing the time and location of the moving operations, and not less than twenty four (24) hours advance notice from the party advising of the actual operation.

Section 545.070. Public Safety: Barricades and Lights Required on Excavations.

- A. All excavations and work shall be barricaded at the ROW-user's expense in such a manner as to protect both pedestrians and vehicular traffic. Such excavations, work and barricades shall be lit at night with danger signals in such a manner that all traffic may be warned of the existence and *location* of such excavations, work, and barricades. All traffic control devices shall be in compliance with the City technical specifications and the Manual of Traffic Control Devices (MUTCD).
- A. All signs shall respond to high level warning and low-level guidance devices around the excavated area. All surplus excavation or work materials, tools or supplies at the site of the excavation or work shall be barricaded and lighted at night in the manner described in this Section. No open excavation may be left in the pavement area without placing street plates over the opening, unless approved by the City Administrator.

Section 545.080. Inspection and Acceptance of Excavations After Backfilling and Settlement.

- A. When an excavation has been made within the limits of any rights-of-way and after the same has been properly backfilled the person making the excavation shall notify the City Administrator that the same is ready for final repair. The City Administrator or his or her duly authorized agent shall immediately inspect the same, and if he or she finds that such excavation has been properly backfilled, the person shall complete the restoration of the surface of such rights-of-way, all in accordance with the City specifications for street restoration.
- B. On the parkways and the shoulder of unpaved streets, the person making the excavation shall be responsible for the same for a period of one (1) year. The judgment of the City Administrator or his authorized agent as to when an excavation has been properly backfilled to permit final repair shall be conclusive.

Section 545.090. Final Repair of Excavations - Specifications.

After inspection and acceptance of excavations by the City Administrator the person holding the rights of-way permit shall be responsible for restoration of excavated surfaces. Immediately after any excavation or work is completed and prior to expiration of the permit, the ROW-user shall restore the rights-of-way in a manner complying with applicable standards and specifications set forth in the City specifications.

Section 545.100. Permit Displayed.

Rights-of-way permits issued shall be made available by the ROW-user at all times at the indicated work site and shall be available for inspection by the City Administrator, other City employees and the public.

Section 545.110. Permit Denial.

- A. The City Administrator may deny an application for rights-of-way permit if:
1. The ROW-user, or any person acting on behalf of the ROW-user, fails to provide all the necessary information requested by the City for managing the public rights-of-way.
 2. The ROW-user, or any person acting on the behalf of the ROW-user, including contractors or subcontractors, has a history of non-compliance or permitting non-compliance within the City. For purposes of this Section, "history of non-compliance or permitting non-compliance within the City" shall include the ROW-user, or any persons acting on the behalf of the ROW-user, including contractors or subcontractors, who has failed to return the public rights-of-way to its previous condition under a previous rights-of-way permit.
 3. The City has provided the ROW-user with a reasonable, competitively neutral, and non-discriminatory justification for requiring an alternative method for performing the excavation or work identified in the rights-of-way permit application or a reasonable alternative route that will not result in additional installation expense of more than ten percent {10%} to the ROW-user or a declination of service quality.
 4. 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 non-discriminatory basis. In determining whether denial of a rights-of-way permit application is necessary to protect the public health and safety, the City Administrator may consider one {1} or more of the following factors:
 - a. The extent to which the rights-of-way space where the rights-of-way permit is sought is available, including the consideration of competing demands for the particular space in the rights-of-way, or other general conditions of the rights-of-way.
 - b. The applicability of any ordinance, Code provision, or other regulations that affect the location of facilities in the rights-of-way.
 - c. The degree and nature of disruption to surrounding communities and businesses that will result from the use of that part of the rights-of-way, including whether the issuance of a rights-of-way permit for the particular dates and/or times requested would cause a conflict or interfere with an exhibition, celebration, festival, or any other event.
 5. The area is environmentally sensitive as defined by State Statute or Federal law or is a historic district defined by local ordinance.

6. The failure to comply with applicable City ordinances or any other violation, unsafe conditions, or damage or threatened harm to the rights-of-way or public that would constitute a lawful basis for revocation of a permit.

Section 545.130. (Reserved)

Section 545.140. (Reserved)

Section 545.150. Map and Location.

Where an application is made for rights-of-way permit for a ROW-user to install or repair its facilities, the applicant shall submit a map or plat of where the work is to take place. Such plat or map shall be specific as to location and depth of the work, as to street address or other location. For excavations or work involving a street or curb, a traffic control plan shall be required and approved by the City Administrator before beginning work.

Section 545.160. Liability Insurance, Performance and Maintenance Bond Requirement.

A. Except as provided in this Section, each ROW-user shall provide, at its sole expense, and maintain during the term of an agreement or franchise, commercial general liability insurance with a reputable, qualified, and financially sound company licensed to do business in the State of Missouri, and unless otherwise approved by the City, with a rating by Best of not less than "A," that shall protect the ROW-user, the City, and the City's officials, officers, and employees from claims which may arise from operations under an agreement or franchise, whether such operations are by the ROW-user, its officers, directors, employees and agents, or any subcontractors of the ROW user. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from all ROW-user operations, products, services or use of vehicles, or construction equipment. The amount of insurance for single limit coverage applying to bodily and personal injury and property damage shall be at least two million five hundred thousand dollars (\$2,500,000.00), but in no event less than the individual and combined sovereign immunity limits established by Section 537.610, RSMo., for political subdivisions; provided that nothing herein shall be deemed to waive the City's sovereign immunity. An endorsement shall be provided which states that the City is listed as an additional insured and stating that the policy shall not be cancelled or materially modified so as to be out of compliance with the requirements of this Section, or not renewed without thirty (30) days' advance written notice of such event being given to the City Administrator. If the person is self-insured, it shall provide the City proof of compliance regarding its ability to self-insure and proof of its ability to provide coverage in the above amounts. The insurance requirements in this Section or otherwise shall not apply to a ROW-user to the extent and for such period during an agreement or franchise as ROW-user is exempted from such requirements pursuant to Section 67.1830(6)(a), RSMo., and has on file with the City Clerk an affidavit certifying that ROW-user has twenty-five million dollars (\$25,000,000.00) in net assets and is otherwise therefore so exempted unless otherwise provided by agreement or franchise. The City reserves the

right to waive any and all requirements under this Section when deemed to be in the public interest.

- B. Except as otherwise may be required by law for ROW-users who have on file with the City Clerk an affidavit certifying that the ROW-user has twenty-five million dollars (\$25,000,000.00) in net assets and is otherwise therefore exempted, a person shall at all times during the term of a rights-of-way permit, and for three (3) years thereafter, maintain a performance and maintenance bond in a form approved by the City Attorney. The amount of the bond will be five thousand dollars (\$5,000.00) or the value of the restoration as determined by the City Administrator, whichever is greater, for a term consistent with the term of the permit plus three (3) additional years, conditioned upon the person's faithful performance of the provisions, terms and conditions conferred by this Chapter. Unless otherwise established by the permit, an annual bond in the amount of five thousand dollars (\$5,000.00) automatically renewed yearly during this period shall satisfy the requirement of this Section. In the event the City shall exercise its right to revoke the permit as granted herein, then the City shall be entitled to recover under the terms of said bond the full amount of any loss occasioned. A copy of the liability insurance certificate and performance and maintenance bond must be on file with the City Clerk.

Section 545.170. Facility Relocation.

- A. A ROW-user shall promptly remove, relocate, or adjust any facilities located in the rights-of-way or in public easements as directed by the City for public improvement or as necessary to eliminate 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. Where the ROW-user facilities are located in whole or in part in private easements, the ROW-user shall promptly relocate the facilities if the City has agreed in writing to compensate the ROW-user, through the condemnation, purchase process, or other reasonable means for the cost of relocation of the ROW-user's facilities.
- B. The City shall provide the ROW-user with written notice of required relocations or adjustments, the anticipated bid letting date if any, of the public improvements and notice of the deadline for completion of the relocations or adjustments. The ROW-user shall respond within ten (10) days with any conflicts and a proposed construction schedule for relocation to be completed in not more than sixty (60) days from the date of notice to ROW-user unless such other schedule is requested and approved by the City Administrator. If facilities cannot be fully relocated within the rights-of-way, the ROW-user shall be responsible at its own cost to obtain alternative locations to timely relocate its facilities.
- C. If any facilities are not relocated in accordance with this Section, the City or its contractors may relocate the facilities after notice to the ROW-user. The ROW-user and its surety shall be liable to the City for any and all costs incurred by the City. In the event the ROW-user is required to move its facilities in accordance with this Section, any ordinary rights-of-way permit fee shall be waived. Failure to comply with the relocation schedule set by the City Administrator shall also subject the ROW-user to penalties as provided for violation of this Chapter.

Section 545.180. Rights-of-Way Vacation.

The City retains the right to vacate any rights-of-way within the City. The City may condition vacation of its rights-of-way on granting and recording of an acceptable easement authorizing the City to use the vacated area, or a portion thereof, for specific purposes as may be deemed appropriate in the public interest. The City may also condition such vacation on payment of any relocation costs that may result from such vacation. In the event that the vacation of rights-of-way requires relocation of facilities of a ROW-user, such user shall bear all costs of relocation or removal of its facilities unless otherwise provided by the party initiating the vacation. In no event shall the City be obligated to pay for relocation costs due to a vacation of right-of-way.

Section 545.190. (Reserved)

Section 545.200. Revocation of Permits.

- A. The City may, after reasonable notice and an opportunity to cure, revoke a rights-of-way permit granted to a ROW-user, without a fee refund, if one (1) or more of the following occurs:
1. A material violation of a provision of this Chapter or a rights-of-way permit, including the violation of any provision of this Chapter or of any additional provisions of a specific permit;
 2. An evasion or attempt to evade any material provision of the rights-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens;
 3. A material misrepresentation of fact in the rights-of-way permit application;
 4. A failure to complete excavation or work by the date specified in the rights-of-way permit, unless a rights-of-way permit extension is obtained or unless the failure to complete the 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, excavation or work that does not conform to applicable 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. If a rights-of-way permit 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.

Section 545.210. Appeals.

Unless otherwise provided herein or by any other governing ordinance or law, any person aggrieved by a decision, fee or requirement established or made pursuant to this Chapter shall, prior to seeking any judicial or statutory relief, if any, file a written appeal of any such decision, fee or requirement with the Board of Aldermen within fifteen (15) days of such decision or imposition of such fee or requirement, specifying this provision and including specific details of the alleged claim or grievance, and an evidentiary hearing shall be held on such appeal by the

Board of Aldermen or its designee to render a final decision. Nothing herein shall deny or preclude any additional applicable appeal remedy that may be granted by Federal or State law after such final decision.

Section 545.220. Violations; Penalties.

In addition to any other penalties and remedies for violations that may exist in law or equity, any person that violates any provision of this Chapter shall be deemed to have committed an offense punishable as provided for City Code violations.

Section 2: This Ordinance shall take effect and be in full force, and retrospect with no grandfather clause from and after its passage by the Board of Aldermen and approval of the Mayor of the City of Marshfield, Missouri.


Section 3: All ordinances or parts of ordinances in conflict or inconsistent herewith are hereby expressly repealed.

Read twice by title after proper posting in accordance with the provisions of Section 79.130, RSMo. (1988) and passed by the Board of Aldermen of the City of Marshfield, Missouri, this 22nd day of February 2024.




Natalie B. McNish, Mayor

ATTEST:

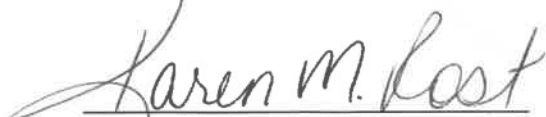

Karen M. Rost, City Clerk

APPROVED by the Mayor of the City of Marshfield, Missouri, this 22nd day of February 2024.




Natalie B. McNish, Mayor

ATTEST:


Karen M. Rost, City Clerk