BILL NO. **7021** ORDINANCE NO. **6506**

Sponsored by: Council member Kling

AN ORDINANCE AMENDING CHAPTER 406 RELATED TO STANDARDS FOR EXCAVATION AND WORK AFFECTING RIGHT-OF-WAY, UTILITY LINES OR OTHER PUBLIC INTERESTS AND ALSO REPEALING CHAPTER 510 IN ITS ENTIRETY AS IT MERELY DUPLICATES SEVERAL PROVISIONS IN CHAPTER 406.

WHEREAS, the City Council seeks to preserve the public health, safety and welfare, by ensuring that public rights-of-way and utility facilities are repaired and maintained in a safe condition when excavation or other work is necessary; and

WHEREAS, a periodic review and update to the regulations are necessary and appropriate to respond to current circumstances; and

WHEREAS, the City's current regulations may not be appropriate to respond to those current circumstances; and

WHEREAS, the City Council desires to amend various provisions of the Municipal Code pertaining to the excavation and work affecting right-of-way, utility lines or other public interests.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF O'FALLON, MISSOURI, AS FOLLOWS:

Section One: Chapter 406 of the Municipal Code of the City of O'Fallon, Missouri, is here by repealed and a new Chapter 406 is hereby enacted in lieu thereof to read as follows:

Chapter 406

Excavation and Work Affecting Right-of-Way, Utility Lines or Other Public Interests

Article I

General

Section 406.010 **Definitions.**
[Ord. No. 5376 §1, 9-25-2008]

The following terms shall have the following meanings unless otherwise defined by context:

CITY ADMINISTRATOR
The manager or administrator of the City or such other person designated by the City to hear appeals as provided in Section **406.050(B)**.

CITY FACILITIES
Any facilities located within the public rights-of-way and owned by the City.

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 an unexpected or unplanned outage, cut, rupture, leak or any other failure of a facility when such failure results or could result in danger to the public or a material delay or hindrance to the provision of service.

ENGINEER
The City's Engineer or such other person designated to administer and enforce this Chapter.

EXCAVATION
Any operation in which earth, rock or other material in or on the ground is moved, removed or otherwise displaced by mean of any tools, equipment or explosives and includes, without limitation, backfilling, grading, trenching, digging, ditching, drilling, well-drilling, auguring, boring, tunneling, scraping, cable or pipe plowing, plowing-in, pulling-in, ripping, driving and demolition of structures, except that, the use of mechanized tools and equipment to break and remove pavement and masonry down only to the depth of such pavement or masonry, the use of high-velocity air to disintegrate and suction to remove earth, rock and other materials and the tilling of soil for agricultural or seeding purposes shall not be deemed excavation. Backfilling or moving

earth on the ground in connection with other excavation operations at the same site shall not be deemed separate instances of excavation.

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, wires, cables, fibers, conduit facilities, cabinets, poles, vaults, pedestals, boxes, appliances, antennas, transmitters, radios, towers, gates, meters, appurtenances or other equipment.

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 ownership or control of facilities located within the rights-of-way.

POTHOLE

The practice of digging a test hole to expose underground utilities to ascertain the horizontal location, vertical depth, size or type of underground utility, with as little disturbance to the actual utility as possible. Methods include hand digging, water (or hydro) excavating, air, or vacuum extraction.

PRE-CONSTRUCTION MEETING

Meeting between the City and the ROW user, before construction begins, to discuss the ROW work as outlined on the City-issued permit.

RIGHTS-OF-WAY OR ROW

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 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:

1. City facilities or the City's property other than ROW, such as City-owned or operated buildings, parks or other similar property,

2. Airwaves used for cellular, non-wire telecommunications or broadcast services,

3. Easements obtained by ROW users on private property,

4. Railroad rights-of-way or ground used or acquired for railroads; or

5. Facilities owned and used by the City for the transmission of one (1) or more services.

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 or authorized contractor 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, video services, alarm systems, steam, electricity, water, telegraph, data transmission, petroleum pipelines, sanitary or stormwater sewer or any similar or related service, to one (1) or more persons located within or outside of the City by use of facilities located within the rights-of-way.

WITHIN

Along, under, over or across rights-of-way.

Article II
Right-Of-Way

Section 406.020 **Right-Of-Way ("ROW") Permits.**
[Ord. No. 5376 §1, 9-25-2008; Ord. No. 6252 §1, 9-8-2016]

A. *Application 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 business day thereafter. The Engineer may design and issue general permits for emergency ROW work for several different locations or throughout the City.

2. An application for a ROW permit shall be submitted to the Engineer. The Engineer may design and make available standard forms for such applications, requiring such information as allowed by law and as the Engineer determines in his or her discretion to be necessary and consistent with the provisions of this Chapter and to accomplish the purposes of this Chapter. Each application shall at a minimum contain the following information for the proposed ROW work, unless otherwise waived by the Engineer:

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, address and telephone number of the person or entity owning or operating the facilities in the ROW for which the proposed work is to be performed;

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

(1) If there are areas of established landscaping, irrigation, lighting, or other unusual items that are in the path of excavation, then detailed photographs of these items shall be included. Letters from the owners of these facilities may be needed if they are to be altered in any way.

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 Engineer with reasonable advance notice of such dates once they are determined;

e. Copies of any required certificates of insurance or performance and maintenance bonds, as outlined in this Chapter. 3. 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.

4. Each such application shall be accompanied by the following payments:

a. An application fee approved by the City to cover the cost of processing the application;

b. A deposit for attending the pre-construction meeting. Said fee will be returned upon verification of attendance of the meeting.

c. An escrow or bond shall be submitted to the City for restoration purposes.

d. Any other amounts due to the City from the applicant, including, but not limited to, prior delinquent fees, costs and any loss, damage or expense suffered by the City because of the applicant's prior work in the rights-of-way or for any emergency actions taken by the City, but the Engineer may modify this requirement to the extent the Engineer determines any such fees to be in good-faith dispute.

e. Failure to submit a permit application may result in triple the permit fees being applied. Emergency ROW work is exempt from this condition.

5. 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 Engineer. 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.

6. The Engineer may 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 Engineer shall also maintain indexes of all ROW permits issued, both by the ROW user and by the affected rights-of-way.

B. *Application Review and Determination.*

1. The Engineer 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 thereof. Unless the application is denied, the Engineer shall issue a ROW permit upon determining that the applicant:

   a. Has submitted all necessary information,

   b. Has paid the appropriate fees, deposits, and escrow, and

   c. Is in full compliance with this Chapter and all other City ordinances.

   The Engineer may establish procedures for bulk processing of applications periodic payment of fees to avoid excessive processing and accounting co

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 Chapter. When reasonable and necessary to accomplish such purposes, the Engineer 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 result in a decline of service quality, and

   b. Shall be competitively neutral and non-discriminatory.

   The Engineer shall justify to the applicant that the required alternativ reasonable and necessary.

3. Upon receipt of an application, the Engineer 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 Engineer 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 Engineer'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 Engineer shall promptly grant the ROW permit.

b. If the Engineer 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 Section applies, the Engineer shall schedule and coordinate the work and grant the ROW permit accordingly. When reasonable and necessary to accomplish the purposes of this Chapter, the Engineer 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.

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

4. Each ROW permit issued by the Engineer shall include:

a. Projected commencement and termination dates or, if such dates are unknown at the time the permit is issued, a provision requiring the ROW user to provide the Engineer 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;

(1) Any proposed road closings or work up against a road

requiring narrowing of the road shall include a detailed traffic management plan, in accordance with the Manual of Uniform Traffic Control Devices (MUTCD).

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 acknowledgment and representation by the applicant to comply with the terms and conditions of the ROW permit and this Chapter; and

f. Such conditions and requirements as are deemed reasonably necessary by the Engineer to protect structures and other facilities in the rights-of-way from damage, to restore such rights-of-way and any structures or facilities, to ensure the reasonable continuity and sight lines of pedestrian and vehicular traffic and to protect property values, the aesthetics of adjoining properties and neighborhoods and the public health, safety and welfare.

5. The Engineer may deny an application, if denial is deemed to be in the public interest, for the following reasons:

a. Delinquent fees, costs or expenses owed by the applicant or the ROW user for which the work is to be performed;

b. Failure to provide information required by the application or this Chapter;

c. Unresolved violations of the provisions of this Chapter or other pertinent and applicable City ordinances by the applicant or ROW user for which the work is to be performed;

d. Failure to return the ROW to its previous condition under previously issued ROW permits or after prior excavations by the applicant or ROW user;

e. For reasons of environmental, historic or cultural sensitivity as defined by applicable Federal, State or local law;

f. Refusal to comply with alternative ROW work methods, locations or other reasonable conditions required by the Engineer; and

g. For any other reason to protect the public health, safety and welfare, provided that such denial does not fall within the exclusive authority of the Missouri Public Service Commission or interfere with a ROW user's right of eminent domain of private property and, provided further, that such denial is imposed on a competitively neutral and non-discriminatory basis. In accordance with the foregoing, any wireless telecommunications towers and facilities to be constructed within the ROW shall at a minimum meet the height, visibility, lighting, and fall line limitations and requirements of Article **XVIII** (Regulations for Wireless Telecommunications Facilities) of Chapter **400** Zoning Code as applicable to the zoning district in which the towers and facilities would be located. Similarly, other utility facilities to be constructed within the ROW shall at a minimum meet the standards of Article **XIX** (Utility Facilities Permits and Regulations) of Chapter **400** Zoning Code as applicable to the zoning district in which the facilities would be located.

C. *Permit Revocation And Ordinance Violations.*

1. The Engineer 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 permit or this Chapter. Prior to revocation the Engineer 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 Engineer 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 or this

Chapter;

b. An evasion or attempt to evade any material provision of the ROW permit or this Chapter 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 Engineer, work that does not conform to applicable national safety ordinances, industry construction standards, this Chapter or any other applicable ordinances, provided that City standards are no more stringent than those of a national safety ordinance.

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

D. *Exceptions.* Projects with a construction plan approved by the City are not required to obtain a separate ROW permit for any work contained in the construction plan approval. City sponsored capital improvement projects, requiring utility adjustments, are not required to obtain a separate ROW permit for any directly associated adjustments or new facilities.

Section 406.030 **Work in The Rights-Of-Way.**
[Ord. No. 5376 §1, 9-25-2008]

A. *Jurisdiction, Inspection and Stop Work Orders.*

1. All facilities and ROW work shall be subject to inspection by the City and the supervision of all Federal, State and local authorities having jurisdiction in such matters to ensure compliance with all applicable laws, ordinances, departmental rules and regulations and the ROW permit.

2. The Engineer shall have full access to all portions of the ROW work and may issue stop work orders and corrective orders to prevent unauthorized work or substandard work as established in Subsection **(G)** hereof. Such orders:

   a. May be delivered personally or by certified mail to the address(es) listed on the application for the ROW permit or the person in charge of the construction site at the time of delivery;

   b. Shall state that substandard work or work not authorized by the ROW permit is being carried out, summarize the substandard or unauthorized work and provide a period of no longer than thirty (30) days to cure the problem, which cure period may be immediate if certain activities must be stopped to protect the public safety; and

   c. May be enforced by equitable action in the Circuit Court of St. Charles County, Missouri, and in such case the person responsible for the substandard or unauthorized work shall be liable for all costs and expenses incurred by the City in enforcing such orders, including reasonable attorney's fees, in addition to any and all penalties established in this Chapter.

B. *Underground Facilities.*

1. In conjunction with the City's long-standing policy favoring underground construction, no person may erect, construct or install new poles or other facilities above the surface of the rights-of-way without the written permission of the City, unless the City's authority has been pre-empted by State or Federal law. Such permission may be granted through a ROW permit when other similar facilities exist above ground or when conditions are such that underground construction is impossible or impractical, as determined by the City, and when in the City's judgment the above ground construction has minimal aesthetic impact on the area where the construction is proposed.

2. During installation of facilities and to the extent authorized by law, existing underground conduits shall be used whenever feasible and permitted by the owner thereof.

3. In the case of new construction or property development, the developer or property owner shall give reasonable written notice to other potential ROW users of the particular date on which open trenching will be available for installation of facilities. All such users shall cooperate to the extent possible to expedite the installation of facilities while minimizing disruption to the ROW.

C. *Above Ground Facilities.*

1. The Engineer 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:

   a. Ornamental or similar specially-designed street lights,

   b. Designated historic areas,

   c. 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,

   d. Facilities, equipment, structures or locations that in the reasonable judgment of the Engineer are incompatible with the proposed facilities or would be rendered unsafe or unstable by the installation, and

   e. 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.

2. Above ground facilities shall be a neutral color and shall not be bright, reflective or metallic. Black, gray and tan shall be considered neutral colors, as shall any color that blends with the surrounding dominant color and helps to camouflage the facilities. Facilities shall be located in such a manner as to reduce or eliminate their visibility. A sight proof landscape screen may be required for any authorized above ground facilities taller than three (3) feet in height or covering in excess of four (4) square feet in size. Such screening shall be

sufficient to reasonably conceal the facility. A landscape plan identifying the size and species of landscaping materials shall be approved by the Engineer prior to installation of any facility requiring landscape screening. The person having facilities within the ROW shall be responsible for the installation, repair or replacement of screening materials. Alternative screening or concealment may be approved by the Engineer to the extent it meets or exceeds the purposes of these requirements.

3. Above ground facilities shall be constructed and maintained in such a manner so as not to emit any unnecessary or intrusive noise and shall comply with all other applicable regulations and standards established by the City or State or Federal law.

4. If the application of this Subsection excludes locations for above ground facilities to the extent that the exclusion conflicts with the reasonable requirements of the applicant, the Engineer shall cooperate in good faith with the applicant to attempt to find suitable alternatives, but such alternatives may exceed the cost increase limitation established by Section **406.020(B)(2)** and the City shall not be required to incur any financial cost or to acquire new locations for the applicant.

D. *Relocation of Equipment and Facilities.*

1. In the event of an emergency or where construction equipment or facilities create or are contributing to an imminent danger to health, safety or property, the City may, to the extent allowed by law, remove, re-lay or relocate such construction equipment, or the pertinent parts of such facilities, without charge to the City for such action or for restoration or repair. The City shall attempt to notify the person having facilities within the ROW prior to taking such action, but the inability to do so shall not prevent same. Thereafter, the City shall notify the person having facilities within the ROW as soon as practicable.

2. At the City's direction, all facilities shall be moved underground and the cost shall be solely the obligation of the person having facilities within the ROW (or as otherwise allowed or required by law).

3. At the City's direction, a person having facilities within the

ROW shall protect, support, disconnect, relocate or remove facilities, at its own cost and expense, when necessary to accommodate the construction, improvement, expansion, relocation or maintenance of streets or other public works or to protect the ROW or the public health, safety or welfare.

4. A person having facilities within the ROW shall, on the reasonable request of any person and after reasonable advance written notice, protect, support, disconnect, relocate or remove facilities to accommodate such person and the actual cost, reasonably incurred, of such actions shall be paid by the person requesting such action. The person having facilities within the ROW taking such action may require such payment in advance.

5. Rather than relocate facilities as requested or directed, a ROW user may abandon the facilities if approved by the City as provided in Subsection **(F)** of this Section.

6. No action hereunder shall be deemed a taking of property and no person shall be entitled to any compensation therefor. No location of any facilities within the rights-of-way shall be a vested interest.

E. *Property Repair and Alterations.*

1. During any ROW work, the person doing the work shall protect from damage any and all existing structures and property belonging to the City and any other person. Any and all rights-of-way, public property or private property disturbed or damaged during the work shall be repaired or replaced by the person doing the work or the person on whose behalf the work is being done and such person shall immediately notify the owner of the fact of any damaged property. Such repair or replacement shall be completed within a reasonable time specified by the Engineer and to the Engineer's satisfaction.

   a. Excavated areas shall be compacted to avoid settling of the excavated areas. Clean soil backfill shall be used in the pits and clean topsoil near the surface to prepare for proper turf restoration, as outlined below.

      (1) Any disturbance on private property or neatly

manicured road rights-of-way shall require sod to be placed on the excavated areas in similar condition. If sections of sod can be removed and replaced in good condition, then that is acceptable. Watering of the sod to ensure survival will be required for a minimum of 21 days after placement or replacement.

(2) Any other disturbance on road rights-of-way or non-maintained private property shall require seed and straw to be placed and watered for a minimum of 21 days after placement, to ensure a good stand of grass has resulted.

(3) If work occurs when normal seed and sod is not available or outside of normal growing seasons (November 1 to April 1), then temporary seed will be used (i.e. annual rye, winter wheat, etc.) until the growing season resumes.

b. Any disturbed area that contains landscaping, hardscaping, mulch, rocks, boulders, shrubbery, flowers, trees, statues, art, irrigation systems, lighting, and other items shall ensure that these are neatly labeled and moved out of the way to the best extent possible prior to work. Restoration includes repairing and/or replacing these items to the same condition before work began. The ROW user shall take whatever means necessary to document the condition of these items before construction begins. Coordination with the owners of these items may be needed to verify their condition before and after construction.

(1) The ROW user may need to hire a third-party professional to mark, repair, replace, or test irrigation, lighting, and other similar items, to verify their condition.

2. Any alteration to the existing sidewalks/trails, curb ramps, streets and curbs, water mains, sewer or drainage system or to any City, State or other public structures or facilities in the rights-of-way required on account of the construction, installation, repair or maintenance of facilities within the rights-of-way shall be made at the sole cost and expense of the owner of such facilities.

a. Driving, parking, placement of outriggers, or other impacts to, under, and over sidewalks or curb ramps is strictly

prohibited. If there is absolutely no access to the facility without crossing the sidewalk/curb ramp, then the City shall inspect the sidewalk/curb ramp before construction begins and after construction finishes. Any damage or change in slope such that the facility would be made out of ADA compliance will result in the person being required to remove and replace the damaged facilities.

F. *Removal, Abandonment, Transfer and Relocation of Facilities.*

1. If a person having facilities within the ROW:

   a. Installs the facilities within the ROW without having complied with the requirements of this Chapter, or

   b. Abandons the facilities, the City may require the removal of the facilities, remove the facilities at the expense of the person having facilities within the ROW or require the transfer of the facilities as provided herein.

2. If the City requires removal of the facilities, the person shall obtain a ROW permit and shall abide by all requirements of this Chapter. The liability, indemnity, insurance and bonding requirements required herein shall continue in full force and effect during and after the period of removal and restoration and until full compliance by the person with the terms and conditions of the ROW permit and the requirements of this Chapter.

3. If the person fails to remove the facilities after having been directed to do so, the City may, to the extent permitted by law, have the removal done at the person's expense. Alternatively, the City may permit the abandonment, without removal, of the facilities if the Engineer determines that abandonment is not likely to prevent or significantly impair the future use, repair, excavation, maintenance or construction of the ROW.

4. If the person fails to remove the facilities after having been directed to do so, the City may, to the extent permitted by law, decide that the ownership of the facilities should be transferred to the City or to such person as directed by the City. In either case the owner of the facilities shall submit a

written instrument, satisfactory in form to the City, transferring to the City, or to such person as directed by the City, ownership of the facilities. The City may sell, assign or transfer all or part of the facilities so transferred.

5. The City shall not remove or seek to possess or transfer the facilities until thirty (30) days have passed following written notice by the Engineer to the person having facilities within the ROW of the City's intent to so act. The Engineer may choose not to act on good cause shown by the person having facilities within the ROW.

G. *Standards for ROW Work.*

1. Except for emergency ROW work as provided in Section **406.020(A)(1)**, ROW work shall be performed only upon issuance and in accordance with the requirements of a ROW permit.

   a. At all times during the work, ROW permits shall be conspicuously displayed or made available upon demand at the work site and shall be available for inspection.

   b. All projects shall require a pre-construction meeting between the City and ROW user. This meeting may be waived if the ROW user has demonstrated considerable compliance with past projects and ordinances, however it will be the responsibility of the ROW user to still contact the City to initiate said meeting and obtain a determination.

2. If at any time it appears that the duration or scope of the ROW work is or will become materially different from that allowed by the ROW permit, the ROW user shall inform the Engineer. The Engineer may issue a waiver, an extension or a revised ROW permit or require that the ROW user reapply for a ROW permit in accordance with all requirements of this Chapter.

3. ROW users shall not open or encumber more of the rights-of-way than is reasonably necessary to complete the ROW work in the most expeditious manner or allow excavations to remain open longer than is necessary to complete the work.

4. All ROW work that affects vehicular or pedestrian traffic shall be properly signed, barricaded and otherwise protected at the ROW user's expense. The ROW user shall be responsible for providing adequate traffic control in accordance with the Manual of Uniform Traffic Control Devices (MUTCD) to the area surrounding the work as determined by the Engineer.

5. The ROW user shall perform the ROW work at such times that will allow the least interference with the normal flow of traffic and the peace and quiet of the neighborhood as permitted by the Engineer. Unless otherwise provided by the Engineer in the permit, non-emergency ROW work on arterial and collector streets may not be accomplished during the hours of 7:00 A.M. to 8:30 A.M. and 4:00 P.M. to 6:00 P.M. in order to minimize disruption of traffic flow.

6. The ROW user shall notify the City no less than three (3) working days in advance of any ROW work that would require any street closure or would reduce traffic flow to less than two (2) lanes of moving traffic for more than four (4) hours. Except in the event of emergency ROW work, no such closure shall take place without notice and prior authorization from the City.
7. All ROW work shall be in accordance with all applicable Sections of the Occupational Safety and Health Act of 1970, the National Electrical Safety Code and other Federal, State or local laws and regulations that may apply including, without limitation, local health, safety, construction and zoning ordinances and laws and accepted industry practices, all as hereafter may be amended or adopted. In the event of a conflict among ordinances and standards, the most stringent ordinance or standard shall apply (except insofar as that ordinance or standard, if followed, would result in facilities that could not meet requirements of Federal, State or local law).

8. All facilities shall be installed and located to cause minimum interference with the rights and convenience of property owners, other ROW users and the City facilities shall not be placed where they will disrupt or interfere with other facilities or public improvements or obstruct or hinder in any manner the various utilities serving the residents and businesses in the City or public improvements.

a. Any installations of utilities in areas of crossing of a City-owned facility will require potholing of the City-owned facility to avoid damage.

b. For horizontal directional drilling operations with a bore path that parallels a City-owned facility within four (4) feet, potholing shall be required at the beginning and end of the bore and every fifty (50) feet along the route.

c. For horizontal directional drilling operations with a bore path that parallels a City-owned facility within six (6) feet, potholing should be required at the beginning and end of the bore and every two hundred (200) feet along the route.

d. Backhoe excavation should not be allowed within two (2) feet of existing facilities.

e. If potholing is impractical due to utility conflicts as specified above, then the City owned storm and sanitary line shall be TVed after construction to confirm no damage was performed before being released from the job.

f. If ROW User failed to pothole as specified and damage is done, then ROW user is responsible for all damage and restoration incurred, including any reimbursement to the City for expenses the City has incurred due to emergency mobilization and/or repair.

9. All facilities shall be of good and durable quality.

10. All ROW work shall be conducted in accordance with good engineering practices performed by experienced and properly trained personnel so as not to endanger any person or property or to unreasonably interfere in any manner with the rights-of-ways or legal rights of any property owner, including the City, or unnecessarily hinder or obstruct pedestrian or vehicular traffic.

11. All safety practices required by law shall be used during ROW work, including commonly accepted methods and devices to prevent failures and accidents that are likely to cause damage, injury or nuisance to the public.

12. Any contractor or subcontractor of a ROW user must be properly licensed under laws of the State and all applicable local ordinances and each contractor or subcontractor shall have the same obligations with respect to its work as a ROW user would have pursuant to this Chapter. A ROW user:

    a. Must ensure that contractors, subcontractors and all employees performing ROW work are trained and experienced,

    b. Shall be responsible for ensuring that all work is performed consistent with the ROW permit and applicable law,

    c. Shall be fully responsible for all acts or omissions of contractors or subcontractors,

    d. Shall be responsible for promptly correcting acts or omissions by any contractor or subcontractor, and

    e. Shall implement a quality control program to ensure that the work is properly performed.

13. A ROW user shall not place or cause to be placed any sort of signs, advertisements or other extraneous markings on the facilities or in the ROW, whether relating to the ROW user or any other person, except such necessary minimal markings approved by the City as necessary to identify the facilities for service, repair, maintenance or emergency purposes or as may be otherwise required to be affixed by applicable law or regulation.

14. Unless otherwise approved in writing by the City, a ROW user shall not remove, cut or damage any trees or their roots within the ROW.

15. Street crossings will be bored unless otherwise permitted by the Engineer.

H. Any person performing ROW work shall provide written notice to all property owners within one hundred eighty-five (185) feet of the site at least forty-eight (48) hours prior to any installation, replacement or expansion of its facilities. Notice shall include a reasonably detailed description of work to be done, the location of

work and the time and duration of the work. Notifications shall be in the form of door hangars or letters. Additional changeable message boards may be needed depending on the scope of the project or as directed by the City Engineer or his/her designee.

I. *Restoring and Maintaining the Rights-Of-Way.*

1. To complete any ROW work, the ROW user shall restore the ROW and surrounding areas, including, but not limited to, any pavement, foundation, concrete slabs or curbs, screening, landscaping or vegetation, to like prior condition and shall comply with other reasonable conditions of the Engineer. Restoration of the ROW shall be completed within the dates specified in the ROW permit unless the Engineer issues a waiver, extension or a new or revised ROW permit.

2. It shall be the duty of any person making an excavation in the ROW to backfill such excavations and restore the surface in accordance with the City's minimum prescribed standards for such surfaces or the following standards as determined by the Engineer.

    a. If the excavations are made in the improved portion of the ROW, twelve (12) inches of granular backfill will be placed over exposed facilities and controlled low strength material (CLSM), aka flowable fill, will fill the hole within eight (8) inches of the finished surface for concrete pavements. There will be a plastic membrane placed between the rock base and the CLSM to prevent the material from bleeding into the rock base. The remaining eight (8) inches will be restored by placing a concrete mix that is approved under chapter 405.210.

        (1) For excavations on concrete streets or sidewalks, all removals shall made be joint-to-joint, and the minimum thickness of replaced concrete shall be either to match existing thickness or seven (7) inches, whichever is greater.

    b. If the excavations are made in the improved portion of an asphalt or combination street, twelve (12) inches of granular backfill will be placed over exposed facilities and CLSM will fill the hole within nine (9) inches of the finished

surface. There will be a plastic membrane placed between the rock base and the CLSM to prevent the material from bleeding into the rock base. The remaining nine (9) inches will be restored by placing a six (6) inch thick, concrete mix that is approved under chapter 405.210. under a three (3) inch asphalt concrete lift of type C mix to meet existing grades.

(1) Where utility crossings occur on City-owned asphalt streets, the asphalt will be required to be milled and overlaid a distance of ten (10) feet both on either side of the utility (basic patching as defined by saw cutting and repair of the immediate trench area along the road is not allowed). Butt joints will be required at each tie-in point.

c. Driveway entrances shall be constructed in accordance with chapter 405.210 (G)

d. Spoil piles shall be placed on sheeting and covered when not in use to minimize disturbance and contamination to the existing turf.

e. Streets, sidewalks, driveways and parking lots shall be cleaned at the end of each working day. If disturbed areas are susceptible to runoff traveling onto a paved surface, then siltation control may be required. If the City is required to clean up the paved areas, then a mobilization fee of four hundred dollars ($400.00) will be charged to the ROW user for each occurrence.

3. If a ROW user fails to restore the ROW within the date specified either by the ROW permit or any extension thereof as granted by the Engineer, the City may take the following actions:

a. The City may perform site restoration. The City may also opt to perform site restoration regardless of any failure by the ROW user, in which case the ROW permit or any amendment or revision thereto, shall note such option. In either event, if the City performs the site restoration, the cost of the restoration shall be paid for out of the bond or escrow, and then the ROW user shall be responsible for

reimbursing the City's reasonable actual restoration costs within thirty (30) days of invoice, if the reimbursement exceeds the bond or escrow amount.

b. The City may stop work on other aspects of the permit until more sufficient restoration is performed.

c. The City may deny issuing any additional permits to the ROW user and/or Person(s) having facilities within the rights-of-way until more sufficient restoration is performed.

4. Every ROW user to whom a ROW permit has been granted shall guarantee for a period of one (1) year the restoration of the ROW in the area where the ROW user conducted excavation. Said period shall commence at the date of closeout of the permit. During this period the ROW user shall, upon notification from the Engineer, correct all restoration work to the extent necessary as required by the Engineer. Said work shall be completed within a reasonable time, not to exceed thirty (30) calendar days from receipt of the Engineer's notice unless otherwise permitted by the Engineer. If a ROW user fails to restore the ROW within the time specified, the City may perform the work and the ROW user shall be responsible for reimbursing the City's reasonable actual restoration costs within thirty (30) days of invoice. The Engineer may extend the cure period on good cause shown.

5. A ROW user shall not be relieved of the obligation to complete the necessary right-of-way restoration and maintenance because of the existence of any performance bond required by this Chapter.

Section 406.040 **Escrow - Bonds — Insurance — Surety — Indemnification — Penalties.**
[Ord. No. 5376 §1, 9-25-2008]

A. *Escrow, Performance and Maintenance Bonds.*

1. Prior to any ROW work a ROW user shall establish a performance and maintenance bond in an amount of five thousand dollars ($5,000.00) to ensure the restoration and protection of the rights-of-way.

a. The bond shall continue in full force and effect for a period

of twenty-four (24) months following completion of the work.

b. The Engineer shall have the authority to extend the maintenance bond period for up to an additional twenty-four (24) months.

c. The Engineer may waive this requirement when the work involves no or only minor disruption or damage to the rights-of-way.

d. The Engineer may waive this requirement when the ROW user (typically a utility company) has twenty-five million dollars ($25,000,000.00) in net assets and does not have a history of non-compliance with State and local regulations.

2. If a ROW user fails to complete the ROW work in a safe, timely and competent manner or if the completed restorative work fails without remediation within the time period for the bond (as determined by the Engineer), then after notice and a reasonable opportunity to cure there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the ROW user and the cost of completing work within or restoring the rights-of-way, plus a reasonable allowance for attorneys' fees, up to the full amount of the bond. The City may also recover against the bond any amount recoverable against a security fund or letter of credit where such amount exceeds that available under a security fund or letter of credit.

3. Upon completion of ROW work to the satisfaction of the Engineer and upon lapse of the bond period, including any extension by the Engineer, the City shall release the bond.

4. The bond shall be issued by a surety with an "A" or better rating of insurance in Best's Key Rating Guide, Property/Casualty Edition, shall be subject to the approval of the City's attorney and shall contain the following endorsement:

"This bond may not be canceled or allowed to lapse until sixty (60) days after receipt by the City, by certified mail, return receipt

requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."

5. In lieu of the bond required herein, the ROW user may establish in the City's favor such other security as the Engineer may determine to be commensurate with the noted bonding requirements, including, but not limited to, an annual bond to be maintained in the minimum amount of twenty-five thousand dollars ($25,000.00). Escrow may also be deposited with the City The escrow must be in the form of cash, check or wire transfer to the City of O'Fallon.

B. *Insurance.*

1. 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: Workers' Compensation and employer liability insurance to meet all requirements of Missouri law and commercial general liability insurance with respect to the construction, operation and maintenance of the facilities and the conduct of the ROW user's business in the City in the minimum amounts of:

Commercial General Liability Insurance:
The Vendor shall carry public and property damage insurance which shall include bodily injury and accidental death to any person and subject at the minimum limits set forth below:

Liability Limits	$1,000,000/Per Occurrence
	$3,000,000/General Aggregate
	$3,000,000 Products/Completed Operations aggregate Additional Insured status must be provided to the City and confirmed by copy of such endorsement. An umbrella/excess liability policy can be used to attain the required limits.

Commercial Automobile Liability Insurance:
The Vendor shall maintain Commercial Automobile Liability Insurance Coverage in the amounts not less than the minimum limits set forth below:

Bodily Injury and Property Damage	$3,000,000 Combined Single Liability Limit An umbrella/excess liability policy can be used to attain the required limits.

These insurance requirements shall not be construed to limit the liability of any person or to impose any liability on the City or to waive any sovereign immunity.

2. All insurance policies shall be with sureties qualified to do business in the State of Missouri 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.

3. All insurance policies shall be submitted with the permit application 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.

4. All general liability insurance policies shall name the City, its officers, boards, board members, commissions, commissioners, agents and employees as additional insureds and shall further provide that any cancellation or reduction in coverage shall not be effective unless thirty (30) days' prior written notice thereof has been given to the Engineer. A ROW user shall not cancel any required insurance policy without submission of proof that it has obtained alternative insurance that complies with this Chapter.

5. The Engineer may exempt in writing from these insurance requirements any self-insured ROW user, provided that the ROW user demonstrates to the Engineer'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 Chapter. The Engineer may require a security fund or letter of credit as a condition to a self-insured's exemption. The Engineer may waive this requirement when the ROW user (typically a utility company) has twenty-five million dollars ($25,000,000.00) in net assets and does not have a history of non-compliance with applicable regulatory law.

C. *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, but not limited to, the construction, maintenance, repair or replacement of the facilities,

   b. The operation of its facilities,

   c. Failure to secure consents from landowners, or

   d. Any actions taken or omissions made by the person pursuant to the authority of this Chapter.

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

Chapter, the City shall not be so indemnified or reimbursed in relation to any amounts attributable to:

a. The City's own negligence, willful misconduct, intentional or criminal acts, or

b. The City acting in a proprietary capacity to deliver service(s) within the City.

4. 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.

D. *Penalties.* Any person violating any provision of this Chapter shall, upon conviction by the City's Municipal 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 406.050 **Dispute Resolutions, Appeals and Arbitration. [Ord. No. 5376 §1, 9-25-2008]**

A. The Engineer shall make a final determination as to any matter concerning the grant, denial or revocation of a ROW permit as provided in this Chapter. On the request of an applicant or a ROW user and within a reasonable period of time, the Engineer 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 Chapter, provided however, that this review shall not apply to matters being prosecuted in the Municipal Court. Any final determination of the Engineer shall be subject to review as provided herein.

B. Any person aggrieved by a final determination of the Engineer may appeal in writing to the City Administrator within five (5) business days thereof. The appeal shall assert specific grounds for review and the City Administrator shall render a decision on the appeal within fifteen (15) business days of receipt affirming, reversing or modifying the determination of the Engineer. The City

Administrator may extend this time period for the purpose of any investigation or hearing deemed necessary. A decision affirming the Engineer's determination shall be in writing and supported by findings establishing the reasonableness of the decision.

C. Any person aggrieved by the final determination of the City Administrator may file a petition for review pursuant to Chapter 536, RSMo., as amended, in the Circuit Court of the County of St. Charles. Such petition shall be filed within thirty (30) days after the City Administrator'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 Administrator may be submitted to mediation or binding arbitration.

2. In the event of mediation, the City Administrator 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 Administrator and the applicant or ROW user shall agree to a single arbitrator. The costs and fees of the 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 Administrator, 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 406.060 **Miscellaneous.**
[Ord. No. 5376 §1, 9-25-2008]

A. At the discretion of the Engineer, after the completion of ROW work the ROW user shall provide to the City as-built drawings, maps or other comparable records as determined by the Engineer,

drawn to scale and certified to the City as reasonably depicting the location of all facilities constructed pursuant to the ROW permit. Such records may be provided to the Engineer in the form maintained by the ROW user, but when available to the ROW user, shall be submitted in automated formats that are compatible with City systems, as determined by the Engineer, or in hard copy otherwise.

B. Upon failure of a ROW user to commence, pursue or complete any ROW work required by law or by the provisions of this Chapter to be done in any street within the time prescribed and to the reasonable satisfaction of the City, the City may, at its option, after thirty (30) days' notice cause such work to be done and the ROW user shall pay to the City the cost thereof in the itemized amounts reported by the City to the ROW user within thirty (30) days after receipt of such itemized report.

C. Upon ten (10) days' written notice and with the supervision of the City or as otherwise provided by law, a ROW user shall have the authority to trim trees that overhang rights-of-way of the City so as to prevent the branches of such trees from coming in contact with its facilities, at its own expense subject to the supervision and direction of the City. Nothing in this paragraph shall authorize the trimming of trees on private property without permission of the property owner. All cut materials shall be properly disposed.

D. During ROW work by a ROW user the City shall have the right to install and to thereafter maintain at its own cost in any excavation to or other applicable disturbance of the ROW any parallel facilities of its own that do not unreasonably interfere with the operations of other facilities.

E. Nothing in this Chapter shall be in preference or hindrance to the right of the City and any board, authority, commission or public service corporation of the City to use or occupy the rights-of-way or to perform or carry on any public works or public improvements of any description.

Section 406.070 **through Section 406.100. (Reserved)**

Article III

Excavations Affecting Public Utilities

Section 406.110 **Notification Center.**
[Ord. No. 5376 §1, 9-25-2008]

It shall be unlawful for any person to perform any excavation or to direct the performance of any excavation within the corporate limits of the City of O'Fallon without first having contacted the Notification Center established pursuant to Sections 319.010 through 319.050, RSMo., and having given the Center at least forty-eight (48) hours to contact the member utilities for appropriate marking of utility lines, cable or facilities.

Section 406.120 **Public Utilities — Generally.**
[Ord. No. 5376 §1, 9-25-2008]

A. It shall be unlawful for any person to perform any excavation or to direct the performance of any excavation within the corporate limits of the City of O'Fallon which shall in any way disturb, move, cut or damage any public utility line, cable or facility.

B. The provisions of this Section shall not apply to any publicly-owned or regulated utility which is repairing or replacing any of its own facilities which does not affect other utilities, lines or facilities.

Section 406.130 **Excavation Near Pipelines.**
[Ord. No. 5376 §1, 9-25-2008]

A. It shall be unlawful for any person to perform any excavation or to direct the performance of any excavation within the corporate limits of the City of O'Fallon within an area designated as a utility or pipeline easement for a hazardous pipeline without having first obtained a permit from the Engineering Department. Any permit required pursuant to this Section shall be requested from the Engineering Department at least three (3) working days, but not more than ten (10) working days, before performing any excavation.

B. All other provisions of the code must be met including Sections **400.250** and **405.015**.

Section Two: Chapter 510 of the Municipal Code of the City of O'Fallon, Missouri, is hereby repealed in its entirety.

Section Three. Appendix "B": Schedule of Fees, Costs and Expenses of the Zoning Code of the City of O'Fallon, MO is hereby amended to include the description and fee as shown below.

[Fees/Descriptions that are not specifically listed are not affected or amended in any way and remain in full force and effect]

APPENDIX "B"

SCHEDULE OF FEES, COSTS, AND EXPENSES

Preconstruction Meeting Deposit	$250. Said fee will be reimbursed to the applicant upon verification of attendance/participation in the preconstruction meeting.

Section Four. It is hereby declared to be the intention of the City Council that each and every part, section and subsection of this Ordinance shall be separate and severable from each and every other part, section and subsection hereof and that the City Council intends to adopt each said part, section and subsection separately and independently of any other part, section and subsection. In the event that any part of this Ordinance shall be determined to be or to have been unlawful or unconstitutional, the remaining parts, sections and subsections shall be and remain in full force and effect.

Section Five. The Chapter, Article, Division and/or Section assignments designated in this Ordinance may be revised and altered in the process of recodifying or servicing the City's Code of Ordinances upon supplementation of such code if, in the discretion of the editor, an alternative designation would be more reasonable. In adjusting such designations the editor may also change other designations and numerical assignment of code sections to accommodate such changes.

Section Six. This Ordinance shall be in full force and effect from and after its passage and approval by the Mayor.

PASSED BY THE CITY COUNCIL FOR THE CITY OF O'FALLON, MISSOURI, THIS 11 DAY OF OCTOBER, 2018.

Presiding Officer

Attest:

Pamela L. Clement, City Clerk

APPROVED BY THE MAYOR ON THIS 11 DAY OF OCTOBER, 2018.

Bill Hennessy, Mayor

Attest:

Pamela L. Clement, City Clerk

Approved as to Form:

Kevin M. O'Keefe, City Attorney