

CITY OF NORTHWOODS RIGHT OF WAY USAGE CODE

Section 570.010. Title.

This Chapter shall be known and may be cited as the Northwoods Rights-of-Way Usage Code.

Section 570.015. Definitions and Word Usage.

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

ABOVE GROUND FACILITIES - Includes facilities proposed to be placed above ground, at a fixed location, but excluding facilities to be placed on existing utility poles.

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

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

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

APPLICATION — Form which an applicant must use to obtain a ROW permit to conduct ROW work.

BOARD OF ALDERMEN - "*Board of Aldermen*" or "*Board*" shall mean the Governing Body of the City.

CITY — The City of Northwoods, Missouri, and its agencies, departments, agents and employees acting within their respective areas of authority.

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

CITY MANAGER — The City Manager of the City of Northwoods, Missouri.

DEGRADATION — The accelerated depreciation of a portion of the rights-of-way caused by excavation in or disturbance of any paved portion of the rights-of-way resulting in the need to repair or maintain such portion of the rights-of-way earlier than would be required if the excavation or disturbance had not occurred (excluding concrete slabs or curbs which shall be replaced rather than restored).

DEGRADATION FEE — The fee charged by the City to recover the costs associated with a decrease in the useful life of any paved rights-of-way caused by excavation or other disturbance. The degradation fee shall not apply to concrete slabs or curbs, which shall be replaced rather than restored.

DIRECTOR —The City's Public Works Director or such other person designated to administer and enforce this code.

EMERGENCY RIGHTS-OF-WAY (OR "ROW") WORK - Includes, but is not limited to, ROW work made necessary by exigent circumstances to repair, control, stabilize, rectify or correct the following:

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

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

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

LINEAR FOOT FEE — A compensation fee approved by the Board and established in the City's pertinent schedule of fees from time to time for the rent of a portion of the rights-of-way by a person having facilities within the rights-of-way. The linear foot fee shall be calculated on the length, in linear feet, of the rights-of-way in or on which facilities are located and shall not include any antenna fee, but a ROW user may be subject to both a linear foot fee and an antenna fee.

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

PERSON(S) HAVING FACILITIES WITHIN THE RIGHTS-OF-WAY — Any person having a possessory interest in, with the right of physical access (as permitted by this code) to, facilities located within the rights-of-way.

RIGHTS-OF-WAY or ROW —

1. Unless otherwise restricted herein, the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, parkway, waterway, public easement, or sidewalk in which the City now or hereafter holds any interest, which, consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining facilities. Rights-of-way shall not include:
 - a. City facilities or the City's property other than ROW, such as City-owned or operated buildings, parks, or other similar property;
 - b. Airwaves used for cellular, non-wire telecommunications or broadcast services;
 - c. Easements obtained by ROW users on private property;
 - d. Railroad rights-of-way or ground used or acquired for railroads;
 - e. Facilities owned and used by the City for the transmission of one (1) or more services;
or
 - f. Pipes, cables, conduits, optical cables or other means of transmission, collection or exchange of communications, information, substances, data or electronic current or impulses utilized by a municipally owned utility.
2. No reference herein to "rights-of-way" shall be deemed to be a representation or guarantee by the City that its interest or other right to control the use of such property is sufficient to permit its use for the delivery of service.

RIGHTS-OF-WAY (OR "ROW") PERMIT — A permit granted by the City to a ROW user for ROW work.

RIGHTS-OF-WAY (OR "ROW") USER — A person performing ROW work within the rights-of-way. A ROW user shall not include ordinary vehicular or pedestrian use.

RIGHTS-OF-WAY (OR "ROW") WORK — Action by a ROW user to:

1. Install, change, replace, relocate, remove, maintain or repair facilities within the rights-of-way, or
2. To conduct work of any kind within or adjacent to the rights-of-way that results in an excavation, obstruction, disruption, damage or physical invasion or impact of any kind to the rights-of-way or the use thereof. The routine inspection of facilities shall not be considered ROW work unless the inspection requires the conduct of any of the activities or actions noted herein.

SERVICE — Providing or delivering an economic good or an article of commerce, including, but not limited to, gas, telephone, cable television, Internet, open video systems, alarm

systems, steam, electricity, water, telegraph, data transmission, petroleum pipelines, sanitary or stormwater sewerage or any similar or related service, to one (1) or more persons located within or outside of the City using facilities within the rights-of-way.

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

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

Section 570.020. Authority To Charge Certain Fees Retained.

Notwithstanding anything herein to the contrary, the City of Northwoods retains its authority to charge degradation, rental and other fees relating to the public rights-of-way as such authority existed prior to May 1, 2001 and as permitted by Section 67.1846, RSMo.

Section 570.025. Registration of Person(s) Having Facilities Within The ROW.

A. Registration Required.

1. Any person desiring to become a person having facilities within the ROW and any person having facilities within the ROW must register with the City.

2. Any person having or applying for a cable franchise from the City under the Cable Communications Regulatory Code must register hereunder. Such a person maintains all rights, privileges and obligations established by its cable franchise and shall also remain subject to any Cable Communications Regulatory Code. To the extent that any term of such person's cable franchise conflicts with the Rights-of-Way Usage Code, the terms of the cable franchise shall prevail. To the extent that any Cable Communications Regulatory Code conflicts with the Rights-Of-Way Usage Code, the more stringent shall prevail.

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

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

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

C. *Registration Characteristics.*

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

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

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

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

D. *Registered Person Subject to Other Laws.*

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

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

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

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

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

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

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

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

4. Take any other action it is entitled to take under applicable law. Additionally, such person may also be subject to the imposition of penalties as provided herein.

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

Section 570.030. Rights-Of-Way ("ROW") Permits.

A. ROW Permit Requirements.

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

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

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

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

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

c. A description of the proposed work, including a conceptual master plan and, when applicable, an engineering site plan or other technical drawing showing the nature, dimensions and location of the applicant's proposed work

and facilities, their proximity to other facilities that may be affected by the proposed work and the number of street crossings and their locations and dimensions, if applicable;

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

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

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

g. *For wireless transmission providers:*

(1) Technical information, including:

(a) A detailed description of the physical dimensions and appearance of the proposed facilities;

(b) The chemical composition of any battery contained within the proposed facilities;

(c) Any hazardous material contained within the proposed facilities;

(d) The potential for interference with the facilities of other wireless transmission providers;

(e) The potential for exposure to electromagnetic fields; and

(f) Such other information as may be reasonably required by the Director and consistent with Section 510.050(B)(4) hereof.

(2) Certification, by a duly authorized representative of any person owning a facility, utility pole or other structure within the ROW upon which the applicant's facility is to be attached or secured, that:

(a) The applicant has permission from such person to install the facility;

(b) The person is not in default of any franchise, license or other agreement with the City; and

(c) The person is not in substantial violation of provision of this code.

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

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

5. Each such application shall be accompanied by the following payments:
 - a. An application fee, as approved by the Board of Aldermen and established in the City's pertinent schedule of fees, to cover the cost of processing the application;
 - b. Any applicable degradation fee, as approved by the Board of Aldermen and established in the City's pertinent schedule of fees, but the Director may waive the degradation fee for any excavation in the rights-of-way undertaken within twelve(12) calendar months immediately preceding the scheduled improvement or reconstruction of such rights-of-way; and
 - c. Any other amounts otherwise due to the City from the applicant including, but not limited to, prior delinquent permit fees and costs, delinquent rental fees and any loss, damage or expense suffered by the City because of the applicant's prior excavations of the rights-of-way or for any emergency actions taken by the City, but the Director may modify this requirement to the extent the Director determines any such fees to be in good faith dispute or beyond the ability of the applicant to control.

d. Notwithstanding anything else herein, temporary construction easement permits shall be assessed a permit fee of based on the most recent St. Louis County assessment for the entire parcel of real estate multiplied by ten percent of the number of square feet of the temporary construction easement.

B. ROW Permit Application Review and Determination.

1. The Director shall promptly review each completed application for a ROW permit and shall grant or deny all such applications as provided herein within thirty-one (31) days of receipt of a completed application. Unless the application is denied pursuant to paragraph (B)(8) hereof, the Director shall issue a ROW permit upon determining that the applicant:

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

In order to avoid excessive processing and accounting costs to either the City or the applicant, the Director shall have authority to establish procedures for bulk processing of applications and periodic payment of fees.

2. It is the intention of the City that interference with, damage to, excavation or disruption of or the placement of facilities within the City's rights-of-way should be minimized and limited in scope to the extent allowed by law to achieve the purposes of this code. When reasonable and necessary to accomplish such purposes, the Director may

require as alternatives to the proposed ROW work either less disruptive methods or different locations for facilities, provided that any required alternative:

- a. Shall not increase expenses by more than ten percent (10%) of the applicant's costs for the work as proposed,
- b. Shall not result in a decline of service quality, and
- c. Shall be competitively neutral and non-discriminatory.

The Director shall justify to the applicant that the required alternative is reasonable and necessary.

3. Upon receipt of an application, the Director shall determine whether any portion of the rights-of-way will be affected by the proposed work and whether the interference, disruption, or placement of facilities will be more than minor in nature. In determining whether the proposed work is more than minor in nature, the Director shall consider the nature and scope of the work, its location and duration, and its effect on the rights-of-way, the use thereof, and neighboring properties.

- a. If the applicant can show to the Director's reasonable satisfaction that the work involves no interference, disruption, excavation or damage to, or only minor interference with, the rights-of-way, or that the work does not involve the placement of facilities or involves time-sensitive maintenance, then the Director shall promptly grant the ROW permit.
- b. If the Director determines that the effect on the rights-of-way will be more than minor in nature and no exemption under the above Subsection (B)(3)(a) or any other provision of this code applies, the Director shall schedule and coordinate the work and grant the ROW permit accordingly. When reasonable and necessary to accomplish the purposes of this code, the Director may postpone issuance of a ROW permit and may give public notice of the application in an attempt to identify whether other person(s) intend to do work in the same area within a reasonable period of time, so that all ROW work in the area can be coordinated. Due regard shall be accorded applicants that are required by any law, rule, regulation, license or franchise to provide service to the area defined in the application. The Director shall not impose any coordination or scheduling requirements that prevent or unreasonably delay an applicant's access to the ROW or that create a barrier to entry.
- c. Applicants shall participate in any joint planning, construction and advance notification of such work, including coordination and consolidation of any excavation of or disturbance to the rights-of-way as directed by the Director. When deemed necessary to accomplish the goals of this Section and to the extent permitted by law, the City reserves the right, when feasible and reasonable, to require the sharing of facilities by ROW users. Applicants shall cooperate with each other and other ROW users and the City for the best, most efficient, least intrusive, most aesthetic, and least obtrusive use of the rights-of-way.

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

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

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

b. Facilities shall be a neutral color and shall not be bright, reflective or metallic. Black, gray and tan shall be considered neutral colors, as shall any color that blends with the surrounding dominant color and helps to camouflage the proposed equipment. Facilities shall be located in such a manner as to reduce or eliminate their visibility. Screening may be appropriate and any screening materials shall be maintained and replaced as needed.

c. Facilities shall comply with the regulations established in the City's zoning ordinance, to the extent such regulations reasonably apply. If the facilities consist of or require a tower, otherwise defined as an antenna support structure, then the applicant shall obtain a special antenna permit.

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

(1) Ornamental or similar specially designed street lights,

(2) Designated historic areas,

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

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

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

e. If the application of this Section excludes locations for facilities to the extent that the exclusion conflicts with the reasonable requirements of the

applicant, the Director shall cooperate in good faith with the applicant to attempt to find suitable alternatives, but such alternatives may exceed the cost increase limitation and the City shall not be required to incur any financial cost or to acquire new locations for the applicant.

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

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

5. *Each ROW permit shall include:*

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

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

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

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

e. An acknowledgement and representation by the applicant to comply with the terms and conditions of the ROW permit and this code; and

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

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

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

(3) For the protection of the public and the continuity of pedestrian and vehicular traffic; and

(4) For the protection of the public health, safety and welfare, including any conditions or requirements resulting from the application of

Section 500.530(B)(4) hereof.

6. An applicant receiving a ROW permit shall promptly notify the Director of any material changes in the information submitted in the application. The Director may issue a revised ROW permit or require that the ROW user reapply for a ROW permit in accordance with all requirements of this code.

7. ROW permits inure to the benefit of the applicant and the rights granted thereunder may not be assigned or transferred to any other person without the written consent of the Director.

8. The Director may deny an application, if denial is deemed to be in the public interest, for any of the following reasons:

- a. Delinquent fees, costs or expenses owed by the applicant;
- b. Failure to provide information required by the application or this code;
- c. The applicant being in violation of the provisions of this code or other pertinent and applicable City ordinances;
- d. Failure to return the ROW to its previous condition under previously issued ROW permits or after prior excavations by the applicant;
- e. For reasons of environmental, historic or cultural sensitivity, as defined by applicable Federal, State or local law, of land within the scope of the application;
- f. For an applicant's refusal to comply with alternative ROW work methods or locations required by the Director; and
- g. For any other reason to protect the public health, safety and welfare, provided that:

(1) Such denial does not fall within the exclusive authority of the State Public Service Commission;

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

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

9. For the purposes of Section 570.030(B)(7), the term "applicant" shall also include, when applicable, the person on whose behalf the applicant is to perform the ROW work. The Director may consider good faith disputes with, or circumstances beyond the control of, the applicant or such person in determining whether to grant or deny the application.

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

1. The Director may revoke a ROW permit without fee refund after notice and an opportunity to cure, but only in the event of a substantial breach of the terms and conditions of the ROW permit. Prior to revocation the Director shall provide written notice to the ROW user identifying any substantial breach and allowing a reasonable period of time not longer than thirty (30) days to cure the problem, which cure period may be immediate if certain activities must be stopped to protect the public safety. The cure period shall be extended by the Director on good cause shown by the ROW user. A substantial breach includes, but is not limited to, the following:

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

2. Any breach of the terms and conditions of a ROW permit shall also be deemed a violation of this code and in lieu of revocation the Director may initiate prosecution of the ROW user for such violation.

Section 570.035. Rental Fees.

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

B. *Payment to City.*

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

2. If a person having facilities within the ROW has or is permitted to install separate facilities within the ROW, then for the purpose of linear foot fees such separate facilities shall be treated as discrete facilities, each of which shall be subject to the compensation requirements of this Section. The term "*separate facilities*" means any existing or new facilities under common ownership or control that occupy different cross-sectional areas within the same linear portion of the ROW. Separate facilities include any such facilities that require distinct and separate ROW access for purposes of installation, change, replacement, relocation, removal, maintenance or repair.

C. *Not a Tax or In Lieu Of Any Other Tax or Fee—Credit.*

1. The rental fees are not a tax, license or fee subject to any requirement of voter approval, but rather constitute a charge for special and individualized use of public property.

2. Rental fees are in addition to all other fees and all taxes and payments that a person may be required to pay under any Federal, State or local law or agreement, including any applicable property and amusement taxes and any payment for attachment fees to install facilities on City facilities or other City proprietary property.

3. To promote economic development, any person obligated to pay rental fees shall be granted a credit for all sums paid to the City by such person for applicable occupational license fees of the City Code, as amended, or similar gross receipts taxes or fees up to the amount of the rental fees. In no event shall such a credit result in a refund from the City.

D. *Payments.*

1. The rental fees shall be paid quarterly to the City and shall commence as of the later of the effective date of this code or the first (1st) day on which a person having facilities within the ROW places facilities within the rights-of-way. The City shall be furnished at the time of each payment with a statement certified by the payer's chief financial officer or comparable officer or by an independent certified public accountant reflecting the total amount of rental compensation for the payment period. Payments shall be made to the City no later than forty-five (45) days following the end of each calendar quarter.

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

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

F. *Audit.* The City shall have the right to inspect all reasonably necessary records and the right to audit and to recompute any amounts determined to be payable under this code.

Persons subject to rental fees hereunder shall be responsible for providing the records to the City at an office located within the metropolitan St. Louis area. Such records shall be maintained for at least five (5) years. The City's audit expenses shall be borne by the person audited if the rental fees paid during the audit period are less than ninety-five percent (95%) of the amount owed according to the audit. Any additional amounts due to the City as a result of the audit shall be paid within thirty (30) days following written notice to the person by the City of the underpayment, which notice shall include a copy of the audit report. If recompilation results in an additional amount to be paid to the City, such amount shall be subject to interest and penalties as specified in Subsection (D)(2) above.

G. Exemption from Rental Fees.

1. Persons having facilities within the ROW pursuant to a duly-issued, lawful and applicable license or franchise shall be exempt from this Section for the duration of such license or franchise.

2. Governmental entities having facilities within the ROW shall not be liable for rental fees, but such entities shall otherwise be subject this Code and such other provisions as may be appropriate to their presence in the ROW.

Section 570.070. Insurance — Surety — Indemnification — Penalties.

A. Insurance Required. All ROW users shall maintain, for the duration of any ROW work and, when applicable, for as long as the ROW user has facilities within the rights-of-way, at least the following liability insurance coverage:

1. Workers' Compensation and employer liability insurance to meet all requirements of State law; and

2. Commercial general liability insurance with respect to the construction, operation, maintenance and presence of the facilities and the conduct of the ROW user's business in the City in a sufficient amount to cover the extent to which the City may be liable under the sovereign immunity limitations pursuant to State law.

These insurance requirements shall not be construed to limit the liability of any person.

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

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

D. Additional Insured—Prior Notice of Policy Cancellation. All general liability insurance policies shall name the City, its officers, boards, board members, commissions, commissioners, agents and employees as additional insured and shall further provide that any cancellation or reduction in coverage shall not be effective unless thirty (30) days' prior written notice thereof has been given to the Director. A ROW user shall not cancel any required

insurance policy without submission of proof that it has obtained alternative insurance that complies with this code.

E. *Exemption from Insurance Requirements.* The Director may exempt in writing from the requirements Insurance any self-insured ROW user, provided that the ROW user demonstrates to the Director's satisfaction that the ROW user's self-insurance plan is commensurate with said requirements and that the ROW user has sufficient resources to meet all potential risks, liabilities and obligations contemplated by the requirements of this code. The Director may require a security fund or letter of credit as a condition to a self-insured's exemption. The Director shall waive this requirement when the ROW user has twenty-five million dollars (25,000,000.00) in net assets and does not have a history of non-compliance with the provisions of this code.

F. *Indemnification.*

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

- a. Any ROW work including, construction, maintenance or facilities;
- b. Failure to secure consents from landowners; or
- c. Any actions taken or omissions made by the person pursuant to the authority of this code.

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

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

- a. Attributable to the City's own negligence, willful misconduct, intentional or criminal acts; or
- b. Attributable to the City acting in a proprietary capacity to deliver service(s) within the City.

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

H. *Penalties.* Any person violating any provision of this code shall, upon conviction by the Court, be punished by a fine not to exceed one thousand dollars (\$1,000.00) or by

imprisonment not to exceed ninety (90) days, or by both such fine and imprisonment. Each day the violation continues may be charged as a separate offense.

Section 570.040. Dispute Resolutions, Appeals and Arbitration.

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

B. *Appeals to the City Manager.* Any person aggrieved by a final determination of the Director may appeal in writing to the City Manager within five (5) business days thereof. The appeal shall assert specific grounds for review and the City Manager shall render a decision on the appeal within fifteen (15) business days of its receipt affirming, reversing or modifying the determination of the Director. The City Manager may extend this time period for the purpose of any investigation or hearing deemed necessary. A decision affirming the Director's determination shall be in writing and supported by findings establishing the reasonableness of the decision.

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

D. *Arbitration and Mediation.*

1. On agreement of the parties and in addition to any other remedies, any final decision of the City Manager may be submitted to mediation or binding arbitration.

2. In the event of mediation, the City Manager and the applicant or ROW user shall agree to a mediator. The costs and fees of the mediator shall be borne equally by the parties and each party shall pay its own costs, disbursements and attorney fees.

3. In the event of arbitration, the City Manager and the applicant or ROW user shall agree to an arbitrator. The costs and fees of a single arbitrator shall be borne equally by the parties. If the parties cannot agree on an arbitrator, the matter shall be resolved by a three (3) person arbitration panel consisting of one (1) arbitrator selected by the City Manager, one (1) arbitrator selected by the applicant or ROW user and one (1) person selected by the other two (2) arbitrators, in which case 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 (3rd) arbitrator and of the arbitration. Each party shall also pay its own costs, disbursements and attorney fees.

Section 570.045. Rights-Of-Way Usage Code Fee Schedule.

Fee Registration fee	Code Section	Amount
----------------------	--------------	--------

ROW work permit fee		\$1000.00
Degradation fee	§ 570.050(A)(5)(a)	\$500.00
	§ 570.050(A)(5)(b)	(Linear feet of the perimeter of the cut) x (\$3.75)* x (Number of years to next overlay)

*Public works' estimate of annual cut maintenance cost

Linear foot fee	§ 570.080(B)	\$2.75**
Antenna fee	§ 570.080(B)	\$300.00***

***This amount shall be adjusted beginning January 1, 2023, and every two (2) years thereafter to reflect price changes in accordance with the Consumer Price Index published by the Bureau of Labor Statistics of the U.S. Department of Labor in accord with this paragraph. The index number shown for the County titled "all items" and under the heading of "CPI-U" for the first (1st) half of 2022, which index shall be the base number and the corresponding index number available for the year prior to the recalculation date shall be the current index number. From the quotient thereof, there shall be subtracted the integer one (1) and any resulting positive number shall be multiplied by one hundred (100) and then deemed to be the percentage increase in the cost of living. Said percentage shall then be multiplied by the previous annual payment rate and the resultant figure shall constitute the applicable payment rate. No adjustment shall be made to reduce any applicable payment rate. If the designated Consumer Price Index is not available for use as the "current index number" for the period provided, the City Manager shall use another appropriate standard cost of living index.

***This amount shall be adjusted beginning January 1, 2023, and every two (2) years thereafter in the same manner as the linear foot fee as outlined above.

Section 570.050. Miscellaneous Provisions.

- A. Captions. Captions throughout this Code are intended solely to facilitate reading and reference to the Sections and provisions. Such captions shall not affect the meaning or interpretation of this code.
- B. Interpretation of Code. The provisions of this code shall be liberally construed to promote the public interest.
- C. Expense. Any act that a person is required to perform by this code or other law shall be done at the person's expense, without City reimbursement, unless expressly provided to the contrary by law.
- D. Eminent Domain. Nothing herein shall be deemed or construed to impair or affect, in any way or to any extent, the power of eminent domain held by the City or any other person.
- E. Exclusive Contracts And Anti-Competitive Acts Prohibited.
 1. Unless otherwise allowed by law, no person shall enter into or enforce an exclusive contract for the provision of services with any other person or demand the exclusive right to serve another person or location as a condition of extending service to that person or location or any other person or location.
 2. No person shall engage in acts that have the purpose or effect of limiting competition for the provision of services in the City, except for such actions as are expressly authorized by law.

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

G. Rights and Remedies.

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

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

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

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

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

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

J. Calculation of Time. Unless otherwise indicated, when the performance or doing of any act, duty, matter or payment is required under this Code, and a period of time is prescribed and is fixed herein, the time shall be computed so as to exclude the day of the act, event or default after which the designated period of time begins to run and include the last day of the prescribed or

fixed period of time, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the next day which is neither a Saturday, Sunday or legal holiday. If the period is less than seven (7) days, intermediate Saturday, Sunday and legal holidays shall be excluded in the computation. This paragraph shall not apply in the context of obligations that continue on a daily basis.

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

Section 570.055. Small Wireless Facility Deployment.

A. Title and Intent. This Section shall be known and may be cited as the "Small Wireless Facility Deployment Code," and it is intended to encourage and streamline the deployment of small wireless facilities in die City and to help ensure that robust and dependable wireless radio-based communication services and networks are available throughout the City, consistent with State and Federal law, including Sections 67.5110 to 67.5121, RSMo. (while in effect) and Sections 67.1830 to 67.1846, RSMo. The provisions of other sections of Chapter 520 shall apply to small wireless deployments except to the extent inconsistent with this Section.

B. Definitions. As used in this Section, the following terms shall mean:

ANTENNA — Communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services;

APPLICABLE CODES – Uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or the City's amendments to such codes enacted to prevent physical property damage or reasonably foreseeable injury to persons to the extent not inconsistent with Sections 67.5110 to 67.5121 RSMo. (while in effect);

APPLICANT — Any person who submits an application and is a wireless provider;

APPLICATION — A request submitted by an applicant to the City for a permit to co-locate small wireless facilities on a utility pole or wireless support structure, or to approve the installation, modification, or replacement of a utility pole;

AUTHORITY OR CITY — The City of Northwoods;

AUTHORITY POLE — A utility pole owned, managed, or operated by or on behalf of the City, but such term shall not include municipal electric utility distribution poles;

AUTHORITY WIRELESS SUPPORT STRUCTURE — A wireless support structure owned, managed, or operated by or on behalf of the City;

CO-LOCATE OR CO-LOCATION – To install, mount, maintain, modify, operate, or replace small wireless facilities on or immediately adjacent to a wireless support structure or utility pole, provided that the small wireless facility antenna is located on the wireless support structure or utility pole;

COMMUNICATIONS FACILITY – The set of equipment and network components, including wires, cables, and associated facilities used by a cable operator, as defined in 47 U.S.C. § 522(5); a telecommunications carrier, as defined in 47 U.S.C. § 153(51); a provider of information service, as defined in 47 U.S.C. § 153(24); or a wireless services provider; to provide communications services, including cable service, as SS SCS HCS HB 1991 7 defined in 47 U.S.C. § 522(6); telecommunications service, as defined in 47 U.S.C. § 153(53); an information service, as defined in 47 U.S.C. § 153(24); wireless communications service; or other one-way or two-way communications service;

COMMUNICATIONS SERVICE PROVIDER — A cable operator, as defined in 47 U.S.C. § 522(5); a provider of information service, as defined in 47 U.S.C. § 153(24); a telecommunications carrier, as defined in 47 U.S.C. § 153(51); or a wireless provider;

DECORATIVE POLE — A City pole that is specially designed and placed for aesthetic purposes;

FEE — A one-time, nonrecurring charge;

HISTORIC DISTRICT — A group of buildings, properties, or sites that are either listed in the National Register of Historic Places or formally determined eligible for listing by the Keeper of the National Register, the individual who has been delegated the authority by the Federal agency to list properties and determine their eligibility for the National Register, in accordance with Section VI.D.1.a.i-v of the Nationwide Programmatic Agreement codified at 47 CFR Part 1, Appendix C, or are otherwise located in a district made subject to special design standards adopted by City ordinance or under State law as of January 1, 2018, or subsequently enacted for new developments;

MICRO WIRELESS FACILITY — A small wireless facility that meets the following qualifications:

- a. Is not larger in dimension than twenty-four (24) inches in length, fifteen (15) inches in width, and twelve (12) inches in height; and
- b. Any exterior antenna no longer than eleven (11) inches;

PERMIT - A written authorization required by the City to perform an action or initiate, continue, or complete a project;

PERSON — An individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including any government authority;

RATE — A recurring charge;

RIGHT-OF-WAY – The area on, below, or above a public roadway, highway, street, sidewalk, alley, or similar property used for public travel, but not including a Federal interstate highway, railroad right-of-way, or private easement;

SMALL WIRELESS FACILITY —

- a. A wireless facility that meets both of the following qualifications:

- (1) Each wireless provider's antenna could fit within an enclosure of no more than six (6) cubic feet in volume; and
 - (2) All other equipment associated with the wireless facility, whether ground or pole-mounted, is cumulatively no more than twenty-eight (28) cubic feet in volume, provided that no single piece of equipment on the utility pole shall exceed nine (9) cubic feet in volume; and no single piece of ground-mounted equipment shall exceed fifteen (15) cubic feet in volume, exclusive of equipment required by an electric utility or municipal electric utility to power the small wireless facility.
- b. The following types of associated ancillary equipment shall not be included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs and related conduit for the connection of power and other services;

TECHNICALLY FEASIBLE - By virtue of engineering or spectrum usage, the proposed placement for a small wireless facility or its design or site location can be implemented without a reduction in the functionality of the small wireless facility;

UTILITY POLE — A pole or similar structure that is or may be used in whole or in part by or for wireline communications, electric distribution, lighting, traffic control, signage, or a similar function, or for the co-location of small wireless facilities; provided, however, such term shall not include wireless support structures, electric transmission structures, or breakaway poles owned by the State Highways and Transportation Commission;

WIRELESS FACILITY — Equipment at a fixed location that enables wireless communications between user equipment and a communications network, including equipment associated with wireless communications and radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. The term includes small wireless facilities. The term does not include:

- a. The structure or improvements on, under, or within which the equipment is co-located;
- b. Coaxial or fiber-optic cable between wireless support structures or utility poles;
- c. Coaxial or fiber-optic cable not directly associated with a particular small wireless facility;
- d. A wireline backhaul facility;

WIRELESS INFRASTRUCTURE PROVIDER — Any person, including a person authorized to provide telecommunications service in the State, that builds or installs wireless communication transmission equipment or wireless facilities but that is not a wireless services provider;

WIRELESS PROVIDER — A wireless infrastructure provider or a wireless services provider;

WIRELESS SERVICES — Any services using licensed or unlicensed spectrum, including the use of wifi, whether at a fixed location or mobile, provided to the public using wireless facilities;

WIRELESS SERVICES PROVIDER — A person who provides wireless services;

WIRELESS SUPPORT STRUCTURE — An existing structure, such as a monopole or tower, whether guyed or self-supporting, designed to support or capable of supporting wireless facilities; an existing or proposed billboard; an existing or proposed building; or other existing or proposed structure capable of supporting wireless facilities, other than a structure designed solely for the co-location of small wireless facilities. Such term shall not include a utility pole;

WIRELINE BACKHAUL FACILITY — A physical transmission path, all or part of which is within the right-of-way, used for the transport of communication data by wire from a wireless facility to a network.

C. Deployment of Small Wireless Facilities And Associated Poles In Right-Of-Way.

1. This Subsection shall only apply to activities of a wireless provider within the right-of-way to deploy small wireless facilities and associated utility poles.
2. Subject to the provisions of this Subsection and Sections 67.5110 to 67.5121, RSMo. (while in effect), a wireless provider may, as a permitted use not subject to zoning review or approval, co-locate small wireless facilities and install, maintain, modify, operate, and replace utility poles along, across, upon, and under the right-of-way, except that the placement in the right-of-way of new or modified utility poles in single-family residential zoning districts or areas zoned as historic as of August 28, 2018, shall remain subject to any applicable zoning requirements that are consistent with Sections 67.5090 to 67.5103 RSMo. In order to maximize compliance with preestablished requirements for placement of utility facilities underground, to the extent that components of small wireless facilities functionally cannot be placed underground in accordance with such requirements, they shall instead be installed in the least conspicuous location as reasonably possible under the circumstances as determined by the City Manager or his or her designee. Small wireless facilities co-located outside the right-of-way in property not zoned primarily for single-family residential use shall be classified as permitted uses and not subject to zoning review or approval. Such small wireless facilities and utility poles shall be installed and maintained as not to obstruct or hinder the usual travel or public safety on such right-of-way or obstruct the legal use of such right-of-way by the City, other governmental authorities or other authorized right-of-way users.
3. A wireless provider must obtain a permit pursuant to this Article, with such reasonable conditions as may be imposed by the City, for work in a right-of-way that will involve excavation, affect traffic patterns, obstruct traffic in the right-of-way, or materially impede the use of a sidewalk.
4. Each new, replacement, or modified utility pole installed in the right-of-way shall not exceed the greater of ten (10) feet in height above the tallest existing utility pole in place as of January 1, 2022, located within five hundred (500) feet of the new pole in the same right-of-way, or fifty (50) feet above ground level. New small wireless facilities in the right-of-way shall not extend more than ten (10) feet above an existing utility pole in place as of August 28, 2022, or for small wireless facilities on a new utility pole, above the height permitted for a new utility pole. A new, modified, or replacement utility pole that exceeds these height limits shall be subject to all applicable zoning requirements that

apply to other utility poles, including as set forth in this Chapter, to the extent consistent with Sections 67.5090 to 67.5103, RSMo.

5. A wireless provider shall be permitted to replace decorative poles when necessary to co-locate a small wireless facility, but any replacement pole shall reasonably conform to the design aesthetics of the decorative pole or poles being replaced, as determined by the City Manager or his or her designee.
 6. Subject to Subsection(D)(4) below, and except for facilities excluded from evaluation for effects on historic properties under 47 CFR 1.1307(a)(4) of the Federal Communications Commission rules, a wireless provider must use appropriate and reasonable, technically feasible, non-discriminatory, and technologically neutral design or concealment measures in a historic district, as determined by the City Manager or his or her designee. Any such design or concealment measures shall not have the effect of prohibiting any provider's technology, nor shall any such measures be considered a part of the small wireless facility for purposes of the size restrictions in the definition of small wireless facility.
 7. Small wireless facility co-locations shall not interfere with or impair the operation of existing utility facilities, or City or third-party attachments. A wireless provider shall repair all damage to the right-of-way directly caused by the activities of the wireless provider in the right-of-way and shall return the right-of-way to its functional equivalence before the damage under the competitively neutral, reasonable requirements and specifications of the City. If the wireless provider fails to make the repairs required by the City within a reasonable time after written notice, the City may make those repairs and charge the wireless provider the reasonable, documented cost of such repairs.
- D. Permits for Poles in Right-Of-Way and Wireless Facilities in All Locations.
1. The provisions of this Subsection shall apply to the permitting of small wireless facilities to be installed by or for a wireless provider in or outside the right-of-way and to the permitting of the installation, modification, and replacement of utility poles by a wireless provider within the right-of-way.
 2. Wireless providers or their agents shall apply for and obtain a permit to co-locate a small wireless facility or install a new, modified, or replacement utility pole associated with a small wireless facility as provided in Subsection C above. The City shall receive applications for, process, and issue such permits subject to the following requirements:
 - a. An applicant shall not be required to perform services or provide goods unrelated to the permit, such as in-kind contributions to the City, including reserving fiber, conduit, or pole space for the City;
 - b. An applicant shall not be required to provide more information to obtain a permit than communications service providers that are not wireless providers, provided that an applicant shall include construction and engineering drawings and information demonstrating compliance with the criteria in Subsection (D)(2)(i) of this Section and an attestation that the small wireless facility complies with the volumetric limitations in the definition of "small wireless facility" of Subsection (B) above;

- c. An applicant shall not be required to place small wireless facilities on any specific utility pole or category of poles or require multiple antenna systems on a single utility pole;
- d. There is no limit as to the placement of small wireless facilities by minimum horizontal separation distances;
- e. An applicant shall comply with reasonable, objective, and cost-effective concealment or safety requirements as provided herein;
- f. An applicant that is not a wireless services provider shall provide evidence of agreements or plans demonstrating that the small wireless facilities will be operational for use by a wireless services provider within one (1) year after the permit issuance date, unless the City and the applicant agree to extend this period or if delay is caused by lack of commercial power or communications transport facilities to the site and the applicant notifies the City thereof. An applicant that is a wireless services provider shall provide the information required by this Subsection by attestation;
- g. Within fifteen (15) days of receiving an application, the City shall determine and notify the applicant in writing whether the application is complete. If an application is incomplete, the City shall specifically identify the missing information in writing. The processing deadline in Subsection (D)(2)(h) of this Section shall be tolled from the time the City sends the notice of incompleteness to the time the applicant provides the missing information. That processing deadline may also be tolled by agreement of the applicant and the City;
- h. An application for co-location shall be processed on a non-discriminatory basis and deemed approved if the City fails to approve or deny the application within forty-five (45) days of receipt of the application. An application for installation of a new, modified, or replacement utility pole associated with a small wireless facility shall be processed on a non-discriminatory basis and deemed approved if the City fails to approve or deny the application within sixty (60) days of receipt of the application;
- i. The City may deny a proposed co-location of a small wireless facility or installation, modification, or replacement of a utility pole that meets the requirements in Subsection (c)(3) above only if the action proposed in the application could reasonably be expected to:
 - (1) Materially interfere with the safe operation of traffic control equipment or City-owned communications equipment;
 - (2) Materially interfere with sight lines or clear zones for transportation, pedestrians, or non-motorized vehicles;
 - (3) Materially interfere with compliance with the Americans with Disabilities Act, 42 U.S.C. §§ 12101 to 12213, or similar Federal or State standards regarding pedestrian access or movement;
 - (4) Materially obstruct or hinder the usual travel or public safety on the right-of-way;
 - (5) Materially obstruct the legal use of the right-of-way by the City, a utility or other third party;

- (6) Fail to comply with reasonable and non-discriminatory spacing requirements of general application adopted by ordinance or regulations promulgated by the State Highways and Transportation Commission that concern the location of ground-mounted equipment and new utility poles, subject to wireless provider requests for exception or variance;
 - (7) Fail to comply with applicable codes, including nationally recognized engineering standards for utility poles or wireless support structures;
 - (8) Fail to comply with the reasonably objective and documented aesthetics of a decorative pole and the applicant does not agree to pay to match the applicable decorative elements; or
 - (9) Fail to comply with reasonable and non-discriminatory undergrounding requirements contained in City ordinances as of January 1, 2018, or subsequently enacted for new developments, that require all new utility facilities in the area to be placed underground and prohibit the installation of new or the modification of existing utility poles in a right-of-way without prior approval, including by wireless provider requests for exception or variance;
- j. The City shall document the complete basis for a denial in writing, and send the documentation to the applicant with the communication denying an application. The applicant may cure the deficiencies identified by the City and resubmit the application within thirty (30) days of the denial without paying an additional application fee. The City shall approve or deny the revised application within thirty (30) days. Any subsequent review shall be limited to the deficiencies cited in the denial;
- k. Consolidated Application.
- (1) An applicant may file a consolidated application and receive a single permit for the co-location of multiple small wireless facilities; provided, however, the denial of one (1) or more small wireless facilities in a consolidated application shall not delay processing of any other small wireless facilities in the same batch; and
 - (2) An application may include up to twenty (20) separate small wireless facilities, provided that they are for the same or materially same design of small wireless facility being co-located on the same or materially the same type of utility pole or wireless support structure and geographically proximate. If the City receives individual applications for approval of more than fifty (50) small wireless facilities or consolidated applications for approval of more than seventy-five (75) small wireless facilities within a fourteen-day period, whether from a single applicant or multiple applicants, the City may, upon its own request, obtain an automatic thirty-day extension for any additional co-location or replacement or installation application submitted during that fourteen-day period or in the fourteen-day period immediately following the prior fourteen-day period. The City shall promptly communicate its request to each affected applicant. In rendering a decision on an application for multiple small wireless facilities, the City may approve the application as to certain individual small wireless facilities while denying it as to others based on applicable requirements and standards, including those identified in this Subsection. The City's denial of any individual small wireless facility or subset of small

wireless facilities within an application shall not be a basis to deny the application as a whole; notwithstanding the foregoing, the FCC "shot clock" review periods set forth in 47 CFR 1.6003 shall not be exceeded regardless of the number of batched applications.

- l. Installation or co-location for which a permit is granted under this Subsection shall be completed within one (1) year after the permit issuance date unless the City and the applicant agree to extend this period, or the applicant notifies the City that the delay is caused by a lack of commercial power or communications transport facilities to the site.
 - m. Approval of an application authorizes the applicant to:
 - (1) Undertake the installation or co-location; and
 - (2) Operate and maintain the small wireless facilities and any associated utility pole covered by the permit for a period of ten (10) years, which shall be renewed for equivalent durations so long as the facilities and poles remain in compliance with the criteria set forth in subdivision (9) of this Subsection, unless the applicant and the City agree to an extension term of less than ten (10) years. The provisions of this Subsection shall be subject to the right of the City to require, upon adequate notice and at the facility owner's own expense, relocation of facilities as may be needed in the interest of public safety and convenience, and the applicant's right to terminate at any time;
 - n. Abandoned small wireless facilities shall be removed as provided in this Chapter or an agreement, as applicable;
 - o. In determining whether sufficient capacity exists to accommodate the attachment of a new small wireless facility, the City shall take into account that any grant of access hereunder shall be subject to a reservation to reclaim such space, when and if needed, to meet a core utility purpose or documented plan projected at the time of the application pursuant to a bona fide development plan; and
 - p. In emergency circumstances that result from a natural disaster or accident, the City may require the owner or operator of a wireless facility to immediately remove such facility if the wireless facility is obstructing traffic or causing a hazard on the City's roadway. In the event that the owner or operator of the wireless facility is unable to immediately remove the wireless facility, the City may remove the wireless facility from the roadway or other position that renders the wireless facility hazardous. Under these emergency circumstances, the City shall not be liable for any damage caused by removing the wireless facility and may charge the owner or operator of the wireless facility the City's reasonable expenses incurred in removing the wireless facility.
3. A permit is not required for:
- a. Routine maintenance on previously permitted small wireless facilities;
 - b. The replacement of small wireless facilities with small wireless facilities that are the same or smaller in size, weight, and height; or
 - c. The installation, placement, maintenance, operation, or replacement of micro wireless facilities that are strung on cables between utility poles, in compliance with applicable codes. For work described in Subsection (D)(3)(a) and (b) of this Section that involves different equipment than that being replaced, the wireless services provider shall submit

a description of such new equipment so that the City may maintain an accurate inventory of the small wireless facilities at that location.

4. No approval for the installation, placement, maintenance, or operation of a small wireless facility under this Section shall be construed to confer authorization for the provision of cable television service, or installation, placement, maintenance, or operation of a wireline backhaul facility or communications facility, other than a small wireless facility, in the right-of-way.

5. The municipal electric utility shall not require an application for the installation, placement, maintenance, operation, or replacement of micro wireless facilities that are strung on cables between utility poles, in compliance with applicable codes.

E. Co-locations on City Poles and Wireless Support Structures Outside of Right-of-Way.

1. This Subsection only applies to co-locations on City poles and wireless support structures that are located outside the right-of-way.

2. Subject to Subsection (E)(3) of this Section, the City shall authorize the co-location of small wireless facilities on City wireless support structures and poles to the same extent, if any, that it permits access to such structures for other commercial projects or uses. Such co-locations shall be subject to reasonable and non-discriminatory rates, fees, and terms as provided in an agreement between the City, or its agent, and the wireless provider substantially in the form of Schedule C to this Section.

3. The City shall not enter into an exclusive agreement with a wireless provider concerning City poles or wireless support structures, including stadiums and enclosed arenas, unless the agreement meets the following requirements:

a. The wireless provider provides service using a shared network of wireless facilities that it makes available for access by other wireless providers, on reasonable and non-discriminatory rates and terms that shall include use of the entire shared network, as to itself; an affiliate, or any other entity; or

b. The wireless provider allows other wireless providers to co-locate small wireless facilities, on reasonable and non-discriminatory rates and terms, as to itself, an affiliate, or any other entity.

4. When determining whether a rate, fee, or term is reasonable and nondiscriminatory for the purposes of this Subsection, consideration may be given to any relevant facts, including alternative financial or service remuneration, characteristics of the proposed equipment or installation, structural limitations, or other commercial or unique features or components.

F. Co-locations on City Poles within the Right-of-Way.

1. The provisions of this Subsection apply to co-locations on City poles within the right-of-way by a wireless provider.

2. Neither the City nor any person owning, managing, or controlling City poles in the right-of-way shall enter into an exclusive arrangement with any person for the right to attach to such

poles. A person who purchases or otherwise acquires a City pole is subject to the requirements of this Subsection.

3. The City shall allow the co-location of small wireless facilities on its poles using the process set forth in Subsection D.
 4. An application shall include engineering and construction drawings, as well as plans and detailed cost estimates for any make-ready work as needed, for which the applicant shall be solely responsible.
 5. Make-ready work shall be addressed as follows, unless the City (or its successor) and applicant agrees to different terms in a pole attachment agreement:
 - a. The rates, fees, and terms and conditions for the make-ready work to co-locate on a City pole shall be non-discriminatory, competitively neutral, and commercially reasonable, and shall comply with Sections 67.5110 to 67.5121, RSMo.;
 - b. Unless the City allows the applicant to perform any make-ready work, the City shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested co-location by a wireless provider, including pole replacement if necessary, within sixty (60) days after receipt of a complete application. If applicable, make-ready work, including any pole replacement, shall be completed by the City within sixty (60) days of written acceptance of the good faith estimate and advance payment by the applicant. The City may require replacement of its pole on a non-discriminatory basis for reasons of safety and reliability, including a demonstration that the co-location would make the pole structurally unsound, including, but not limited to, if the co-location would cause a utility pole to fail a crash test; and
 - c. The person owning, managing, or controlling the City pole shall not require more make-ready work than required to meet applicable codes or industry standards. Fees for make-ready work shall not include costs related to preexisting or prior damage or non-compliance unless the City had determined, prior to the filing of the application, to permanently abandon and not repair or replace the structure. Fees for make-ready work, including any pole replacement, shall not exceed actual costs or the amount charged to other communications service providers for similar work, and shall not include third-party fees, charges, or expenses, except for amounts charged by licensed contractors actually performing the make-ready work.
 6. When a small wireless facility is located in the right-of-way of the State highway system, equipment and facilities directly associated with a particular small wireless facility, including coaxial and fiber optic cable, conduit, and ground-mounted equipment, shall remain in the utility corridor except as needed to reach a City or utility pole in the right-of-way but outside the utility corridor in which the small wireless facility is co-located.
- G. Rates and Fees.
1. This Subsection governs the rates and fees to co-locate small wireless facilities on City poles and the rates and fees for the placement of utility poles, but does not limit the City's ability to recover specific removal costs from the attaching wireless provider for abandoned structures. The rates to co-locate on City poles shall be non-discriminatory regardless of the services provided by the co-locating applicant.

2. The City shall not require a wireless provider to pay any rates, fees, or compensation to the authority or other person other than what is expressly authorized by Sections 67.5110 to 67.5121, RSMo. (while in effect) for the use and occupancy of a right-of-way, for co-location of small wireless facilities on utility poles in the right-of-way, or for the installation, maintenance, modification, operation, and replacement of utility poles in the right-of-way.
 3. Application fees shall be as follows:
 - a. The total fee for any application under Subsection (D)(3) for co-location of small wireless facilities on existing City poles shall be one hundred dollars (\$100.00) per small wireless facility. An applicant filing a consolidated application under Subsection (D)(2)(k) shall pay one hundred dollars (\$100.00) per small wireless facility included in the consolidated application; and
 - b. The total application fees for the installation, modification, or replacement of a pole and the co-location of an associated small wireless facility shall be five hundred dollars (\$500.00) per pole.
 4. Co-Location Fees; Statutory Authority.
 - a. The rate for co-location of a small wireless facility to a City pole shall be one hundred fifty dollars (\$150.00) per pole per year.
 - b. The City shall not charge a wireless provider any fee, tax other than a tax authorized by Subsection (G)(4)(c) below, or other charge, or require any other form of payment or compensation, to locate a wireless facility or wireless support structure on privately owned property, or on a wireless support structure not owned by the City.
 - c. The City shall not demand any fees, rentals, licenses, charges, payments, or assessments from any applicant or wireless provider for, or in any way relating to or arising from, the construction, deployment, installation, mounting, modification, operation, use, replacement, maintenance, or repair of small wireless facilities or utility poles, if not allowed by Section 67.5116, RSMo. (while in effect).
- H. Authority Preserved. Subject to the provisions of Sections 67.5110 to 67.5121, RSMo. (while in effect) and applicable Federal law, the City shall continue to exercise zoning, land use, planning, and permitting authority within its territorial boundaries, including with respect to wireless support structures and utility poles, except that the City shall not have or exercise any jurisdiction or authority over the design, engineering, construction, installation, or operation of any small wireless facility located in an interior structure or upon the site of any campus, stadium, or athletic facility not owned or controlled by the City, other than to comply with applicable codes.
- I. Prior Agreements. This Section shall not nullify, modify, amend, or prohibit a mutual agreement between the City and a wireless provider made prior to August 28, 2018, but an agreement that does not fully comply with Sections 67.5110 to 67.5121, RSMo. (while in effect) shall apply only to small wireless facilities and utility poles that were installed or

approved for installation before August 28, 2018, subject to any termination provisions in the agreement. Such an agreement shall not be renewed, extended, or made to apply to any small wireless facility or utility pole installed or approved for installation after August 28, 2018, unless it is modified to fully comply with Sections 67.5110 to 67.5121 RSMo. (while in effect). In the absence of an agreement, and until such a compliant agreement or ordinance is entered or adopted, small wireless facilities and utility poles that become operational or were constructed before August 28, 2018, may remain installed and be operated under the requirements of Sections 67.5110 to 67.5121 RSMo. (while in effect).

J. Indemnification, Insurance, and Bonding Requirements.

1. A wireless provider shall indemnify and hold the City and its elected and appointed officers and employees harmless against any damage or personal injury caused by the negligence of the wireless provider or its employees, agents, or contractors, including but not limited to reasonable attorneys' fees incurred by the City.
2. A wireless provider shall have in effect insurance coverage consistent with this Subsection, or demonstrate a comparable self-insurance program. A self-insured wireless provider does not need to name the City or its officers and employees as additional insured. A wireless provider shall furnish proof of insurance, if applicable, prior to the effective date of any permit issued for a small wireless facility.
3. The bonding requirements shall apply to small wireless facilities. The purpose of such bonds shall be to:
 - a. Provide for the removal of abandoned or improperly maintained small wireless facilities, including those that an authority determines need to be removed to protect public health, safety, or welfare;
 - b. Restore the right-of-way in connection with removals under Section 67.5113, RSMo.;
 - c. Recoup rates or fees that have not been paid by a wireless provider in over twelve (12) months, so long as the wireless provider has received reasonable notice from the City of any noncompliance listed above and been given an opportunity to cure;
 - d. Bonding requirements shall not exceed one thousand five hundred dollars (\$1500.00) per small wireless facility. For wireless providers with multiple small wireless facilities within the City, the total bond amount across all facilities shall not exceed seventy-five thousand dollars (\$75,000.00), which amount may be combined into one (1) bond instrument.
4. Applicants that have at least twenty-five million dollars (\$25,000,000.00) in assets in the State and do not have a history of permitting non-compliance within the City shall, under Section 67.1830, RSMo., be exempt from the insurance and bonding requirements otherwise authorized by this Section.
5. Any contractor, subcontractor, or wireless infrastructure provider shall be under contract with a wireless services provider to perform work in the right-of-way related to small wireless facilities or utility poles, and such entities shall be properly licensed under the laws of the State and all applicable City ordinances. Each contracted entity

shall have the same obligations with respect to his or her work as a wireless services provider would have under this Section, under Sections 67.5110 to 67.5121, RSMo., and other applicable laws if the work were performed by a wireless services provider. The wireless services provider shall be responsible for ensuring that the work of such contracted entities is performed consistently with the wireless services provider's permits and applicable laws relating to the deployment of small wireless facilities and utility poles, and responsible for promptly correcting acts or omissions by such contracted entity.

- K. Expiration. This Section shall expire at such time that Sections 67.5110 to 67.5122, RSMo., expire, except that for small wireless facilities already permitted or co-located on City poles prior to such date, the rate set forth in Subsection G for co-location of small wireless facilities on City poles shall remain effective for the duration of the permit authorizing the co-location.

**PASSED BY THE BOARD OF ALDERMEN FOR THE CITY OF NORTHWOODS,
MISSOURI, THIS 27th DAY OF September, 2022.**


SIGNED THIS 27th DAY OF September, 2022.



Sharon Pace

Mayor—City of Northwoods, MO

ATTEST:



**Cynthia Dixon
City Clerk—City of Northwoods, MO**