

ORDINANCE NO. 2189

AN ORDINANCE OF THE CITY OF DARDENNE PRAIRIE, MISSOURI, AMENDING SECTIONS 530.020 AND 530.030 OF THE MUNICIPAL CODE OF THE CITY OF DARDENNE PRAIRIE, MISSOURI, AND ESTABLISHING REGULATIONS AND PROCEDURES FOR RIGHT-OF-WAY MANAGMENT

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

SECTION 1. That subsection (C)(2)(f) of Section 530.020 of the Municipal Code of the City of Dardenne Prairie, Missouri, be and is hereby amended by deleting it in its entirety, and enacting, in lieu thereof, a new subsection (C)(2)(f) of Section 530.020, to read as follows:

SECTION 530.020 Permits.

...
C. Permit Applications.
...

2. At a minimum, the application should have the following information:

...
f. Certificates of insurance as required pursuant to Section 530.030(C)(10) of this Chapter.
...

SECTION 2. That subsection (C)(7) of Section 530.020 of the Municipal Code of the City of Dardenne Prairie, Missouri, be and is hereby amended by deleting it in its entirety, and enacting, in lieu thereof, a new subsection (C)(7) of Section 530.020, to read as follows:

SECTION 530.020 Permits.

...
C. Permit Applications.
...

7. It is the intention of the City that disruption of the public rights-of-way should be minimized. Upon receipt of an application for a permit, the City Engineer shall do the following:

a. Evaluate the degree of excavation necessary to perform the facilities work in the public rights-of-way and determine whether the proposed excavation will be more than minor in nature. The City

Engineer shall grant a permit within ten (10) business days for facilities work deemed minor in nature. If the applicant can show to the City Engineer's reasonable satisfaction that the facilities work involves time sensitive maintenance, then the City Engineer shall grant the permit within two (2) business days. In either instance if the permit is not issued in ten (10) business days, the aggrieved party may appeal to the City Administrator as provided in Subsection (E) of this Section 530.020, unless the applicant is submitting one (1) project application for multiple excavations, construction or installations; and

- b. For circumstances where the City Engineer determines that there will be significant facilities work of the public rights-of-way and no exemption under Subsection (C)(7)(a) or any other provisions of this Subsection applies, the City Engineer may, consistent with the time requirements set forth in Subsection (C)(7) and in the permit, direct permit holders performing facilities work in the same area to consult on how they may schedule and coordinate their work to accomplish the goal of this Section.

- (1) For larger excavation projects, total linear footage per permit shall be limited to two thousand (2,000) linear feet and/or twenty (20) open cut/hole areas. ROW work shall be broken up into separate permits to comply with these requirements. Permits may be suspended by the City until the adjacent permits are completed in full, or at least to the point where the restoration work is complete.

SECTION 3. That subsection (C) of Section 530.030 of the Municipal Code of the City of Dardenne Prairie, Missouri, be and is hereby amended by deleting it in its entirety, and enacting, in lieu thereof, a new subsection (C) of Section 530.030, to read as follows:

SECTION 530.030 Facilities Work.

...

C. Unacceptable And Unauthorized Work.

1. The City Engineer shall have full access to all portions of facilities work and may issue stop work orders and corrective orders to prevent unacceptable or unauthorized work.

- a. *Unauthorized Work.* In the case of unauthorized work, such corrective or stop work orders shall state that work not authorized by the permit is being carried out, summarize the unauthorized work and provide a period of no longer than thirty (30) days to cure the problem unless a time extension is approved by the City Engineer, which cure period may be shortened if certain activities must be

ceased to protect the public safety and may be delivered personally or by certified mail to the address listed on the application for permit or to the person in charge of the facilities work site at the time of delivery.

- b. *Unacceptable Work.* Unacceptable work shall include circumstances where real or personal property has been damaged in the vicinity of facilities work being performed by a permit holder or their contractor and the City Engineer has reasonable suspicion to believe that the damage was caused as a result of the facilities work. In such circumstances, the City Engineer is authorized to issue a stop work order for a period of time not to exceed thirty (30) days. During the stoppage, the City Engineer shall investigate the cause of the real or personal property damage. If the City Engineer finds that the real or personal property damage was caused by the facilities work, the City Engineer may issue a corrective order or revoke the permit pursuant to Section 530.020(G) of this Chapter.

Such orders may be enforced by equitable action in the Circuit Court of St. Charles County, Missouri, and if the City prevails in such case, the person involved in the facilities work, by acceptance of the permit, agrees to be liable for all costs and expenses incurred by the City, including reasonable attorney's fees, in enforcing such order, in addition to any and all penalties established in this Chapter.

SECTION 4. That subsection (D) of Section 530.030 of the Municipal Code of the City of Dardenne Prairie, Missouri, be and is hereby amended by deleting it in its entirety, and enacting, in lieu thereof, a new subsection (D) of Section 530.030, to read as follows:

SECTION 530.030 Facilities Work.

...

D. Construction Standards.

1. The construction, operation, maintenance and repair of facilities shall be in accordance with all applicable ordinances.
2. All facilities shall be installed and located with due regard for minimizing interference with the rights of the public, including the City and other users of the public rights-of-way. All facilities work shall be performed at such times that will allow the least interference with the normal flow of traffic and the peace and quiet of the neighborhood as permitted by the City Engineer and set forth in the permit.
3. All new facilities shall be constructed underground except for facilities that are required to be located above ground and except in areas that have been designated as overhead corridors by the City Engineer. In cases where facilities will be placed underground, the permit holder shall give to all facility owners registered hereunder reasonable written advance notice of

the particular date on which open trenching will be available for installation of facilities. Aboveground pedestals, vaults, antennae or other facilities may be installed only if approved by the City Engineer where alternative underground facilities are not feasible or where underground requirements are otherwise waived pursuant to this Chapter. Except if contrary to governing law, existing conduit shall be used where feasible and available.

4. Existing underground conduits or overhead facilities shall be used whenever feasible and permitted by the owner thereof. No person may erect new poles or similar structures within the public right-of-way without the prior, express written consent of the City Engineer.
5. Applicant shall not place facilities where they will damage or interfere with the use or operation of previously installed facilities or obstruct or hinder the various utilities serving the residents and businesses in the City or their use of any public rights-of-way. Should the permit holder, their contractor or subcontractor damage the facilities of another facilities owner, permit holder shall, within one (1) day report to the City, of the occurrence thereof, identifying the precise location of the damage to the facilities, the permit holder performing the facilities work, the facilities owner impacted, and the description of the damage caused. For purposes of this paragraph, damage to facilities shall include, but is not limited to, cutting, striking or disconnecting any facilities or any other activity that may cause disruption to the provision the services of any other facilities owner, without the prior consent of that facilities owner and notice to the City Engineer.
6. The permit holder shall be responsible to inform the City Engineer of any damage to City property. The permit holder shall be responsible to inform any other facilities owner of possible damage to their facilities. The permit holder is fully responsible for reimbursing the facilities owners for damages caused by the permit holder's work to facilities whose existence and approximate locations were known or should have been known before the damage was done. Nothing in this Chapter shall make the permit holder liable for damage to facilities located below the ground surface, in the absence of negligence, if the facility owner, after reasonable notice from the permit holder, fails to advise the permit holder of its location and approximate depth below the ground surface.
7. Prior to directional boring critical existing City facilities, such facilities shall be located by digging a hole large enough to visually inspect the facilities at proposed crossing locations, unless deemed unnecessary by the City Engineer. To prevent damage to existing facilities, the boring operation shall be visually monitored during the placement of new facilities.
8. Any and all public rights-of-way or facilities disturbed or damaged during the facilities work shall be promptly repaired or replaced, or caused to be

promptly repaired or replaced, to its previous condition by the permit holder or, at the City Engineer's discretion, by the City, at the permit holder's expense.

9. Any contractor or subcontractor used for facilities work must be properly licensed under laws of the State of Missouri and all applicable local ordinances, and each contractor or subcontractor shall have the same obligations with respect to its work as a permit holder would have hereunder and shall be responsible for ensuring that the work of contractors and subcontractors is performed consistent with its permits and applicable law, shall be fully responsible for promptly correcting acts or omissions by any contractor or subcontractor.

10. Insurance. Applicant shall provide at its sole expense, and maintain during the term of the permit commercial general liability insurance with \$1,000,000.00 per accident limits, combined single limits with an insurer rated at least A-VII by AM Best and eligible to do business in the State of Missouri, and unless otherwise approved by the City Engineer that shall protect the applicant as a named insured and the City, and other City officials, officers, and employees as additional insureds from class claims which may arise from operations under the permit, whether such operations are by the applicant, its officers, directors, employees and agents, or any subcontractors of the applicant. The city's additional insured status shall (i) be limited to bodily injury, property, damage or personal and advertising injury caused, in whole or in part, by applicant, its employees, agents or other independent contractors or facilities; (ii) not extend to claims where such coverage is prohibited by law or to claims arising out of the gross negligence of City, its employees, agents or independent contractors; and, (iii) not exceed applicant's indemnification obligation under the permit, if any. 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 applicant operations, facilities, products, services or use of automobiles, or construction equipment. The amount of insurance for commercial general liability insurance applying to bodily and personal injury and property damage shall be \$2,500,000.00 per occurrence and in the aggregate, but in no event less than the individual and combined sovereign immunity limits established by the RSMo 537.610 for political subdivisions; provided that nothing shall be deemed to waive the city's sovereign immunity. Evidence shall be provided which provides that the City is listed as an additional insured. Permit holder shall provide at least thirty (30) days' advance written notice to the city of cancellation of any required coverage that is not replaced. Notwithstanding the forgoing, the applicant may, in its sole discretion, self-insure any of the required insurance under the same terms as required by this section. The insurance requirements in this section or other otherwise shall not apply to applicant to the extent and for such period during the permit as the applicant is

exempted from such requirements pursuant to RSMo 67.1830(6)(a), has on file with the city clerk an affidavit certifying that the applicant has \$25,000,000.00 in net assets and the facts otherwise establishing that the applicant is therefore so exempt.

11. Advertising, signs or extraneous markings. The permit holder shall not place or cause to be placed any sort of signs, advertisements or other extraneous markings, whether relating to applicant or any other person or entity, on the public rights-of-way; *provided, however*, permit holder and each contractor or subcontractor thereof shall, at all times while performing facilities work, display signage readily visible and with print a font size not less than four and one-half (4½) inches and no greater than six (6) inches, identifying the facilities owner for whom the facilities work is being performed.

SECTION 5. Effective Date: This Ordinance shall be in full force and take effect from and after its final passage and approval.

SECTION 6. Savings Clause: Nothing contained herein shall in any manner be deemed or construed to alter, modify, supersede, supplant or otherwise nullify any other Ordinance of the City or the requirements thereof whether or not relating to or in any manner connected with the subject matter hereof, unless expressly set forth herein.

SECTION 7. Severability Clause: If any term, condition, or provision of this Ordinance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective and each and every remaining provision hereof shall be valid and shall be enforced to the fullest extent permitted by law, it being the intent of the Board of Aldermen that it would have enacted this Ordinance without the invalid or unenforceable provisions. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by the City and shall thereafter be binding.

Read the first (1st) time this 20th day of April, 2022.

Attest: Kim Clark
City Clerk

John W. Botway
As Presiding Officer and as Mayor

Read the second (2nd) time and passed this 4th day of May, 2022.

John W. Botway
As Presiding Officer and as Mayor

Attest: Kim Clark
City Clerk

Approved this 4th day of May, 2022.

John W. Gutwirth
Mayor

Attest: Kim Clark
City Clerk